

**New Los Padres Project  
of  
Monterey Peninsula  
Water Management District**

**Carmel River  
Monterey County**

**Decision No. 1632**

**Application 27614 and Permit 7130B**

**JULY 6, 1995**

**STATE WATER RESOURCES CONTROL BOARD  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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## CITING THE RECORD

When citing evidence in the hearing record, the following conventions have been adopted:

Information derived from the hearing transcript:

T, II, 12:1-15:17

┌───┐ ┌───┐ ┌───┐  
├───┤ ├───┤ ├───┤ ending page and line number (may be omitted  
├───┤ ├───┤ ├───┤ if single line reference is cited)  
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├───┤ ├───┤ ├───┤ identifying abbreviation of the information source

Information derived from an exhibit:

SWRCB:5,4

┌───┐ ┌───┐  
├───┤ ┌───┤ page number, volume, table, graph, or figure  
├───┤ ┌───┤ number; or application number if a file is cited  
├───┤ ┌───┤ exhibit number  
├───┤ ┌───┤ identifying abbreviation of information source

Abbreviations of information sources:

AC	Archeological Consulting
ACHP	Advisory Council on Historic Preservation
ACOE	U.S. Army Corps of Engineers
CAL-AM	California American Water Company
CRSA	Carmel River Steelhead Association
CSPA	California Sportfishing Protection Alliance
DISTRICT or MPWMD	Monterey Peninsula Water Management District
DFG	California Department of Fish and Game
ESSELEN TRIBE	Esselen Tribe of Monterey County
ESSELEN NATION	Esselen Nation of United Families of the Central Coast of California
EVANS	Willis Evans
PARK	Monterey Peninsula Regional Park District
PHBr	Post-Hearing Brief
SWRCB	State Water Resources Control Board
SIERRA CLUB	Ventana Chapter of the Sierra Club
T	Hearing Transcript



Other commonly used abbreviations:

af . . . . . acre-feet  
afa . . . . . acre-feet annually  
cfs . . . . . cubic feet per second  
CEQA . . . . . California Environmental Quality Act  
gpm . . . . . gallons per minute  
RM . . . . . river miles, measured from the ocean  
USGS . . . . . United States Geologic Survey

DECISION APPROVING AMENDED APPLICATION 27614  
AND ORDER REVOKING PERMIT 7130B

SYNOPSIS

This decision approves Application 27614 by the Monterey Peninsula Water Management District for the appropriation of water from the Carmel River by the New Los Padres Project. Application 27614 is approved for up to 42 cubic feet per second of direct diversion and 24,000 acre feet annually (afa) to storage, not to exceed a combined total diversion of 29,000 afa. The authorized season of direct diversion and diversion to storage will extend from November 1 of each year to June 30 of the following year.

The decision includes conditions which provide that any permit issued to the District shall:

- a. Be junior in priority to the rights of persons diverting water for reasonable beneficial use under valid and properly exercised riparian, overlying, pre- and post-1914 appropriative claims of right (which are currently prior to Application 27614) and
- b. Be junior to any approved application for an appropriative right for certain persons identified in the decision who are using established quantities of water within the watershed of origin, irrespective of the priority of such applications *vis a vis* the District's application.

The decision finds that: (a) existing diversions from the Carmel River have adversely affected the public trust resources in the river, (b) the District's proposed method for operating the New Los Padres Project would mitigate the effects of existing diversions from the river, and (c) requires the District to operate the New Los Padres Project to maintain flow in the Carmel River in accordance with a schedule and to implement other measures to preserve steelhead and riparian habitat. The decision also includes conditions to avoid, protect, or minimize the project's effects on historic and traditional cultural properties pursuant to the Programmatic Agreement developed in accordance with Section 106 of the National Historic Preservation Act.

In addition, the decision revokes Permit 7130B for lack of diligence by the District and its predecessors to develop the water authorized by the permit. Finally, the decision finds that no additional water is available for appropriation from the Carmel River between May 1 to December 31 of each year and directs the staff of the State Water Resources Control Board to include the Carmel River among those streams determined to be fully appropriated during all or part of each year in accordance with Water Code Section 1205.

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of: (a) Amended )  
Application 27614; and (b) Petition for )  
Time Extension for Permit 7130B ) DECISION 1632  
(Application 11674B) by Monterey )  
Peninsula Water Management District, )  
Applicant and Petitioner, ) SOURCE: Carmel River  
Asoleado Mutual Water Company, Dale and ) tributary to  
Marian Blanchard, Cachagua Community ) Pacific Ocean  
Center, California-American Water ) COUNTY: Monterey  
Company, California Sportfishing )  
Protection Alliance, California Trout, )  
Inc., Carmel River Steelhead Association, )  
Carmel Valley Ranch, Douglas and Roberta )  
Chappell, Chugach and Company, Charity )  
Crane, George and Julia Crow, Tom Crow, )  
Esselen Tribe of Monterey County, )  
Richard Evans, Willis Evans, Jane )  
Galante, Hacienda Carmel Community )  
Association, Franklin and Catherine )  
Johnson, Patricia Johnson, Roy Kaufman, )  
James Kirk, Donald Koontz, Dan Lufkin, )  
Leo Lutes, A. C. and Linda Markkula, )  
Aloyse and Novella Nicholson, Odella )  
Brothers, Nancy Porter, Patricia Hoover, )  
Pt. Sur Corporation, Quail Lodge, Rancho )  
Cañada de la Segunda, Rancho San Carlos, )  
Verne Rockhold, William Spear, Bruce and )  
Beth Sterten, Syndicate Camp, John and )  
Kathryn Tregoe, Craig Vetter, John G. )  
Williams, Leonard and Emily Williams )  
Trust, Robert and Elizabeth Wilson, )  
Roger and Josephine Williams, Wolter )  
Properties Ltd., Bill Barker, California )  
Department of Fish and Game, California )  
Department of Parks and Recreation, )  
Green Valley Meadows, Quinn Properties, )  
and Sierra Club, )  
Protestants & Interested Parties. )

DECISION APPROVING AMENDED APPLICATION 27614  
AND ORDER REVOKING PERMIT 7130B

BY THE BOARD:

Monterey Peninsula Water Management District (District) having:

(1) filed Application 27614, and amendments thereto, and

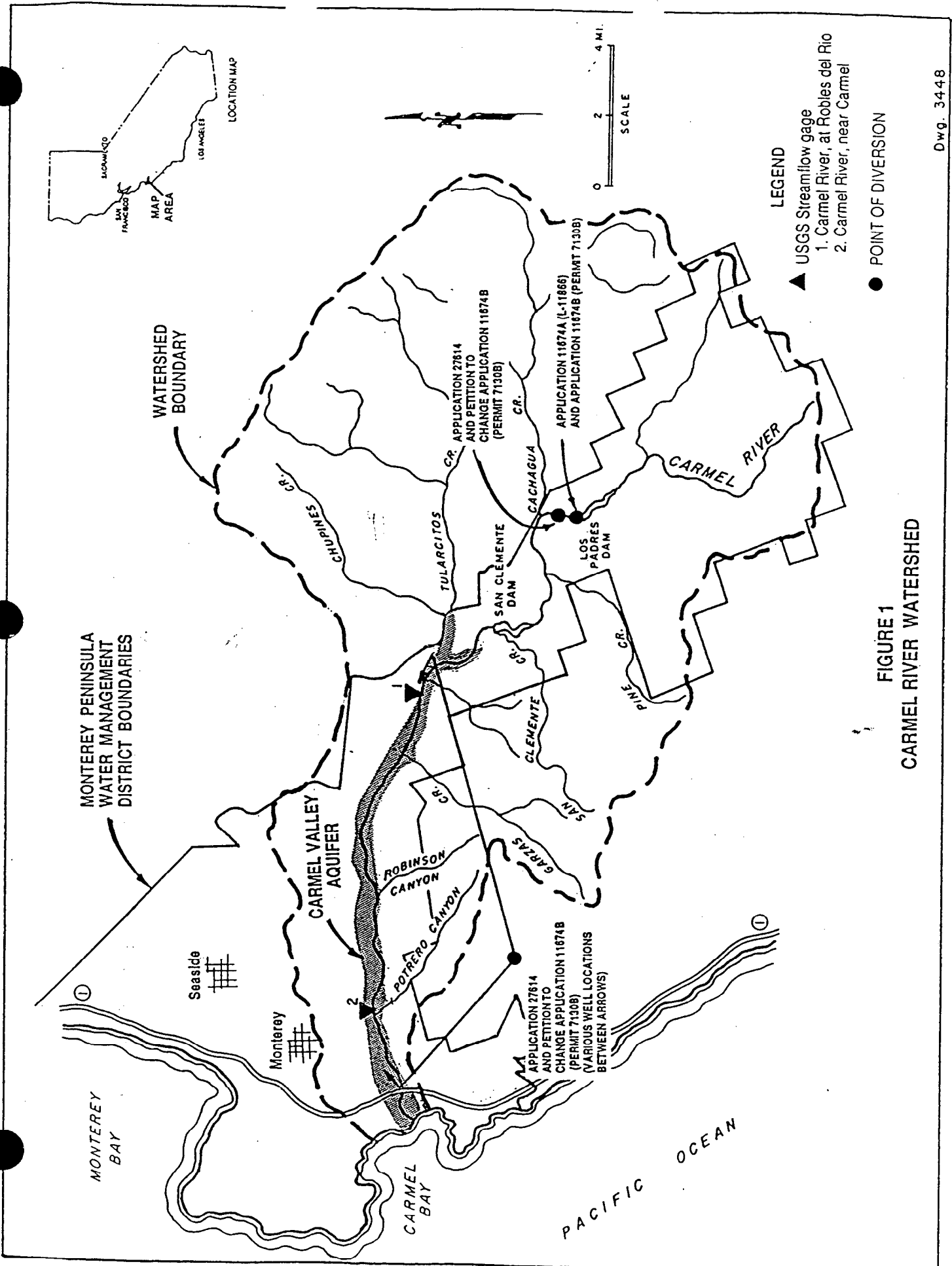
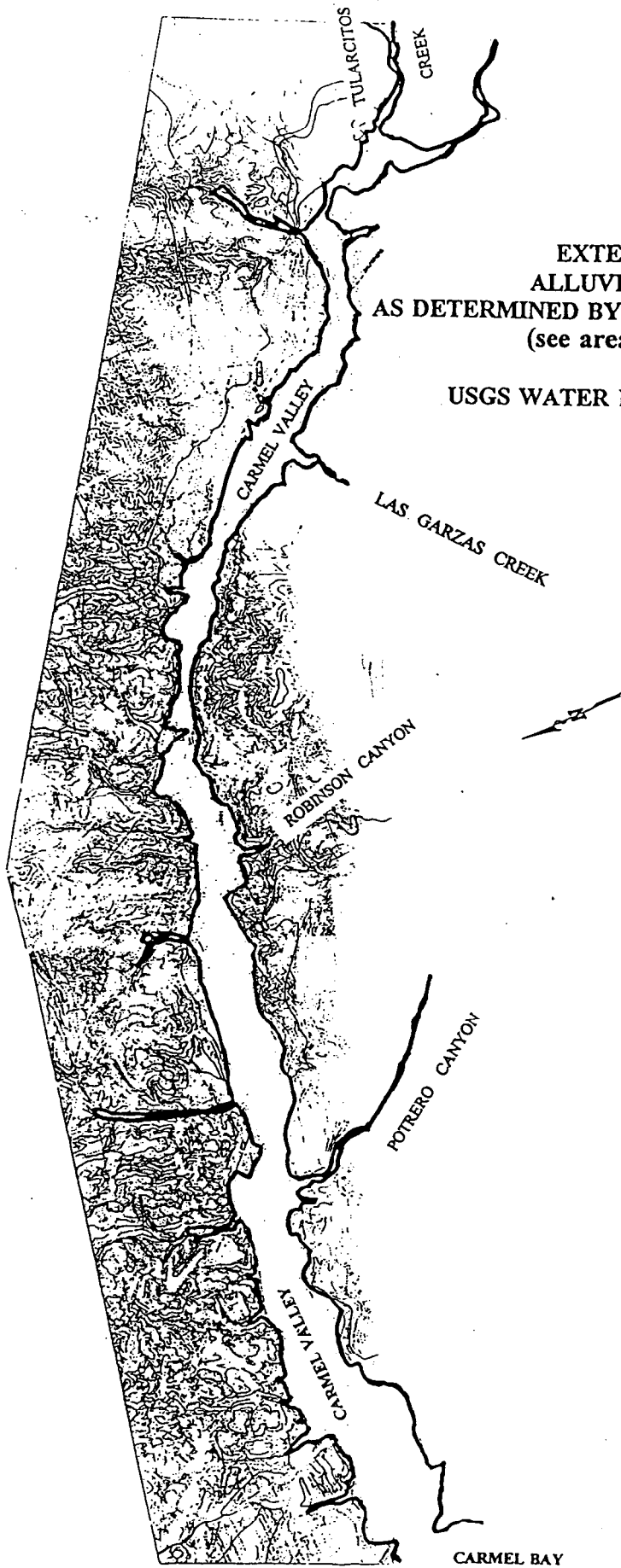


FIGURE 1  
CARMEL RIVER WATERSHED

FIGURE 2

EXTENT OF CARMEL VALLEY  
ALLUVIAL GROUNDWATER BASIN  
AS DETERMINED BY THE U.S. GEOLOGICAL SURVEY (USGS)  
(see area defined by the bold lines)

USGS WATER INVESTIGATIONS REPORT 83-4280  
JUNE 1984



THE CARMEL RIVER (NOT SHOWN)  
FLOWS THROUGH CARMEL VALLEY

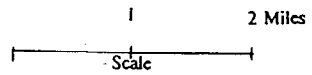
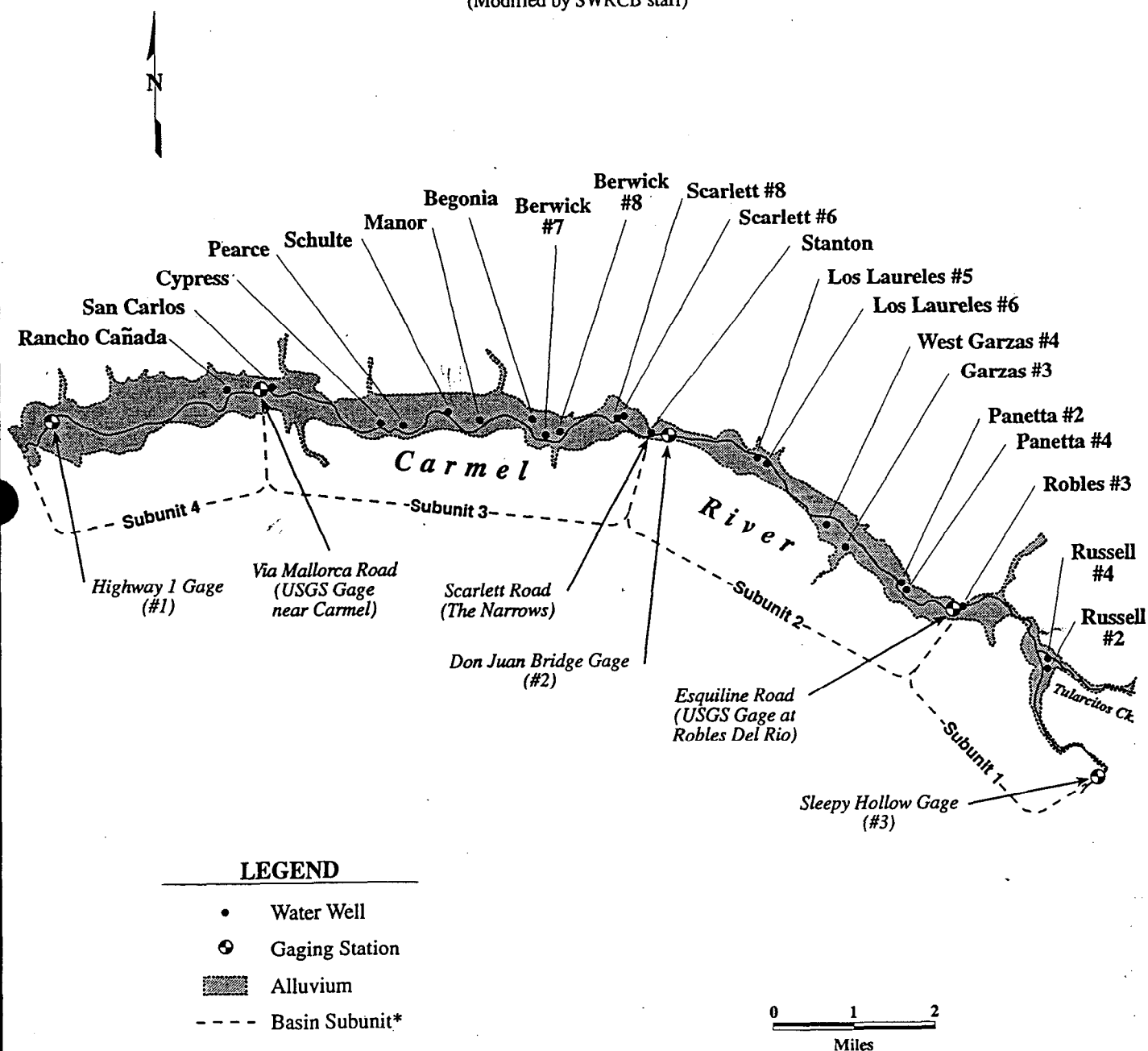


FIGURE 3

ALLUVIAL GROUNDWATER BASIN SHOWING THE LOCATION OF THE CALIFORNIA-AMERICAN WATER COMPANY WELLS

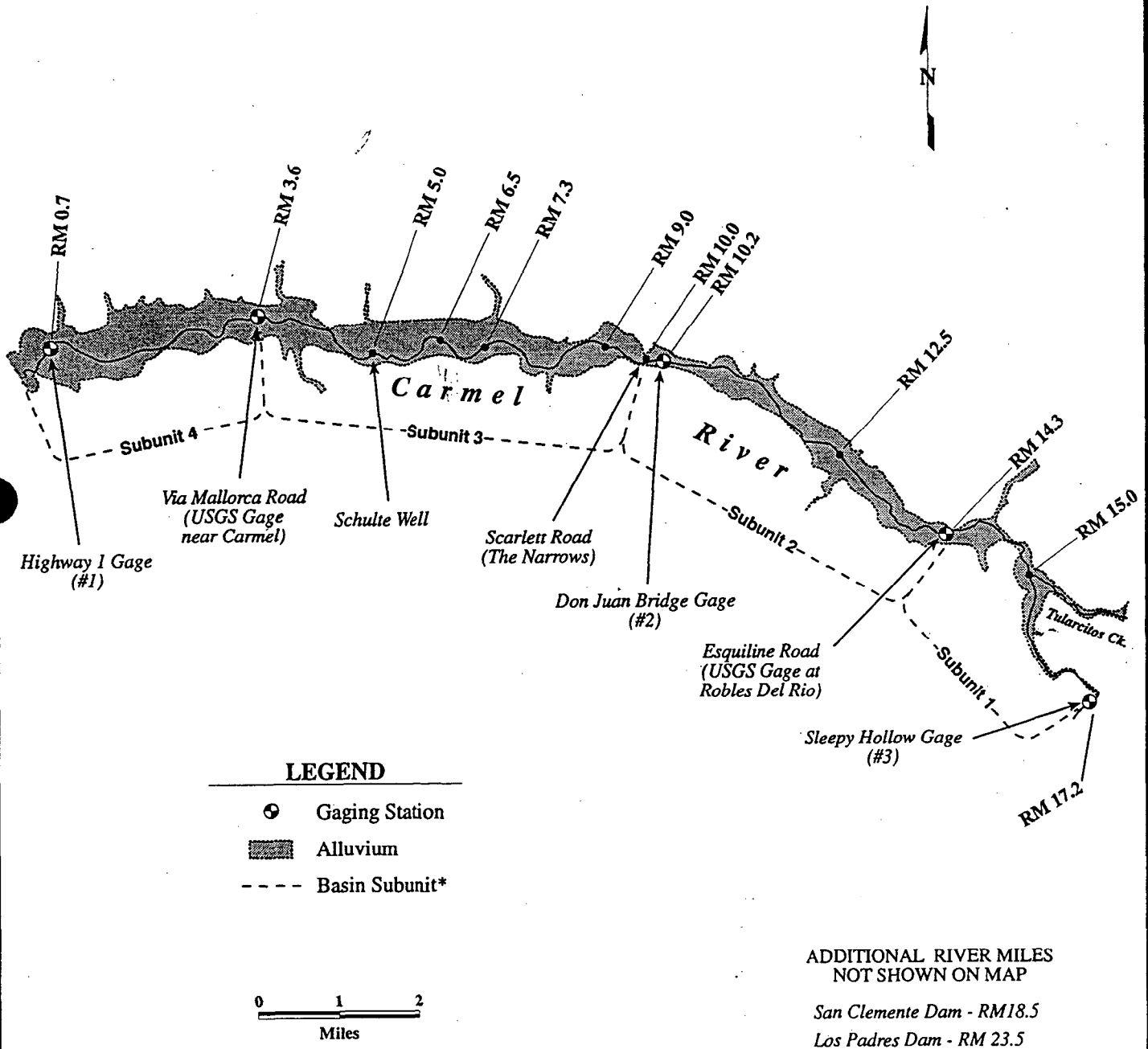
Information obtained from MPWMD Exhibit 287 - Figure 7-2  
(Modified by SWRCB staff)



\* Subunits 1-4 form the Carmel Valley Groundwater Basin. The subunit boundaries are: 1. Via Mallorca Road (USGS Gage Near Carmel), 2. Scarlett Road (The Narrows), 3. Esquiline Road (USGS Gage at Robles Del Rio), 4. Sleepy Hollow Gage. Streamgaging will occur at the Highway 1 Gage (#1), Don Juan Bridge Gage (#2), and Sleepy Hollow Gage (#3).

FIGURE 4

ALLUVIAL GROUNDWATER BASIN  
IDENTIFYING RIVER MILES (RM)



ADDITIONAL RIVER MILES  
NOT SHOWN ON MAP

San Clemente Dam - RM 18.5  
Los Padres Dam - RM 23.5

\* Subunits 1-4 form the Carmel Valley Groundwater Basin. The subunit boundaries are: 1. Via Mallorca Road (USGS Gage Near Carmel), 2. Scarlett Road (The Narrows), 3. Esquiline Road (USGS Gage at Robles Del Rio), 4. Sleepy Hollow Gage. Streamgaging will occur at the Highway 1 Gage (#1), Don Juan Bridge Gage (#2), and Sleepy Hollow Gage (#3).

(2) petitioned for an extension of time and change in the point of diversion for Permit 7130B; numerous protests having been filed by persons claiming these actions would injure rights to the use of water or the environment, including instream beneficial uses; a hearing having been held on August 24, 25, 26, 31, September 1, 8 and 9, October 19 and 21, and November 7, 8 and 22, 1994; the applicant, protestants and other interested persons having been provided opportunity to present evidence; closing briefs having been filed; the evidence and briefs having been duly considered, the Board finds as follows:

**1.0 NEW LOS PADRES DAM AND RESERVOIR, THE DISTRICT'S PROJECT**

The District proposes to construct and operate the New Los Padres Reservoir Project (project) under: (1) amended Application 27614 and (2) Permit 7130B (Application 11674B). Petitions have been filed to conform the original application and permit to the proposed project.

The project consists of an onstream storage reservoir on the Carmel River about 23 river miles upstream from the Ocean. Water would be released from the reservoir for: (1) rediversion downstream at San Clemente Dam at RM 18.5, (2) recharge of the Carmel Valley aquifer and subsequent rediversion by 34 wells located approximately from RM 3 to 15, and (3) maintenance of instream flow. In addition, water would be directly diverted from the river at 34 points of diversion located approximately from RM 3 to 15.

Amended Application 27614 requests authorization to store 24,000 acre-feet annually (afa) and to directly divert 47 cubic feet per second (cfs), with a combined limitation of 29,000 afa.

Permit 7130B authorizes storage of 15,970 afa at the existing Los Padres Reservoir located at RM 23.5. The District has petitioned to store this water at the proposed project. Under



Application 27614 and Permit 7130, the District seeks a total of 44,970 afa of water by direct diversion and storage.<sup>1</sup>

### **1.1 Project Purpose**

The Monterey Peninsula depends upon local surface and ground water resources to meet regional water supply needs. In normal and wet years, supply exceeds demand, but the area is subject to climatic variability and the impact of multi-year droughts. Since 1976, the Peninsula community has endured two extended periods of mandatory rationing; 18 months in 1976 to 1977 and 28 months in 1989 to 1991.

The New Los Padres Project is proposed to reduce existing drought vulnerability, provide an increment of "new" water to satisfy a modest amount of future growth, and to correct the adverse environmental effects from the present method of diverting and using water from the Carmel River. The stated overall purpose of the project, therefore, is to provide municipal supply and provide adequate instream flow to protect the public trust resources of the Carmel River. (MPWMD:312,15-18.) The dual project purposes are to be achieved by operating the Carmel River system on a conjunctive use basis. In this way, surface water supplies are managed in coordination with ground water supplies. (MPWMD:287, 4-19.)

### **1.2 Application 27614**

Application 27614 was filed on December 16, 1982. The District amended the application on January 14, 1986, and further amended it on March 26, 1992. An amended application supersedes the application on file. Because protests raised the question whether it is appropriate to approve certain elements of the 1992 amendments to the application, both the application and amendments are set forth below:

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<sup>1</sup> 44,970 afa is obtained by adding the 15,970 afa for Permit 7130B with the requested 29,000 afa for Application 27614.



**TABLE 2**

**APPLICATION 27614 (AMENDMENT DATED MARCH 26, 1992)**

QUANTITY:	47 cfs by direct diversion 24,000 afa by storage in New Los Padres Reservoir combined total annual diversion of 29,000 afa
SEASON:	(1) direct diversion for irrigation purposes--May 1 to October 31  (2) direct diversion for municipal purposes--January 1 to December 31  (3) storage for irrigation, municipal and fish and wildlife purposes--January 1 to December 31
SOURCE:	Carmel River
COUNTY:	Monterey
POINT OF DIVERSION: <sup>2</sup>	(1) New Los Padres Dam within the NE¼ of SE¼ of Section 5, T18S, R3E, MDB&M  (2) Carmel River (underflow) as follows (the word section is abbreviated as sect. for this table only):  <ol style="list-style-type: none"> <li>1. Reimers Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> <li>2. Pryor Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> <li>3. Scarlett Well - SW¼ of SW¼ of Sect. 09, T16S, R2E</li> <li>4. DeDampierre Well - NE¼ of SW¼ of Sect. 03, T17S, R2E</li> <li>5. Cañada Well - NE¼ of SW¼ of Sect. 17, T16S, R1E</li> <li>6. San Carlos Well - NE¼ of SE¼ of Sect. 17, T16S, R1E</li> <li>7. Cypress Well - SW¼ of NW¼ of Sect. 22, T16S, R1E</li> <li>8. Pearce Well - SE¼ of NW¼ of Sect. 22, T16S, R1E</li> <li>9. Schulte Well - SW¼ of NW¼ of Sect. 23, T16S, R1E</li> <li>10. Manor Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> <li>11. Manor #2 Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> </ol>
Continued next page	

<sup>2</sup> The District submitted an application map depicting only the extreme upstream and downstream points of diversion/rediversion. Title 23, California Code of Regulations (CCR), Section 715 requires all points of diversion/rediversion to be shown on a map, with specific additional information. The District should be required to amend its application map prior to permit issuance.

**TABLE 2**

**APPLICATION 27614 (AMENDMENT DATED MARCH 26, 1992)**

*Continued from previous page*

POINT OF DIVERSION:	12. Begonia Well - NW¼ of SW¼ of Sect. 24, T16S,R1E 13. Begonia #2 Well - NW¼ of SW¼ of Sect. 24, T16S,R1E 14. Berwick #7 Well - SW¼ of SW¼ of Sect. 24, T16S,R1E 15. Berwick #8 Well - SE¼ of SW¼ of Sect. 24, T16S,R1E 16. Scarlett #6 Well - SW¼ of SW¼ of Sect. 19, T16S,R2E 17. Scarlett #8 Well - SW¼ of SW¼ of Sect. 19, T16S,R2E 18. Stanton Well - NW¼ of NE¼ of Sect. 30, T16S,R2E 19. Los Laureles #5 - NW¼ of SE¼ of Sect. 29, T16S,R2E 20. Los Laureles #6 - SE¼ of SE¼ of Sect. 29, T16S,R2E 21. West Garzas #4 - NE¼ of SW¼ of Sect. 33, T16S,R2E 22. Garzas Creek #3 - SW¼ of SE¼ of Sect. 33, T16S,R2E 23. Panetta #2 Well - NW¼ of NW¼ of Sect. 03, T17S,R2E 24. Panetta #1 Well - NW¼ of NW¼ of Sect. 03, T17S,R2E 25. Robles #3 Well - NE¼ of NE¼ of Sect. 10, T17S,R2E 26. Russell #4 Well - SW¼ of SE¼ of Sect. 11, T17S,R2E 27. Russell #2 Well - SE¼ of SE¼ of Sect. 11, T17S,R2E 28. A Well - SW¼ of SE¼ of Sect. 13, T16S,R1W 29. B Well - NE¼ of SW¼ of Sect. 18, T16S,R1E 30. C Well - SW¼ of NW¼ of Sect. 22, T16S,R1E 31. D Well - SW¼ of NW¼ of Sect. 23, T16S,R1E 32. E Well - SW¼ of SE¼ of Sect. 24, T16S,R1E 33. F Well - NW¼ of NW¼ of Sect. 03, T17S,R2E 34. G Well - SW¼ of NW¼ of Sect. 03, T17S,R2E
POINT OF REDIVERSION:	(1) San Clemente Dam within the NW¼ of SW¼ of Section 24, T17S, R2E, MDB&M  (2) 34 Carmel River wells as listed above under points of diversion
PLACE OF USE:	110,000 acres as shown on a map on file with the SWRCB
PURPOSE OF USE:	Municipal, irrigation, fish and wildlife

**1.3 Permit 7130 (Application 11674)**

On July 7, 1948, the State Engineer of the Department of Water Resources adopted Decision 582 approving the issuance of

Permit 7130 to Cal-Am.<sup>3</sup> The permit approved the diversion and use of water at the existing Los Padres Dam. Permit 7130 required the permittee to construct works and put water to full beneficial use by December 1, 1975. Cal-Am developed only a small amount of the water approved by the permit and transferred the balance. Today, the District holds the balance of the right to develop water under the Permit, 15,970 afa. This permit is denominated as Permit 7130B.<sup>4</sup>

During March 1992, the District filed a petition to change the point of diversion under Permit 7130B from the existing Los Padres Dam to the point of diversion for the proposed project, a short distance downstream from the existing project.<sup>5</sup> Other changes to Permit 7130B are also sought by the District. (See Table 4, *infra*.) Finally, the District has filed a petition for time extension to develop water under Permit 7130B. The details of Permit 7130B, and the petition to amend the permit are set forth in Tables 3 and 4.

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<sup>3</sup> The State Engineer of the Department of Water Resources is a predecessor of the SWRCB.

<sup>4</sup> The reassignment was approved by Order dated May 2, 1984. Permit 7130 was split into Permits 7130A for 3,030 afa and Permit 7130B for 15,970 afa. The original permit was revoked.

<sup>5</sup> The proposed project will inundate the existing Los Padres Dam and reservoir.

**TABLE 3**

**PERMIT 7130B OF THE DISTRICT**

DATE FILED:	December 30, 1946
QUANTITY:	15,970 afa
SEASON:	October 1 to May 31
SOURCE:	Carmel River tributary to Pacific Ocean
COUNTY:	Monterey
PURPOSE:	Domestic, Industrial and Municipal
POINT OF DIVERSION:	Los Padres Dam within NW¼ of NE¼, Section 8, T18S, R3E, MDB&M
PLACE OF USE:	District service area covering 9,900 acres in the Carmel Valley within Townships 15, 16, 17 and 18 South, Ranges 1 West, 1, 2, 3 and 4 East, MDB&M

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**TABLE 4**

**PETITIONED CHANGES TO PERMIT 7130B**

<b>POINT OF DIVERSION:</b>	New Los Padres Dam within NE¼ of SE¼, Section 5, T18S, R3E, MDB&M
<b>POINTS OF REDIVERSION:</b>	<p>(a) San Clemente Dam within NW¼ of SW¼, Section 24, T17S, R2E, MDB&amp;M</p> <p>(b) Carmel River (subterranean stream) as follows (the word section is abbreviated as sect. for this table only):</p> <ol style="list-style-type: none"> <li>1. Reimers Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> <li>2. Pryor Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> <li>3. Scarlett Well - SW¼ of SW¼ of Sect. 09, T16S, R2E</li> <li>4. DeDampierre Well - NE¼ of SW¼ of Sect. 03, T17S, R2E</li> <li>5. Cañada Well - NE¼ of SW¼ of Sect. 17, T16S, R1E</li> <li>6. San Carlos Well - NE¼ of SE¼ of Sect. 17, T16S, R1E</li> <li>7. Cypress Well - SW¼ of NW¼ of Sect. 22, T16S, R1E</li> <li>8. Pearce Well - SE¼ of NW¼ of Sect. 22, T16S, R1E</li> <li>9. Schulte Well - SW¼ of NW¼ of Sect. 23, T16S, R1E</li> <li>10. Manor Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> <li>11. Manor #2 Well - NE¼ of SW¼ of Sect. 23, T16S, R1E</li> <li>12. Begonia Well - NW¼ of SW¼ of Sect. 24, T16S, R1E</li> <li>13. Begonia #2 Well - NW¼ of SW¼ of Sect. 24, T16S, R1E</li> <li>14. Berwick #7 Well - SW¼ of SW¼ of Sect. 24, T16S, R1E</li> <li>15. Berwick #8 Well - SE¼ of SW¼ of Sect. 24, T16S, R1E</li> <li>16. Scarlett #6 Well - SW¼ of SW¼ of Sect. 19, T16S, R2E</li> <li>17. Scarlett #8 Well - SW¼ of SW¼ of Sect. 19, T16S, R2E</li> <li>18. Stanton Well - NW¼ of NE¼ of Sect. 30, T16S, R2E</li> <li>19. Los Laureles #5 - NW¼ of SE¼ of Sect. 29, T16S, R2E</li> <li>20. Los Laureles #6 - SE¼ of SE¼ of Sect. 29, T16S, R2E</li> <li>21. West Garzas #4 - NE¼ of SW¼ of Sect. 33, T16S, R2E</li> <li>22. Garzas Creek #3 - SW¼ of SE¼ of Sect. 33, T16S, R2E</li> <li>23. Panetta #2 Well - NW¼ of NW¼ of Sect. 03, T17S, R2E</li> <li>24. Panetta #1 Well - NW¼ of NW¼ of Sect. 03, T17S, R2E</li> <li>25. Robles #3 Well - NE¼ of NE¼ of Sect. 10, T17S, R2E</li> <li>26. Russell #4 Well - SW¼ of SE¼ of Sect. 11, T17S, R2E</li> <li>27. Russell #2 Well - SE¼ of SE¼ of Sect. 11, T17S, R2E</li> </ol>
<i>Continued next page</i>	

<b>TABLE 4</b>	
<b>PETITIONED CHANGES TO PERMIT 7130B</b>	
<i>Continued from previous page</i>	
POINTS OF REDIVERSION:	28. A Well - SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sect. 13, T16S,R1W 29. B Well - NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sect. 18, T16S,R1E 30. C Well - SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sect. 22, T16S,R1E 31. D Well - SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sect. 23, T16S,R1E 32. E Well - SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sect. 24, T16S,R1E 33. F Well - NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sect. 03, T17S,R2E 34. G Well - SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sect. 03, T17S,R2E  * By letter dated July 8, 1992, the District indicated that the Manor and Begonia Wells (see nos. 10 and 12 above) will be used only for monitoring purposes.
PLACE OF USE:	110,000 acres within Townships 14, 15, 16, 17, 18 and 19 South, and Ranges 1 West, 1, 2, 3 and 4 East, MDB&M
TIME EXTENSION:	To construct project and put the water to maximum use. SWRCB staff notes that the petition lacks information on the extent of the time extension sought by the permittee.

## 2.0 PROTESTS TO THE PROPOSED PROJECT

Fifty-three protests were filed against the proposed project. Protests were filed in response to: (1) the 1986 notice of Application 27614, (2) the 1992 rennotice of Application 27614, and (3) notice of Petitions for Change of Permit 7130B. Many protests raise multiple issues. In general, protestants allege that the proposed project will injure: (1) prior rights to the use of water and (2) the environment. Table 5 summarizes protestants claiming prior rights to the use of water and the basis of the right being claimed. Table 6 summarizes the other issues being raised and the protestants raising the issues.

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TABLE 5

PRIOR RIGHT PROTESTS

Protestant	Riparian	Pre-1914 Appropriative	Overlying Ground Water Right	Post-1914 Appropriative
Asoleado Water Company	X			
Blanchard	X	X	X	
Cal-Am		X		A30215
Carmel Valley Ranch	X	X	X	
Chappell	Basis of Right Not Listed			
Chugach	X		X	A30034
Crow, G.	X		X	A30065
Crow, T.	X		X	A30066
Evans, R.	X		X	A29659
Galante	X			A27215
Hacienda Carmel	X	X	X	
Johnson, F. and C.	X	X	X	
Johnson, P.	X	X	X	
Kaufman	X	X	X	
Kirk	X	X	X	
Koontz	X		X	A30057
Lufkin	X	X	X	
Lutes	X	X	X	
Markkula	X	X		
Nicholson	X		X	A30046
Odello Brothers	X	X	X	
Porter	X		X	A30075
Pt. Sur Corporation	X	X	X	

Continued next page

TABLE 5

PRIOR RIGHT PROTESTS

Protestant	Riparian	Pre-1914 Appropriative	Overlying Ground Water Right	Post-1914 Appropriative
<i>Continued from previous page</i>				
Quail Lodge <sup>6</sup>	X	X	X	
Quinn Properties	X		X	
Rancho Cañada <sup>7</sup>	X	X	X	
Rancho San Carlos	X	X	X	
Spear	X		X	A30059
Sterten	X		X	A30070
Syndicate Camp (Hoss)	X	X	X	
Tregea Trust	X	X	X	
Williams <sup>8</sup> Trust	X	X	X	
Wilson	X	X	X	
Wolter Properties	X	X	X	

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<sup>6</sup> 1986 protest by Green Valley Meadows, Inc. for the same property.

<sup>7</sup> 1986 protest filed by Barker, Hatton, Bransen, Pierce and Rancho San Carlos for the same property.

<sup>8</sup> 1986 protest by Leonard Williams for what appears to be the property covered by the 1992 Williams Trust protest.

**TABLE 6**

**OTHER PROTEST ISSUES**

<i>Issue</i>	<i>Protestant</i>
Export from Cachagua Area	Crane, Charity
Ground Water Depletion	Rancho San Carlos
Construction Related Impacts	Cachagua Community Center
Priority Date of 1992 Application Modifications	Chappell, Douglas and Roberta Chugach and Company Crow, George and Julia Crow, Tom Evans, Richard Koontz, Donald Nicholson, Aloyse and Novella Porter, Nancy Spear, William Sterten, Bruce and Beth
Appropriateness of 1992 Application Modifications	Evans, Willis
Water Management Authority of the District Regarding Pumpage	Pt. Sur Corporation Asoleado Water Company
Reservation of Water for Junior Applicants	Blanchard, Dale and Marian Carmel Valley Ranch Hacienda Carmel Hoss, Peter Johnson, Franklin and Catherine Johnson, Patricia Kaufman, Roy Kirk, James Lufkin, Dan Quail Lodge Rancho Cañada Rancho San Carlos Tregae Trust Williams Trust Wilson, W. Robert and Elizabeth

*Continued next page*

**TABLE 6**

**OTHER PROTEST ISSUES**

<i>Issue</i>	<i>Protestant</i>
<i>Continued from previous page</i>	
Public Trust Resources	California Trout Ca. Sportfishing Protection Alliance Carmel River Steelhead Association Department of Fish and Game Department of Parks and Recreation Evans, Willis Lutes, Leo Odello Brothers Sierra Club Williams, John Wolter Properties
Final EIR/EIS Prior to Project Approval	Asoleado Water Company Evans, Willis Markkula, A.C. and Linda Pt. Sur Corporation Williams, Roger and Josephine
Cultural Resource Issues (as related to Native American Issues)	Esselen Tribe

**3.0 DESCRIPTION OF WATERSHED**

The Carmel River drains a 255 square mile watershed tributary to the Pacific Ocean. Its headwaters originate in the Santa Lucia Mountains at 4,500 to 5,000 foot elevations, descend and merge with seven major stream tributaries along a 36-mile river course, and discharge into Carmel Bay about 5 miles south of the City of Monterey. About 65 percent of the watershed is found above the confluence of Tularcitos Creek at RM 15. Downstream from RM 15, the river has a 40 feet per mile gradient where river flow is over and within an alluvium-filled Carmel Valley floor.

Carmel River flow is in a well-defined channel that ranges from 20 to 150 feet wide. (SWRCB:19.) The channel changes progressively from cobble to gravel between RM 15 and RM 7, from gravel to sand

between RM 7 and RM 2.5 and consists entirely of sand from RM 2.5 to Carmel Bay. (DFG:4,2.)

The alluvial deposits downstream from RM 15 comprise a ground water basin which underlies the river in the Carmel Valley portion of the watershed. Local ground water levels within the aquifer are influenced by pumping or production at supply wells, evapotranspiration by riparian vegetation, seasonal river flow infiltration, and subsurface inflow and outflow.

During the dry season, pumping of wells has caused significant declines in the ground water levels. Carmel River surface flow has been found to decrease due to pump-induced infiltration which recharges the seasonally-depleted ground water basin. During normal and dry years, surface flow in the lower Carmel Valley becomes discontinuous or non-existent. Downstream from RM 3.2, there was no river runoff between April 1987 and March 1991. (MPWMD:287,2-8.)<sup>9</sup>

#### 4.0 AVAILABILITY OF UNAPPROPRIATED WATER

Water Code Section 1201 defines the water available for appropriation as all water flowing in any natural channel, excepting the quantity which is reasonably needed for useful, beneficial purposes on riparian lands, or otherwise appropriated. Prior to the issuance of a permit, the SWRCB must find that unappropriated water is available for an application to appropriate water. (Water Code Section 1375(d).)

Under Application 27614, as amended, the District is requesting an appropriative right to: (1) divert 24,000 afa to storage for municipal, irrigation, and other purposes of use at New Los Padres Reservoir from January 1 through December 31 of each year;

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<sup>9</sup> Under predevelopment conditions, the river flowed year round except in the driest of years. (Sierra Club:1,20.)

(2) directly divert 42 cfs (22,500 afa) from January 1 through December 31 for municipal use; and (3) to directly divert 5 cfs (600 afa) from May 1 through October 31 for irrigation use. The combined total diversion would be limited to 29,000 afa.

The availability of unappropriated water is determined as follows: First, the unimpaired streamflow for the Carmel River is identified. Second, the quantity of water used under prior rights is estimated. Finally, the amount of water estimated to be used under prior rights is subtracted from the unimpaired streamflow. Unappropriated water is that water which remains in the system.

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#### 4.1 Unimpaired Carmel River Streamflow<sup>10</sup>

Flow above Los Padres Dam accounts for almost 70 percent of the total runoff which is expected to occur in the watershed under normal conditions. (MPWMD:101,8,22-26.)<sup>11</sup> Precipitation occurs almost entirely as rain, with over 90 percent falling between November and April. (MPWMD:103,3,6-7.) Approximately 39,000 af of runoff is generated above the Los Padres site under normal (i.e., median) conditions. (MPWMD:101,8,22-26.) These data indicate that during most years adequate streamflow is available to supply the full 29,000 afa requested by Application 27614. The water described above, however, may be: (1) needed to first satisfy prior rights to the use of water and (2) available only on a seasonal basis.

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<sup>10</sup> During the hearing, the District provided evidence regarding the quantity of water which is available for Application 27614. This evidence is based, in part, on a model which the District developed. The model uses streamflow data developed by the ACOE and includes some synthetic streamflow data. Synthetic flow data is actual data obtained from a nearby watershed which is modified and substituted for missing data in a stream under investigation. John Williams, testifying for the Sierra Club, questioned the accuracy of the streamflow values reported by the District. (Sierra Club:51.)

Selected data from Sierra Club Exhibit 51 were compared with the equivalent data in District's Exhibit 211. For various exceedence values, the flows in Exhibit 51 are inconsistent with the flows in Exhibit 211. The Sierra Club's values are sometimes greater and sometimes less than the District's. Mr. Williams attributes these differences to errors he believes exist in the synthesized streamflow values. (Sierra Club:50.) The historic streamflow record is incomplete. Mr. Williams testified that he could not duplicate the ACOE synthesized flows. (Sierra Club:50,1.) Mr. Williams provided only limited flow data during the hearing. (T:249,5-19.) Further, Mr. Williams indicated that the streamflow values developed by the ACOE may contain some errors for specific reported values. (Sierra Club:50.) The witness did not identify the total number of errors which he believes the ACOE model contains, nor the statistical significance of the errors as it affects the overall accuracy of the ACOE model. Finally, the witness did not provide information to document the statistical validity of the data which he developed. Although Mr. Williams raises questions regarding the reliability of the District's model, we find that insufficient data was provided to support the conclusion that the District's model and its results cannot be relied upon.

<sup>11</sup> Flow in the lower Carmel River is approximately 30 percent greater than the streamflow at Los Padres Dam.





TABLE 7						
Reconstructed Inflow To Los Padres Reservoir MPWMD Exhibit 202--Average Monthly Flows Converted To CFS <sup>12</sup>						
NOV	DEC	JAN	FEB	MAR	APR	
22.3	67.5	153.0	228.9	208.2	119.2	mean
1.0	1.4	1.3	2.4	10.4	6.9	minimum
241.2	368.5	884.3	932.0	1446.5	831.2	maximum

TABLE 8 (Continuation of Table 7)						
Reconstructed Inflow To Los Padres Reservoir MPWMD Exhibit 202--Average Monthly Flows Converted To CFS						
MAY	JUN	JUL	AUG	SEP	OCT	
44.7	19.9	8.2	3.6	3.0	5.8	mean
3.6	1.4	1.0	1.0	1.0	1.0	minimum
311.5	98.5	45.3	29.4	17.8	41.1	maximum

TABLE 9						
Unimpaired Inflow To Los Padres Dam: 1902-1991 District Exhibit 202--Flow Exceedence Frequency Values Average Monthly Flows in AF						
MAY	JUN	JUL	AUG	SEP	OCT	Percent of Time Flow Is Exceeded
7,458	2,940	1,673	821	662	1,042	5.0%
5,427	2,406	1,152	445	377	662	12.5%
3,112	1,861	786	246	194	390	25.0%
2,121	917	319	122	74	218	50.0%
1,097	580	93	63	64	88	75.0%
612	276	70	61	59	71	87.5%
411	93	62	61	59	61	95.0%

<sup>12</sup> Tables 7, 8 and 9 are based on District Exhibit No. 202. Exhibit No. 202 includes flow data for 1902 through 1991. Thus, the statistical characterizations of the flow data are based upon 90 years of flow data.

#### 4.3 Water Diverted Under Riparian, Pre-1914 Appropriative, and Overlying Claims of Right

The combined total of water being claimed and/or used by protestants under riparian, pre-1914 appropriations and overlying claims of right is approximately 3,230 afa,<sup>13</sup> most of which is directly diverted during the summer months for irrigation purposes. (Sections 5.0 to 5.5, *infra*.)

#### 4.4 Water Diverted Under License 11866 (Application 11674A)

Cal-Am Water Company (Cal-Am) holds the right to divert and use water at the existing Los Padres Dam under License 11866. The dam is just upstream of the location for the proposed project.<sup>14</sup> During 1948, the SWRCB's predecessor adopted Decision 582 authorizing the appropriation of water for the application which became License 11866. The application sought to appropriate water by direct diversion and diversion to storage on a year-round basis. Decision 582 found that only 2.4 percent of the average annual flow occurred during the four-month period beginning June 1 and ending September 30 of each year. In addition, the decision authorized the diversion of water only between October 1 and May 31.<sup>15</sup>

The mean inflow to Los Padres Reservoir during the month of October for the period of record is only 218 afa. (MPWMD:202.) As previously noted, Cal-Am is authorized to divert and use water at Los Padres Dam under License 11866 during the month of October. License 11866 authorizes Cal-Am to divert up to 3030 af and the license does not impose a restriction on the rate of

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<sup>13</sup> Cal-Am's pre-1914 appropriative rights are not included in this total.

<sup>14</sup> No significant tributaries join the river between the site of the existing Los Padres Dam and the proposed project.

<sup>15</sup> Table 9 lists the median flow at Los Padres Dam (the 50 percent exceedence flows) for summer months. These flows range from a high of 15.4 cfs (917 af) in June to a low of 1.25 cfs (74.4 af) during September. (MPWMD:202.) The updated hydrology data provided by the District for the pending application confirms the findings made in Decision 582.

collection. This right has a higher priority than the right which could be authorized for Application 27614. Such water as is ordinarily available in October would be diverted under License 11866. This demonstrates the lack of unappropriated water during the month of October for Application 27614. Accordingly, the storage season and direct diversion seasons for Application 27614 should begin on November 1 of each year.

#### **4.5 Cal-Am Diversions at San Clemente Dam and From Wells Between River Miles 3 to 14**

In addition to License 11866, Cal-Am claims pre-1914 appropriative rights to divert and use water at San Clemente Dam and from its wells along the Carmel River between RM 3 to 15. In Order WR 95-10, the SWRCB found that Cal-Am did not demonstrate a right to divert water at San Clemente Dam under a pre-1914 appropriative right. Order WR 95-10 also found that, excepting License 11866, Cal-Am has a year-round pre-1914 appropriative right to divert water from the Carmel River of only 1,137 afa or about 95 af monthly. Finally, the order concludes that Cal-Am is diverting as much as 10,730 afa from the river without a valid basis of right.

#### **4.6 Additional Findings On Availability of Water**

The Decision 582 diversion season extends from October 1 to May 31. As noted in Section 4.4, the diversion season for Application 27614 should not include October. Accordingly, the water availability analysis will first consider the period from November 1 to May 31. The percentage of mean annual unimpaired streamflow at Los Padres Reservoir between November 1 and May 31 was compared with the percentage generated throughout the remainder of the year. Mean annual unimpaired streamflow is: (a) 50,158 afa for November 1 to May 31 and (b) 2,424 afa for June 1 to October 31. Thus, only 4.6 percent of the mean annual flow at Los Padres Reservoir is produced from June 1 to October 31. Runoff upstream of Los Padres Reservoir accounts for approximately 70 percent of the basin runoff. The average annual

flow in the Carmel River watershed is estimated to be 71,654 afa for the period November 1 to May 31 and 3,462 afa for the period June 1 to October 31.

From June 1 to October 31, a significant amount of available water is required to satisfy claimants of paramount rights. The quantity of water required to serve the claimed rights is approximately 3,705 afa.<sup>16</sup> (Sections 4.3 and 4.6, *infra*.) As previously noted, water is primarily used for irrigation purposes during the summer months. Water applied for irrigation either transpires, evaporates, or percolates to the aquifer. The fraction of the water applied for irrigation which percolates to the aquifer has not been quantified. The 3,705 afa<sup>17</sup> figure exceeds the average surface flow in the river during the summer months.<sup>18</sup> Surface flow is also significantly impacted by diversions of up to 10,730 afa from the aquifer by Cal-Am for which it has no basis of right. (Order WR 95-10.)

Under License 11866, Cal-Am is authorized to collect water to storage in Los Padres Dam from October 1 through May 31. The maximum amount authorized for collection to storage under License 11866 is 3,030 af; however, the present capacity of the reservoir is approximately 2,179 af. (MPWMD:88,11.) Water stored in this facility is delivered to Cal-Am's customers. The license does not restrict the maximum rate of collection to storage and the reservoir can be refilled as soon as runoff becomes available. The Los Padres Reservoir generally fills by

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<sup>16</sup> This figure is obtained by adding Cal-Am's pre-1914 appropriative right for the months of June through October (95 af x 5 months = 475 af) to 3,230 afa for riparian, overlying and all other pre-1914 claimants.

<sup>17</sup> This analysis relies upon the prior right claims submitted as part of the hearing record, in order to have adequate information to identify point of diversion, purpose of use and season of diversion of the protestants for purposes of evaluating seasonal water availability.

<sup>18</sup> Diversion from the alluvial ground water basin of the Carmel River is the common practice and explains this apparent discrepancy. In essence, diverters are pumping water during the summer months at a rate which exceeds the seasonal rate of resupply from the surface water course.

mid-December at which time water starts to overflow the reservoir. (MPWMD:106,12,14-15.) Available October runoff is required, therefore, to serve License 11866. Flows in excess of the quantity required to serve License 11866 are generated, occasionally, during October. (MPWMD:202.)

Another factor which affects water availability is the determination that it is appropriate to reserve water for junior applicants to obtain an appropriative right with a priority superior to the District's permit (see Section 5.7).

The Carmel River hearing record has been utilized to determine the general season of water availability for the persons listed in Table 13, in order to determine the quantities of water available to serve District Application 27614. The availability of water for persons on Table 13 varies due to their specific location on various tributaries or the mainstem of the Carmel River.

Water availability within the Carmel Valley is composed of two elements: (1) surface water flow and (2) water flowing through the alluvial aquifer below RM 15. The usable storage capacity of the aquifer is approximately 28,400 af, with 21,900 af of usable storage located in the lower Carmel Valley (below the Narrows) and 6,500 af of usable storage located in the upper Carmel Valley (above the Narrows). (MPWMD:101,6.) In this context, usable storage refers to ground water<sup>19</sup> which can be extracted by Cal-Am production wells. (MPWMD:101,6.) The alluvial aquifer is extensively used as a water supply; Cal-Am generally produces 75 percent of its water supply by pumping from the alluvial aquifer. (MPWMD:101,6.)

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<sup>19</sup> Throughout Section 4.6, the word "ground water" actually refers to the Carmel River subterranean stream flowing through the alluvial aquifer. As noted previously, alluvial fill material is generally present downstream of RM 15.

Because Cal-Am will have a priority for the largest quantity of water listed in Table 13, 2,964 af, this assignment of water has the single largest impact upon water availability for District Application 27614. The remaining Table 13 parties will be separately evaluated as a group, to assess how those applicants affect water availability for the District's project.

Under any application filed or to be filed pursuant to Table 13, Cal-Am may be authorized to continue utilizing 2,964<sup>20</sup> af for in-basin uses, which have historically been diverted from surface flows at the San Clemente Filter Plant and/or San Clemente Dam. The filter plant is located within one-half mile downstream of San Clemente Dam. Only a small amount of alluvial fill is present in this area. Consequently, water availability is contingent upon the presence of surface flows.

Water is available for Cal-Am whenever there is surface flow present in excess of the quantity needed to satisfy prior rights. Water is available for the other persons in Table 13 whenever there is surface and/or subsurface flow present (for parties below RM 15 on the mainstem Carmel River) or surface flow present (for all others in Table 13), after deducting the quantities needed to satisfy prior rights.

During the months of May through September, significant quantities of water are required to serve the Table 12 claimants. The actual quantities of water diverted by Table 12 claimants is set forth in Column 1 in Table 13.

Table 9 lists the unimpaired streamflow at Los Padres Dam. As noted previously, this accounts for approximately 70 percent of the runoff generated in the Carmel Valley. Water use by the persons in Table 13 has been limited, primarily, to direct

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<sup>20</sup> Table 13 indicates that Column 3 amounts, which includes 2,964 af for Cal-Am, may be reduced.

diversion. For those direct diverters who do not have an alternative water source which can be utilized during a drought, it is appropriate to review water availability based upon the 50-percent exceedence (median flow) value shown in Table 9.

The recorded flow at Los Padres Dam does not include all of the water physically available to Cal-Am, pursuant to Table 13. Pine Creek and San Clemente Creek add to the Carmel River flow between Los Padres Dam and the location where Cal-Am takes its water. Taking this additional flow into account, water may be available to Cal-Am from November 1 of each year through May 31 of the following year.<sup>21</sup> A final determination regarding the season of water availability for any Cal-Am application for priority based on Table 13 will be made at the time that the application is processed. For purposes of the District's application, however, the Cal-Am Table 13 diversion will be reviewed based upon a diversion season of November 1 through May 31.

The diversion practices of the remaining Table 13 persons can be subdivided into two groups: the irrigators who generally use water during the summer months and persons who divert water throughout the year. Information regarding existing diversion practices is contained in Table 12.<sup>22</sup> To avoid double-counting of water under claimed rights (Table 12) and water actually pumped by the claimants (Table 13), only values from Table 13 will be utilized in this part of the analysis.

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<sup>21</sup> Water may be available to Cal-Am during November. Based upon the Carmel River hearing record, it appears that such flow is available less than 50 percent of the time. Only a minimal amount of flow occurs at San Clemente Dam in June. (MPWMD:289, Appendix 5, 23.)

<sup>22</sup> Information regarding Cal-Am's existing diversions from the alluvial basin is not contained in the following analysis because, pursuant to Order WR 95-10, the SWRCB is requiring Cal-Am to implement measures to restrict unlawful diversion of water and to obtain legal rights to its use of water. Any new appropriative rights obtained by Cal-Am at this time, excluding the Table 13 water, will be junior to the appropriative rights obtained by persons listed in Table 13.





**TABLE 10**

WATER AVAILABILITY AND PRODUCTION LIMITS CARMEL VALLEY SUBBASINS (IN AF)				
	AQ 1	AQ 2	AQ 3	AQ 4
Usable Storage Capacity of Subbasin (SWRCB:42,IV-45)	4,502	2,029	16,927	5,000
Production Limit Based Upon MPWMD Allocation <sup>28</sup>	139	610	8,345	1,584
Cal-Am 1994 Pumping	23	205	8,154	1,657
Non-Cal-Am 1994 Pumping <sup>29</sup>	110	158	983	847
1994 Pumping Total	133	363	9,137	2,504
Pumping Within Usable Storage Capacity of Subbasin	Yes	Yes	Yes	Yes
Pumping Within MPWMD Allocation	Yes	Yes	No	No
Quantity Remaining From MPWMD Allocation	+6	+247	-792	-920

Based upon the usable storage capacity of the four subbasins, water is available for appropriation from the alluvial aquifer for the persons listed in Table 13,<sup>30</sup> even if there is no surface

<sup>28</sup> The estimated allocation in this table is based upon the revised water production summary for 1987 for both non-Cal-Am and Cal-Am diversions. (SWRCB:1,A-27614,10-27-94 letter.)

<sup>29</sup> The Table 13 amounts are generally included in the non-Cal-Am pumping records for AQ 1 through AQ4, except for the quantities assigned to the following persons: Asoleado, Beckerman, Blanchard, Evans, P. Johnson, F. Johnson, Kirk, Lufkin, Markkula-Holt, Porter-Hoover, Samson, Scardina, Spear, Syndicate Camp, Tregaea Trust, Wilson-Rancho Chupinos, and Wolfe. These quantities are not included in the records for AQ 1 through AQ4, because these persons pump water from elsewhere in the Carmel River watershed.

<sup>30</sup> Cal-Am water availability under Table 13 was analyzed separately above. Consequently, the finding of year-round water availability for Table 13 diverters does not pertain to Cal-Am.

flow present. Pumping in subbasins AQ3 and AQ4 has increased from 1987 to 1994. The quantity of water which can be diverted, however, is limited. The District has developed a methodology to identify the practical limit for diversion and has further determined that it will allow the quantity of pumping identified in the table to continue. The hearing record contains evidence which indicates that the District has determined that the existing production limits shall not be increased until the New Los Padres Reservoir Project is operable. Thus, we find that appropriation from the alluvial aquifer should be limited to the quantities identified in Table 13.<sup>31</sup> The public trust impacts of such diversions should be evaluated at the time the Table 13 applications are processed.

Unappropriated water is available for District Application 27614 whenever the flow requirements listed above are present. The District's project is composed of two elements: (1) surface water storage in the New Los Padres Reservoir and related project elements and (2) direct diversion at downstream wells located throughout the Carmel River Valley. Water availability for the New Los Padres Reservoir is based upon the surface flow record. The wells the District proposes to use would divert water from the alluvial ground water basin. The District proposes, however, to mitigate project impacts by implementing a bypass flow regime and releases to maintain, as much as possible, surface flows in the Carmel River. Therefore, it is not appropriate to authorize diversion for Application 27614 based upon water contained in the

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<sup>31</sup> The data in Table 10 above indicates that the District's water allocation methodology, which utilized 1987 as the base year for purposes of establishing production limits, may further restrict water availability for Table 13 parties. The water allocation methodology is described in the District's Water Allocation EIR (SWRCB:42). The Water Allocation EIR did not establish pumping limits for the respective subbasins or particular individuals. The analysis in Table 10 was performed to illustrate which portions of the aquifer are currently subject to the greatest pumping impacts and related environmental impacts. The pumping in subbasins AQ3 and AQ4 by Cal-Am may have increased over the 1987 level due to reoperation (reduced diversion) at San Clemente Dam to maintain instream flows as far downstream as possible. Therefore, this evaluation does not purport to find that such pumping exceeds reasonable production limits for Cal-Am.

alluvial aquifer. Consequently, our evaluation will be limited to the surface flow records.

The flow records at Los Padres indicate the following water availability. (MPWMD:202.)

TABLE 11					
ANALYSIS OF WATER AVAILABILITY FOR APPLICATION 27614 AND JUNIOR APPLICATIONS					
Month	Median Flow	Prior Water Rights (af/month)	Percent of Time Prior Rights Met	Water Available For Application 27614	Water Available For Junior Applicants <sup>32</sup>
October	218	983	< 10	No	No
November	596	1,230	< 25	Yes <sup>33</sup>	No
December	1,940	794	> 75	Yes	No <sup>34</sup>
January	4,626	358	100	Yes	Yes
February	6,934	358	100	Yes	Yes
March	8,550	358	100	Yes	Yes
April	4,302	358	100	Yes	Yes
May	2,121	358	100	Yes	No <sup>35</sup>
June	917	523	< 75	Yes	No
July	318	523	< 25	No	No
August	122	523	< 12	No	No
September	74	523	< 10	No	No

<sup>32</sup> If the District were to divert the 29,000 afa under Application 27614 uniformly throughout the eight-month diversion season, 3,625 af would be diverted each month. Water availability for junior applicants is determined by adding this quantity to the prior rights column.

<sup>33</sup> Even though water is rarely available for Application 27614 in November, it is appropriate to permit storage of peak flows when they do occur.

<sup>34</sup> Water is available less than 25 percent of the time.

<sup>35</sup> Water is available less than 25 percent of the time.

In conclusion, the District could have an authorized diversion season which extends from November 1 of each year to June 30 of the following year. A limited quantity of water is available for junior applicants, however, from only January 1 through April 30 of each year.

#### **4.7 Conclusions Regarding the Availability of Unappropriated Water**

Based upon the need to refill Los Padres Reservoir, the water required to satisfy persons claiming paramount rights to the use of water during summer months, and the need to maintain water in the surface channel for instream uses, we find that the diversion season for Application 27614 should be limited to November 1 of each year to June 30 of the following year.<sup>36</sup> We also find that unappropriated water is available and that Application 27614 should be approved for 42 cfs of direct diversion and storage of 24,000 afa, not to exceed a combined total of 29,000 afa.<sup>37</sup> Finally, we find that any permit issued for Application 27614 should limit the diversion season to November 1 of each year through June 30 of the following year. The period of available water for applicants with priorities of right which are junior to Application 27614 extends from January 1 through April 30 of each year.

#### **5.0 VESTED RIGHT PROTESTS**

Numerous protests are based upon potential injury to prior rights of protestants. Water needed to serve prior rights is water which is not available for appropriation by the District. Accordingly, the quantity of water needed to satisfy prior rights is considered in this section.

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<sup>36</sup> Because water is only available from January 1 to April 30 of each year, the Carmel River should be considered at a future hearing for inclusion in the Declaration of Fully Appropriated Streams pursuant to Water Code Section 1206, et seq.

<sup>37</sup> The District's request to directly divert 5 cfs during summer months should be denied, due to the absence of available supply.

### 5.1 Protests Based Upon Overlying Ground Water Rights

In Order WR 95-10, the SWRCB found that the water flowing through the Carmel River alluvium constitutes a subterranean stream and not percolating ground water. Consequently, the protests based upon claims of overlying ground water rights are dismissed. However, these protestants also claimed riparian and/or appropriative rights which are considered in the following sections.

### 5.2 Protests Based Upon Riparian Rights<sup>38</sup>

A riparian is entitled to pump and use water on a parcel which overlies a subterranean stream. The following protestants claim a riparian right to divert water: Asoleado Water Company, Carmel Valley Ranch, Chugach, George and Julia Crow, Tom Crow, Evans, Galante, Hacienda Carmel, Kaufman, Kirk, Koontz, Lufkin, Lutes, Markkula, Nicholson, Odello Brothers, Porter, Pt. Sur Corporation, Quail Lodge, Rancho Cañada, Rancho San Carlos, Spear, Sterten, Syndicate Camp, Tregia Trust, Quinn Properties, Williams Trust, Wilson and Wolter Properties. In addition, protestants Blanchard, Frank and Catherine Johnson and Patricia Johnson claim an overlying right to divert water and may, consequently, be overlying riparian users.<sup>39</sup>

Protestants Blanchard, Chugach and Company, Evans, Franklin Johnson, Patricia Johnson, Kirk, Lufkin, Markkula, Porter, Spear, Tregia Trust and Wilson divert water from Tularcitos Creek, Chupines Creek, Robertson Creek, and Big Creek and do not divert water from the Carmel River. These protestants are able to divert and use water from these streams prior to the water reaching the Carmel River. The proposed project will divert

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<sup>38</sup> The District has stipulated to recognize the riparian rights of many of the protestants. The information contained in the stipulations is insufficient to utilize for purposes of determining availability of unappropriated water. Consequently, the protest materials are analyzed in this Decision.

<sup>39</sup> Those parties claiming both a riparian and an overlying right are only listed once in this portion of the decision.

water to storage and directly divert water only from the Carmel River. Thus, we find that the proposed project will not interfere with the prior rights of these persons and that their protests should be dismissed.<sup>40</sup>

Most of the riparian protestants did not submit parcel maps to identify the parcels which are contiguous to the Carmel River. Further, most of the protestants did not submit deeds identifying: (1) any riparian rights preserved by deeds of conveyance and (2) any riparian rights which have been affected by waiver of riparian rights (see Cal-Am 13-17, for example). Consequently, the hearing record is not adequate to make determinations regarding the validity of claimed riparian rights.<sup>41</sup>

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<sup>40</sup> Even though these protests should be dismissed, any water used under these claims must be deducted from the unimpaired Carmel River flows to estimate availability of unappropriated water.

<sup>41</sup> Prior to the hearing, riparian claimants had not complied with Water Code Section 5100, et seq. requiring the filing of Statements of Water Diversion and Use with the SWRCB, with the exception of Chugach and Company; Crow, G. and J.; Evans; Koontz; Nicholson; Porter; and Sterten. Such statements might have documented the extent and location of the claimed rights.

The protestants claim the right to divert and use the following quantities of water from the Carmel River:

TABLE 12			
PROTESTS BASED UPON RIPARIAN CLAIMS			
PROTESTANT	QUANTITY		SEASON
	afa	Source	
Asoleado Water Company	11.3	ASO:B <sup>42</sup>	01-01 to 12-31
Carmel Valley Ranch	525.0	protest	04-01 to 11-15* <sup>43</sup>
Crow, George and Julia	3.5	protest	05-01 to 10-01*
Crow, Tom	7.0	protest	05-01 to 10-01*
Galante	40.0	protest	11-01 to 04-15
Hacienda Carmel	50.0	protest	04-15 to 11-15*
Kaufman	150.0	protest	04-15 to 11-15*
Koontz	2.0	protest	05-01 to 10-31*
Lutes	70.0	protest	04-01 to 11-15*
Nicholson	2.0	protest	05-01 to 10-31*
Odello Brothers	540.0	protest	04-01 to 11-01*
Pt. Sur Corporation	4.9	protest	01-01 to 12-31
Quail Lodge	254.0	protest	04-01 to 11-15*
Quinn Properties	40.0	protest	03-01 to 10-15
Rancho Cañada	700.0	protest	04-15 to 11-15*
Rancho San Carlos	240.0	RSC:3;3	04-01 to 11-01*
Sterten	6.0	protest	05-01 to 09-30*
Syndicate Camp	0.8	protest	04-01 to 11-01*
Continued to next page			

<sup>42</sup> The combined available well output of 20,000 gpd was converted to cfs using the formula  $(20,000 \text{ gpd} \times (1 \text{ cfs}/646,317 \text{ gpd})) = 0.03 \text{ cfs}$ .

<sup>43</sup> The "\*" denotes the primary diversion season.

**TABLE 12**

**PROTESTS BASED UPON RIPARIAN CLAIMS**

PROTESTANT	QUANTITY		SEASON
	afa	Source	
<i>Continued from previous page</i>			
Williams Trust	38.0	protest	04-01 to 11-01*
Wolter Properties	60.0	protest	04-01 to 11-15*
<b>TOTAL</b>	2752.1		
<b>Protestants diverting water from tributaries to the Carmel River:</b>			
Blanchard	0.1	protest	01-01 to 12-31
Chugach and Company	2.1	protest	05-01 to 12-31*
Evans	15.0	protest	05-01 to 12-31*
Johnson, Franklin	0.1	protest	01-01 to 12-31
Johnson, Patricia	0.1	protest	01-01 to 12-31
Kirk	9.5	protest	01-01 to 12-31
Lufkin	28.0	protest	01-01 to 12-31
Markkula	quantity not listed		
Porter	30.0	protest	05-01 to 10-31*
Spear	17.4	protest	05-01 to 10-31*
Tregea Trust	6.0	protest	01-01 to 12-31
Wilson	377.0	protest	01-01 to 12-31
<b>TOTAL</b>	477.9		

The combined total of water being claimed by riparian protestants is approximately 3,230 afa, most of which is directly diverted during the summer months for irrigation purposes. No evidence was submitted to demonstrate that the District's proposed project would interfere with prior riparian rights during a diversion season between November 1 of each year through June 30 of the following year. Further, the District has stipulated to recognize valid riparian rights of protestants, and any permit which is issued by the SWRCB will include a condition to implement the stipulation. Accordingly, we find that protests based upon riparian right claims should be dismissed.



### 5.3 Protests Based Upon Pre-1914 Appropriative Rights

The following persons filed protests based upon claims of pre-1914 appropriative rights: Blanchard, Cal-Am, Carmel Valley Ranch, Hacienda Carmel, Hoss, F. and C. Johnson, P. Johnson, Kaufman, Kirk, Lufkin, Lutes, Markkula, Odello Brothers, Pt. Sur Corporation, Quail Lodge, Rancho Cañada, Rancho San Carlos, Syndicate Camp, Tregua Trust, Williams Trust, Wilson and Wolter Properties.

Title 23, CCR, Section 745 states that if a protest is based upon interference with a prior right, the protest shall state the basis of the claim of right to use water, when the use began, the use which has been made in recent years, and present use.

Section 746 states that a protest based upon a claim of interference with an alleged appropriative right which is based solely upon use of water commenced since December 19, 1914, without compliance with statutory procedure, will not be accepted. Protestants either: (1) failed to offer evidence which satisfies all of the requirements of Section 745<sup>44</sup> or (2) claimed a pre-1914 appropriative right for a use which commenced after 1914. Accordingly, we find that these protests should be dismissed.

Except for protestant Cal-Am, protestants claiming a pre-1914 appropriative right also claim a riparian right for the same properties. The quantities of water which the protestants use are listed in Section 5.2. Accordingly, the quantities of water which the protestants divert under pre-1914 appropriative claim are included in the quantities listed in Section 5.2. No evidence was submitted to demonstrate that the District's proposed project would interfere with these claimed rights during a diversion season between November 1 of each year through May 31 of the following year. Further, the District has stipulated to

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<sup>44</sup> Several persons introduced evidence of some of the elements required by Section 745.

recognize valid pre-1914 appropriative rights of protestants and any permit which is issued by the SWRCB will include a condition to implement the stipulation. Thus, we find that protests based upon pre-1914 appropriative rights should be dismissed.<sup>45</sup>

#### **5.4 Protest Based Upon Unidentified Prior Right**

The protest filed by Douglas and Roberta Chappell is based upon potential injury to an unspecified type of water right. The protest indicates that use of 3.5 afa began in 1972 for stock watering purposes. The water is stored in a stockpond. Storage of water initiated after December 19, 1914, can only be accomplished under a valid appropriative water right. The SWRCB has no record of an appropriative water right for the Chappell stockpond. The protestant is seeking an appropriative right for the stockpond pursuant to pending Application 30145; however, the protest should be dismissed, per Title 23, CCR, Section 746.

#### **5.5 Protest Based Upon Permit 18976 of Galante**

Galante Vineyards protested Application 27614 on the basis of need to continue service to Permit 18976 (Application 27215) of Galante, which authorizes storage of 40 afa. On behalf of Galante Vineyards, Donald Kienlen testified that the District's proposed project will not have an adverse effect on the water use of Galante Vineyards. (GALANTE:1,2.) Thus, the standard permit condition according protection to senior water rights is adequate to protect the permit and, on this basis, the protest is dismissed.

#### **5.6 Protests Regarding the Priority Date of Application 27614**

Application 27614 was filed on December 16, 1982. The application originally requested authorization both to directly divert and store water throughout the year. In 1986, the

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<sup>45</sup> Our conclusion is based, in part, on the protestants duplicative riparian claim and that riparian claims are, generally, permanent to appropriative claims of right.

application was amended to request storage only. In 1992, a second amendment was filed and the application now requests authorization to both directly divert and store water throughout the year.

Protestants Chappell, Chugach and Company, G. Crow, T. Crow, Evans, Koontz, Nicholson, Porter, Spear, and Sterten filed protests which request that the priority date of the 1992 Application 27614 modifications be set to the date of the 1992 amendments and not the date of the application in 1982. Protestant Evans filed a protest regarding the appropriateness of allowing the District to add direct diversion to Application 27614 via the 1992 amendment to the application.

Title 23, CCR, Section 699 provides that:

"Neither the amount of water applied for, nor the season of diversion, as stated in the application as first filed, can subsequently be increased in the application or in a permit or license issued on the application."

In both the initial application and the first and second amendments thereto, the District requested the right to divert water on a year-round basis. In addition, neither amendment sought to increase the amount to be diverted. Water Code Section 1450 states that any application properly made gives to the applicant a priority of right as of the date of the application until such application is approved or rejected. Accordingly, the protests listed in this section should be dismissed because the District's amended applications did not: (1) increase the amount of water requested under the application and (2) did not increase the requested diversion season.

#### **5.7 Reversal of Priority For Some Junior Applicants**

Protestants Blanchard, Carmel Valley Ranch, Hacienda Carmel, F. Johnson, P. Johnson, Kaufman, Kirk, Lufkin, Quail Lodge, Rancho Cañada, Rancho San Carlos, Syndicate Camp, Tregrea Trust, Williams Trust, and Wilson request that a condition be included

in any permit issued on Application 27614 to reserve a specific quantity of water for appropriation by junior applicants.<sup>46</sup> These protestants request, in essence, that their junior applications be given a higher priority than the application for the District's proposed project.

All of the listed protestants claim a riparian right as well as other rights to divert and use water. To the extent that the claimed rights are valid, these protestants have water rights which are senior to any right which the District may establish under any permit issued for Application 27614.<sup>47</sup>

The junior applicants and others contend that it is in the public interest to reserve water for appropriation by junior applicants. Clearly, such a condition would be in their individual interests. It can be argued that it is in the public interest that long-standing claims and/or uses of water should be respected irrespective of the validity of the legal basis for such claims and/or uses. The District has entered into settlement agreements with some protestants. These agreements provide, in part:

"2. Pumper and the Water Management District agree that a determination of the existence and extent of the pre-1914, riparian or overlying water rights which may be held by Pumper is not necessary in these proceedings. To the extent Pumper may later establish that they hold perfected and enforceable pre-1914, riparian or overlying water rights the Water Management District agrees not to exercise any water right presently held by District or granted in these proceedings in a manner to impair Pumper's pre-1914, riparian or overlying water rights.

"3. The Water Management District does not and shall not contest Pumper's right to divert or extract water

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<sup>46</sup> Bruce and Beth Sterten, Aloys and Novella Nicholson, Donald R. Koontz, Nancy Porter and Patricia Hoover, Chugach & Company, Richard B. Evans, Thomas Crow, George and Julia Crow, Douglas and Roberta Chappell and William Spear made the same request when closing briefs were filed with the SWRCB. (Supplemental Closing Brief of Carmel Valley Water Users.)

<sup>47</sup> The amounts claimed under riparian rights are addressed in Section 5.2, *supra*.

from existing wells, existing surface diversions, or other facilities (or replacement wells, diversions, or other facilities of similar capacities) for reasonable and beneficial overlying or riparian uses on Pumper's lands, [which are] described in Exhibit 1 [to each agreement].... To the extent Pumper may have, hold, or obtain a water right or rights to divert or extract water for use on the lands described in Exhibit 1 as an appropriator, a riparian property owner or an overlying owner, the ... District agrees not to exercise any water right presently held by the District or granted to the District in these proceedings in any manner that would impair such water rights pertaining to Pumper's existing wells, diversion or other facilities (or replacement wells, diversion, or other facilities of similar capacities)." (Emphasis added.)

Water Code Section 1450 states that any application properly made gives to the applicant a priority of right as of the date of the application until such application is approved or rejected. The SWRCB has the authority, however, to modify the relative priority of applications. (Water Code Section 1257.)

The District filed Application 27614 prior to the subsequent filing of any applications by the protestants. Application 27614 requests water to augment municipal water supply, to reduce drought vulnerability for existing customers served by Cal-Am, and to mitigate the adverse effects of existing diversions on the public trust uses of the Carmel River. (MPWMD:287,2-2.) Most of the water which would be supplied to Cal-Am customers would be for use outside of the Carmel River watershed. Finally, this project could make a legal water supply available to Cal-Am in lieu of its unauthorized diversion from the Carmel River. (Order WR 95-10.)

When determining the quantity of water available to supply the proposed project, the District made allowance for established levels of diversions from the river. (MPWMD: 247, 5-11.) These amounts are set forth in a limited number of stipulations between the District and water users along the Carmel River, in the District Water allocation EIR and in other places in the hearing

record. (Table 13.) Whether such water is being diverted and used under valid legal rights is not known.<sup>48</sup>

As previously discussed, surface water is not available in the Carmel River for much of the year, particularly during the summer and fall of each year. Further, the opportunity to develop additional water within the Carmel River Valley is limited.<sup>49</sup> As a matter of public interest, the District should not be allowed to develop and export water from a watershed at the expense of water used within the watershed. Thus, any permit issued to the District should include conditions for protecting users of established quantities of water within the watershed of origin.<sup>50</sup> This preference can be accomplished by special permit conditions.

The holders of riparian, overlying, and pre-1914 appropriative rights have a paramount right to take and use water over persons holding post-1914 appropriative water right permits or licenses. A condition should be included in any permit issued for Application 27614 which expressly states that the right to take water under the permit is junior to the rights of persons diverting water for reasonable beneficial use under valid riparian, overlying, and pre- and post-1914 appropriative claims of right. Thus, such users will be assured that their water rights are protected. (Condition 9.)

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<sup>48</sup> The administrative record does not provide sufficient information for the SWRCB to evaluate such claims.

<sup>49</sup> The only real option for providing water for significant development within the Carmel River watershed includes additional storage projects and desalination of ocean water. Suitable sites for additional storage within the watershed are limited. Further, additional development within the watershed would have significant environmental effects.

<sup>50</sup> This preference does not apply to Cal-Am to the extent that it is diverting and supplying water for use outside of the Carmel Valley watershed.

**TABLE 13**

**CARMEL RIVER WATERSHED--SWRCB DETERMINATION OF  
PRIORITY AND QUANTITIES OBTAINED FROM  
STIPULATIONS, APPLICATIONS, OR PROTESTS (AFA)**

<b>Name</b>	<b>Quantity of Water Diverted (Obtained from Hearing Record) (1)</b>	<b>Source of Information</b>	<b>Application Number</b>	<b>Quantity Applied For (Storage and Direct Diversion Combined) (2)</b>	<b>Quantity Reserved by SWRCB For Future Appropriation (3)*</b>
Asoleado	11.30	Exhibit ASO:B	A30093	914.0	11.3
Beckerman	0.00	Application	A30351	28.9	0.0
Bernardi	2.30	Well Report <sup>51</sup>	A29193	3.7	2.3
Berube	48.40	Application	A30442	41.2	41.2
Blanchard	0.30	Protest	---	--	0.3
Cal-Am	2,964.00	Exhibit <sup>52</sup> Cal-Am:88,5	A30215	33,153.0	2,964.0
Carmel Valley Ranch <sup>53</sup>	237.47	Well Report	A30106	340.0	340.0
Chappel	9.09	Well Report	A30145	3.5	3.5
Chugach & Company	7.62	Well Report	A30034	25.2	7.6
Crow, G. & J.	1.40	Well Report	A30065	3.5	1.4
Crow, T.	13.95	Well Report	A30066	12.7	12.7
Evans, R.	15.00	Protest	A29659	17.5	15.0
* NOTE: Column (3) is the lesser of columns (1) or (2), unless there is a stipulation specifying an amount of water. For those parties who have stipulated to a specific maximum quantity of water (see footnotes by names), the stipulated quantity is listed in column (3).					
Continued to next page					

<sup>51</sup> All well reports were obtained from SWRCB:1,A27614, letters dated 10-27-94, 11-30-94 & 5-1-95.

<sup>52</sup> From July 1991 to June 1992, 2,964 af was diverted at San Clemente Dam, presumably for use in Carmel Valley Village. (CAL-AM:88.) Beginning in 1991, diversions at San Clemente Dam were restricted by agreement with the District.

<sup>53</sup> Carmel Valley Ranch and the District stipulated to a maximum of 340.0 afa.

**TABLE 13**

**CARMEL RIVER WATERSHED--SWRCB DETERMINATION OF  
PRIORITY AND QUANTITIES OBTAINED FROM  
STIPULATIONS, APPLICATIONS, OR PROTESTS (AFA)**

Name	Quantity of Water Diverted (Obtained from Hearing Record) (1)	Source of Information	Application Number	Quantity Applied For (Storage and Direct Diversion Combined) (2)	Quantity Reserved by SWRCB For Future Appropriation (3)*
<i>Continued from previous page</i>					
Greco	6.10	Estimate	A30045	6.1	6.1
Hacienda Carmel <sup>54</sup>	51.25	Well Report	A30112	50.0	50.0
Johnson, P.	0.10	Protest	---	--	0.1
Johnson, F.	0.10	Protest	---	--	0.1
Kaufman/Williams Trust <sup>55</sup>	122.05	Well Report of Shared Facility	A30067 A30068	150.3 37.7	160.0
Kirk	9.50	Protest	---		0.0
Koontz	0.72	Well Report	A30057	14.4	0.7
Lutes	70.00	Protest	---	--	0.0
Lufkin	28.00	Protest	---		0.0
<i>Continued to next page</i>					

<sup>54</sup> The District and Hacienda Carmel stipulated to a maximum of 50.0 afa.

<sup>55</sup> 160.0 afa is based upon a stipulation with the District and the files for Applications 30067 and 30068. These files were accepted into evidence during the hearing. (T,VIII,16:22-17:8.) The SWRCB takes administrative notice of Table 14, Final Environmental Assessment of the Cañada Woods Public Water System, filed for the applications. The amount of water which can be diverted pursuant to Table 13 for the Kaufman/Williams' applications shall not exceed 147 afa until such time as the New Los Padres Project becomes operational under any permit issued to the District for Application 27614. The SWRCB takes administrative notice of the District's May 15, 1995, Conditions of Approval of the Application to Create the Cañada Woods Public Water System. In this document the District stipulates that established use is between 110 and 188 af.



TABLE 13

CARMEL RIVER WATERSHED--SWRCB DETERMINATION OF  
PRIORITY AND QUANTITIES OBTAINED FROM  
STIPULATIONS, APPLICATIONS, OR PROTESTS (AFA)

Name	Quantity of Water Diverted (Obtained from Hearing Record) (1)	Source of Information	Application Number	Quantity Applied For (Storage and Direct Diversion Combined) (2)	Quantity Reserved by SWRCB For Future Appropriation (3)*
Continued from previous page					
Markkula/Holt <sup>56</sup>	---	Stipulation	---	--	0.0
Moses	2.28	Well Report	A30047	8.2	2.3
Nicholson	2.23	Well Report	A30046	5.1	2.2
Odello	195.84	Exhibit: Odello, 2.1 <sup>57</sup>	---	--	195.9
Patterson <sup>58</sup>	---	Application	A30447	2.8	0.0
Porter-Hoover	82.00	Estimate <sup>59</sup>	A30075	98.6	82.0
Pt. Sur Corp.	4.90	Protest	---	--	0.0
Quail Lodge <sup>60</sup>	281.76	Well Report	A30117	253.5	254.0
Continued to next page					

<sup>56</sup> The District and Markkula/Holt stipulated to an unspecified amount of water. There is insufficient information in the hearing record to identify the quantities beneficially used; however, the SWRCB has established a procedure for parties to seek an application with priority over the District's project.

<sup>57</sup> Meter readings for East #3 well for 1990 water year. West #1 and West #2 wells serve DPR property and are not considered here. (Odello:1,3.)

<sup>58</sup> Application 30447 filed June 1, 1995. Quantity of water used during 1987 through 1994 not yet confirmed.

<sup>59</sup> The pump discharge rate of 0.22 cfs restricts diversion from May 1 through October 31 (irrigation season) to 80.2 af (0.22 cfs x 1.98 af per day/cfs x 181 days = 80.2 af). During the balance of the year, 3 residences require 500 gallons per day (gpd) each, which equals 0.8 af (1,500 gpd x 1 af/325,851 gal x 184 days = 0.85 af). An existing 15.7 af stockpond requires an estimated 1.0 afa to replace water lost to evaporation and seepage. Total water use is 82.0 afa (80.2 + 0.8 + 1.0 = 82.0).

<sup>60</sup> The District and Quail Lodge stipulated to a maximum of 254.0 afa.

**TABLE 13**

**CARMEL RIVER WATERSHED--SWRCB DETERMINATION OF  
PRIORITY AND QUANTITIES OBTAINED FROM  
STIPULATIONS, APPLICATIONS, OR PROTESTS (AFA)**

Name	Quantity of Water Diverted (Obtained from Hearing Record) (1)	Source of Information	Application Number	Quantity Applied For (Storage and Direct Diversion Combined) (2)	Quantity Reserved by SWRCB For Future Appropriation (3)*
<i>Continued from previous page</i>					
Rancho Cañada <sup>61</sup>	524.61	Well Report	A30111	700.0	700.0
Rancho San Carlos	268.00	Well Report	A29282 A29283 A30149 A30150 A30154 A30420	3,000.0 3,000.0 150.0 120.0 116.0 13.0	268.0
Randazzo	18.04	Well Report	A30281	36.5	18.0
Samson	79.12	Estimate <sup>62</sup>	A30110	109.8	79.1
Scardina	0.36	Estimate <sup>63</sup>	A30060	5.6	0.4
Spear	17.40	Protest	A30059	17.4	0.0
Sterten	5.10	Well Report	A30070	11.2	5.1
Syndicate Camp	0.80	Protest			0.8
Templeman	0.65		A29648	5.0	0.7
Tregia Trust	6.00	Protest	---		0.0
<i>Continued to next page</i>					

<sup>61</sup> The District and Rancho Cañada stipulated to a maximum of 700.0 afa.

<sup>62</sup> The pump discharge rate of 0.22 cfs limits water diversion from May 1 through October 31 to 78.84 af. During the balance of the year, 0.28 af is required for one existing residence (see prior calculation method). Total water use equals 79.12 af (78.84 + 0.28 = 79.12).

<sup>63</sup> The pump discharge rate of 150 gpd restricts diversion from May 1 through October 31 to 0.08 af. During the remainder of the year, 0.28 af is required for one existing residence (see calculation method above). Total water use is 0.36 afa (0.08 + 0.28 = 0.36).

**TABLE 13**

**CARMEL RIVER WATERSHED--SWRCB DETERMINATION OF  
PRIORITY AND QUANTITIES OBTAINED FROM  
STIPULATIONS, APPLICATIONS, OR PROTESTS (AFA)**

<b>Name</b>	<b>Quantity of Water Diverted (Obtained from Hearing Record) (1)</b>	<b>Source of Information</b>	<b>Application Number</b>	<b>Quantity Applied For (Storage and Direct Diversion Combined) (2)</b>	<b>Quantity Reserved by SWRCB For Future Appropriation (3)*</b>
<i>Continued from previous page</i>					
Vetter	---	--- <sup>64</sup>	A30446	2.6	0.0
Williams Trust, R & J	1.50	Well Report	A30058	7.6	1.5
Wilson-Rancho Chupinos	12.00	Exh.:Wilson: 1,3,25	---		12.0
Wistrich	0.88	Well Report	A27633	1.5	0.9
Wolter	65.00	Protest	---	--	0.0
Wolfe	8.30	Estimate <sup>65</sup>	A30040	9.0	8.3
<b>Total</b>					<b>5,247.5</b>

Further, a special condition should be included in any permit issued to the District providing that persons using established quantities of water within the Carmel River watershed and identified in Table 13 shall have an opportunity to obtain a water right permit with a priority superior to the District's permit.<sup>66</sup> This condition is to protect only persons using established quantities of water who may have questionable rights to the use of water or who wish to make a use of water which

<sup>64</sup> Application A30446 filed June 1, 1995. Quantity of water used during 1987 through 1994 not yet confirmed.

<sup>65</sup> Stockpond and pool not built, 8.3 af existing use.

<sup>66</sup> This decision finds that unappropriated water was only available to the District from November 1 of each year to June 30 of the following year. (Section 4.7.) This determination is based, in part, on the assumption that the amount of water claimed by protestants is not available to the District during summer months. Thus, the months when water is not available to the District are not applicable, necessarily, to applications having a higher priority than Application 27614.

cannot be provided under existing water rights.<sup>67</sup>

(Condition 10.)

About 3,900 af of the yield of the proposed project is available for future growth throughout the District's service area (MPWMD:287,5-11), an area which includes most of the Carmel River watershed. Thus, a significant percentage of project yield would be dedicated to providing a legal supply of water for Cal-Am, firming up an undependable supply from the Carmel River and mitigating the effects of existing diversions on the public trust values of the river. (Condition 11.) These conditions should not be extended to persons who wish to obtain water right permits for quantities of water in excess of actual quantities of established use because the District's proposed project dedicates a very significant portion of developed water to mitigate the effects of existing diversions on public trust resources. In addition, extending the benefits of these conditions for quantities of water in excess of actual quantities of established use would reduce the water available to the District for consumptive use purposes throughout the District (including the valley), and could affect the viability of project financing and feasibility.

### **5.8 Protests Based Upon Pending Applications**

The following protests are based upon applications which are junior to Application 27614: Cal-Am, Chugach, G. Crow, T. Crow, Evans, Koontz, Nicholson, Porter, Spear, and Sterten for

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<sup>67</sup> Persons filing applications and seeking the benefit of this condition are not entitled to additional amounts of water over and above the amounts set forth in Table 13. If such persons are also claiming riparian, overlying and/or pre- and post-1914 appropriative water rights which are superior to any permit issued on Application 27614, standard permit term 21 shall be included in the permit. Term 21 provides, in part:

"During the season specified in this permit, the total quantity and rate of water diverted, stored, and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, storage, and use, respectively, specified in this permit...."

Applications 29659, 30034, 30046, 30057, 30059, 30065, 30066, 30070, 30075, and 30215. Water Code Section 1450 provides that any application properly made gives an applicant a priority of right as of the date of the application until such application is approved or rejected. Based upon Water Code Section 1450, the District's Application 27614 is senior to the protestant's applications except as set forth in Section 5.7. Therefore, per Table 13 the protests filed by the junior applicants Cal-Am, Chugach, G. Crow, T. Crow, Evans, Koontz, Nicholson, Porter, Spear and Sterten have been resolved.<sup>68</sup> Section 5.7 resolves the Cal-Am protest as it relates to a senior right for in-basin uses of water. The Cal-Am protest for out-of-basin uses is hereby dismissed based upon Water Code Section 1450.

## **6.0 EXISTING ENVIRONMENTAL SETTING**

The following sections describe existing environmental conditions in the river and its immediate vicinity. Diversion from the river by Cal-Am and others affect conditions in the river. These conditions include the loss of riparian habitat in the lower river and the near extinction of the Carmel River Steelhead run. The diversions by Cal-Am and others are not the sole cause of current conditions in the Carmel River. One significant cause of current conditions is the series of dry and critically dry years during the late 1980s and early 1990s. Nevertheless, Cal-Am's combined diversions from the Carmel River constitute the largest single impact to the instream beneficial uses of the river.

### **6.1 Vegetative Resources**

Three vegetation communities are found within the Carmel River watershed; coastal wetlands within the Carmel River Lagoon, riparian communities along the river itself, and upland vegetation on the upper alluvial terraces and hills surrounding

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<sup>68</sup> Numerous protestants filed applications to appropriate water subsequent to filing protests against the District's application. These applications are not separately identified because protestants did not supplement their protests to reference the applications. The priority dates for the new applications are junior to the District's application.

the valley. Mature multistoried riparian vegetation supports a wide diversity of plant and animal species, including a number of species which are protected pursuant to federal and state endangered species acts.

Historically, riparian vegetation was more extensive than at present, particularly in the lower nine river miles. Prior to 1956, losses were primarily attributable to agricultural development. Since that time, the decline has coincided with the increasing diversion of ground water to meet growing urban demand on the Monterey Peninsula. (SWRCB:17; SWRCB:42,III-28.) Were it not for the extensive riparian corridor irrigation efforts of the District and Cal-Am, it is estimated that current ground water pumping would severely stress approximately 59 percent of the existing riparian vegetation in the upper portion of Aquifer Subunit 3 (see Figure 2) in normal water years, and nearly all vegetation during critically dry years. (MPWMD:289,9G-1.)

The Carmel River Lagoon contains a mixture of freshwater and salt marsh vegetation. Coastal salt marsh is considered one of the most fragile and rapidly disappearing habitats in California. The Carmel River coastal wetland represents some of the last remaining habitat of this type on the Central Coast. (SWRCB:42,III-32.)

Upland vegetation within the watershed is composed of a mixture of coastal scrub, hardwood forest, coastal dune, chaparral, and closed-cone coniferous forest. Diversions from the river have no direct effect on such resources.

## **6.2 Wildlife Resources**

Carmel River riparian and wetland communities support a diverse group of resident and migratory wildlife. A number of amphibian and reptile species occur within the riparian and wetland zones as well, including the red-legged frog and the western pond turtle. These are, respectively, a proposed and candidate

species for listing under the Federal Endangered Species Act. A more detailed description of these resources is found in the District's EIR/EIS. (MPWMD:287-290.)

### **6.3 Fishery Resources**

The Carmel River supports populations of at least ten resident freshwater and anadromous fish species. Of these fishes, the steelhead (*Onchyrhynchus mykiss*) has been considered the most important, and extensive studies have been performed to define its ecology in the river. (SWRCB:42,III-41.)

Adult steelhead live in the ocean and migrate into the upper reaches of the Carmel River to spawn. Migration may begin in the fall after the lagoon sandbar is breached by either artificial means or by a major storm and when sufficient flow is established in the lower river to allow upstream fish passage.

Typically, in early January the adults spawn and migrate back to the ocean. After approximately three to eight weeks of incubation, depending on water temperature, the eggs hatch and fry soon emerge from the gravel. These fry continue development in the river until fall. By fall, the fry have developed into juveniles and begin moving downstream. They remain in the lower reaches of the river and the lagoon adapting to brackish water until late spring. In late spring as high river flows are receding, most juvenile migrate to the Pacific Ocean. Some juveniles and adults remain in the river system for one or two additional years before migrating to the ocean, hence these life stages may be found in the river throughout the entire year. (SWRCB:42,III-42.)

### **6.4 Extent of the Steelhead Resource**

When first seen by Spanish explorers in 1603, the Carmel River supported a spectacular steelhead run, believed to have been well in excess of 12,000 fish annually. (CSRA:5,2.) Heavy fishing in the 1850s through the 1870s diminished the fishery. Fish

planting began in 1910 and continued through the 1940s.

(MPWMD:289,8-8.)

When San Clemente Dam was constructed in 1921 (RM 18.5), a fish ladder was also built. (MPWMD:289,8-8.) Access to a major portion of the steelhead spawning and rearing habitat was effectively eliminated in 1949 with the construction of Los Padres Dam at RM 23.5. (CSRA:5,2.) Although a fish trap was installed downstream of the dam and captured adults transported into the reservoir, the facility proved ineffective at maintaining steelhead populations above the reservoir.

(MPWMD:289,8-8.)

Annual counts of steelhead passing through the San Clemente fishway began in 1961. The critical dry years of 1976-77, the 1987-92 drought and diversion by Cal-Am from its wells have combined to reduce water available to steelhead and have also reduced the steelhead population to remnant levels. Only one fish was recorded in 1991, and 15 fish in 1992. (MPWMD:337,49.)

Past reviews of Carmel River environmental problems have identified flow reduction and habitat alteration as major factors associated with steelhead decline. (SWRCB:42,III-44.)

Paralleling the declining steelhead population during this period was the rising urban demand for water. Originally, the Monterey Peninsula water supply was diverted entirely from the two reservoirs and from surface flow. When demand exceeded the developed surface resources, wells drilled in the Carmel Valley alluvium aquifer were added to supplement supply. In recent times, dry season surface flows below the Narrows at RM 10 have been depleted in most years as a result of heavy ground water pumping. This results in the stranding and death of many juvenile fish as surface flow recedes. (DFG:4,32.)



## 7.0 EFFECT OF PROPOSED PROJECT ON THE ENVIRONMENT

When approving an application for a project, the SWRCB must adopt conditions to: (1) keep fish in good condition below a proposed dam; (2) avoid or minimize harm to public trust resources, when feasible; (3) assure that the use of water will be in the public interest; and (4) avoid or mitigate adverse environmental project effects. (California Department of Fish and Game Code Section 5937 and Title 23, CCR, Section 782; National Audubon Soc. v. Sup. Ct. (1983) 33 Cal.3d 419, 189 Cal.Rptr. 346, 364; Water Code Sections 1253 and 1257; Public Resources Code Section 21000, et seq.)

### 7.1 Project Impacts and Conditions

The evidentiary record, including the EIR/EIS, identify a number of significant and potentially significant environmental impacts associated with the proposed project. Those areas requiring water right permit conditions are discussed below.

#### 7.1.1 *Seismic Considerations and Dam Safety*

The New Los Padres Project is located in a seismically active region and the Cachagua fault is located approximately 0.5 mile downstream from the dam site. For the purposes of project design, the fault must be considered potentially active and the dam designed to withstand the maximum credible earthquake. As a jurisdictional structure, final design criteria should be approved by the Department of Water Resources, Division of Safety of Dams (Department). (MPWMD:287,6-9.) Thus, a condition shall be included in any permit issued for Application 27614 requiring that design of the dam be approved by the Department. (Condition 12.)

#### 7.1.2 *Soil Erosion*

Construction activities will disturb soil and rock, resulting in a period of increased erosion with potential impact on downstream water quality and fishery habitat. Prior to construction, the District should prepare an Erosion Control Plan incorporating, as

a minimum, mitigation measure 6.3.1-1 in the EIR/EIS.

(MPWMD:287,6-12.) Further, as construction will take place in the natural channel of the Carmel River, an executed stream alteration agreement with the Department of Fish and Game (DFG) will be required. Accordingly, a condition shall be included in any permit issued for Application 27614 requiring compliance with soil erosion measures and requiring the District to obtain a stream alteration agreement with DFG. (Conditions 14 and 15.)

### 7.1.3 Hydrology

Operation of the New Los Padres Reservoir would provide year-round flow to the lagoon in 75 percent of years, representing a significant improvement over pre-project conditions. Flow would cease in the lower river only during critically dry periods, estimated to occur 5 to 13 percent of the time. (MPWMD:287,7-34.) Presence of surface flow would in turn have a beneficial impact on ground water storage, allowing the aquifer to remain 99 percent saturated during normal and better water years.

(MPWMD:287,7-39.)

Reservoir construction can significantly affect the hydraulic characteristics of a river, such as channel geometry and sediment transport. By reducing the frequency of high flows, encroachment by vegetation can decrease the downstream channel capacity and, thereby, increase flood elevations. (MPWMD:287,7-42.) Reduced peak flows can alter the ability of the river to move incoming sediment downstream and result in bank erosion and degraded fishery habitat. In this case, the degree of impact is unknown, but potentially significant. The District proposes to develop a program to monitor long-term changes in channel capacity downstream of the project. (MPWMD:287,7-48.) Accordingly, we find that any permit which may be issued for Application 27614 shall require the District to develop and implement a program to monitor long-term changes in channel capacity downstream of the project. (Condition 16.)

#### **7.1.4 Water Quality**

Construction can cause temporary adverse impacts to water quality resulting from wastewater discharge and stormwater runoff. Other potential construction pollutants include sewage, petroleum products, and industrial chemicals. (MPWMD:287,7-66.) Water Code Section 13000 et seq. authorizes Regional Water Quality Control Boards to regulate the discharge of waste to the waters of the State to protect water quality and the beneficial uses of water. Construction of the proposed project should be subject to conditions to protect water quality and the beneficial uses of water. Accordingly, we find that any permit issued for Application 27614 shall require the District to file a report with the California Regional Water Quality Control Board, Central Coast Region (Board) pursuant to Water Code Section 13260 and comply with all waste discharge requirements which may be imposed by the Board. (Condition 17.)

The impoundment of water behind dams can cause significant changes in the temperature and dissolved oxygen concentrations of the stored water. Warm water depleted of oxygen can adversely impact downstream fishery resources. To mitigate these effects, the District proposes to construct a multi-level intake structure enabling cool water to be released in a manner to achieve maximum reaeration. (MPWMD:287,7-64.) Accordingly, we find that any permit issued for Application 27614 shall require the District to construct and operate a multi-level intake structure enabling cool water to be released in a manner to achieve maximum reaeration. (Condition 18.)

#### **7.1.5 Vegetation**

Operation and construction of the New Los Padres Project is expected to have significant impact on vegetation within the inundation zone, the construction staging area, and the downstream riparian corridor.

#### 7.1.5.1 Construction Impacts

Dam and reservoir construction will permanently eliminate:

127.0 ac. of mixed hardwood forest and coast live oak woodland  
6.3 ac. of valley oak woodland  
39.0 ac. of riparian habitat  
2.6 ac. of wetland  
65.0 ac. of non-native grassland (MPWMD:287,9-64.)

In addition, the construction staging area will result in the temporary loss of 16 acres of upland habitat. With the exception of non-native grassland, vegetation losses are considered significant and require mitigation. (MPWMD:287,9-72.)

To compensate for loss of mixed hardwood/coast live oak woodland, the District plans to preserve in perpetuity similar habitat at a 3:1 ratio. (MPWMD:287,9-67.) Valley oak woodland is considered by the DFG to be a particularly sensitive habitat. To mitigate this impact, the District proposes to enhance a 23-acre site of declining valley oak by infilling with seedlings and protection from grazing as outlined in the Valley Oak Woodland Mitigation and Monitoring Plan. (MPWMD:289,9B.) To compensate for riparian and wetland losses, the District proposes to rehabilitate 46.5 acres of degraded habitat within the current inundation zone of San Clemente Reservoir. (MPWMD:323; MPWMD:324,1.) Accordingly, we find that any permit issued for Application 27614 shall require the District to undertake measures to mitigate the loss of mixed hardwood/coast live oak woodland, valley oak woodland, and riparian and wetland habitat impacts. (Conditions 19 through 22.)

#### 7.1.5.2 Sensitive Plant Species

No state or federally listed endangered or threatened plant species are found within the reservoir or construction impact area. Two sensitive species (CNPS List 4) occur in the inundation zone, the Lewis' Clarkia (*Clarkia lewisii*) and the Douglas' Spineflower (*Chorizanthe douglasii*). Both species, though uncommon, are widely distributed in Monterey County. The

District plans to collect seed prior to reservoir clearing for later reintroduction (MPWMD:288,9E,25). We find that any permit issued for Application 27614 shall require the District to collect seeds of Lewis' Clarkia and Douglas' Spineflower prior to reservoir clearing for later reintroduction. (Condition 23.)

#### 7.1.5.3 *Project Operation Impact on Downstream Riparian Vegetation*

A key feature of the New Los Padres Project is maintenance of a prescribed flow from the dam to the lagoon in normal and above normal water years. Reliable summer flow is expected to have a beneficial impact on riparian vegetation and associated wildlife. Critically dry conditions occur in 12.5 percent of years, and in those years ground water drawdown would cause severe water stress to 119 acres of riparian vegetation. Such impact would be similar to the present conditions. Riparian irrigation programs have mitigated the effect of ground water drawdown on riparian vegetation. (MPWMD:287,9-81; SWRCB:45.) Thus, we find that any permit issued for Application 27614 shall require the District to maintain and use the riparian irrigation system during dry and critically dry water years. (Condition 24.)

#### 7.1.6 *Wildlife*

Construction of the New Los Padres Project is expected to have some impacts on wildlife. By providing more reliable instream flow, however, the project is expected to have a beneficial impact on riparian habitat and associated wildlife. The District has initiated the Wildlife Habitat Monitoring Program (Program) to assess pre-project baseline conditions as well as long-term improvements in wildlife values and species diversity after construction and operation of the project. The Program is intended as partial mitigation for habitat losses in the construction and inundation area. (MPWMD:287,9-84; MPWMD:289,9G.) Accordingly, we find that any permit issued for Application 27614 shall require the District to continue with the

Program to assess wildlife values and species diversity.  
(Condition 25.)

#### 7.1.7 Fisheries

The following key issues were included in the June 1992 notice for hearing before the SWRCB:

"Does the District's proposed project have adverse effects on the public trust resources of the Carmel River?"

and

"What instream flows are necessary to protect the public trust resources of the Carmel River?"

The impacts of the proposed project on steelhead were analyzed for the following categories of effects. (MPWMD:287,8-34.)

1. The physical impact of project facilities on steelhead rearing and spawning habitat.
2. How operation of the New Los Padres Project would affect streamflow patterns during specific phases of the steelhead lifecycle.
3. The impact of existing and proposed fish passage facilities on upstream and downstream migration of steelhead.
4. The impact of project operation on water temperature downstream of the reservoir.

In 1988 the District convened an Interagency Group (MPWMD:45) to review water supply alternatives and mitigation plans proposed by the District. The Fishery Working Group (FWG) was formed in 1992 as a technical advisory group to the Interagency Group. The FWG was composed of representatives from the District, DFG, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service (USFS), and Cal-Am. The primary

objective of the FWG was to develop a set of New Los Padres operating rules and associated instream flow requirements for the protection of public trust resources, particularly steelhead; fish passage issues were also addressed. FWG recommendations were released in March 1994 in their Completion Report (MPWMD:289,A4) and incorporated into the Final EIR/EIS (MPWMD:287,4-25).

In developing instream bypass flow requirements, the FWG was guided by several underlying principles. (MPWMD:A4,5.) First, project bypass flows were designed to mimic natural conditions as closely as possible, taking into consideration season and hydrologic year type. Inflow to the New Los Padres Project in excess of releases to maintain instream flows is available for diversion. Instream flows may be provided by natural inflow, tributary inflow, water stored in the reservoir, or a combination of the three; however, tributary inflow is normally insignificant during the summer months. Second, the bypass flows are designed to satisfy the biological requirements of the life stages for steelhead residence below the new dam, and to provide additional downstream habitat to mitigate for project-induced losses of spawning and rearing habitat. Biological requirements of the Carmel River steelhead have been studied extensively by the District (MPWMD:152), their consultants, and DFG. (SWRCB:36; MPWMD:127; MPWMD:128; DFG:4.)

#### **7.1.8 Construction Impacts on Steelhead Trout Habitat**

Construction of the New Los Padres Reservoir will either inundate or block 3.4 miles of the Carmel River and Danish Creek. This represents about 12 percent of steelhead spawning habitat (MPWMD:87,8-34) and up to 14 percent of rearing habitat (MPWMD:87,8-38) in the Carmel Basin. Both impacts are considered significant and adverse.

The District proposes that impacts to spawning habitat be mitigated primarily by injection of suitably sized gravel at

specific locations downstream of the dam, periodically monitoring the sites after major storm events, and reinjecting gravel as necessary. Based upon studies, the District maintains that increased project flows below the dam will increase existing downstream spawning habitat. The District's proposed new fish passage facilities will make available additional fish habitat upstream of the dam, which is currently under utilized due to restricted fish passage at Los Padres Dam. These measures are set forth in the Spawning Habitat Mitigation Plan outlined in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume II, Appendix 8-B. Accordingly, we find that any permit issued for Application 27614 shall require the District to finalize and implement the Spawning Habitat Mitigation Plan outlined in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume II, Appendix 8-B. (Condition 26.)

Inundated rearing habitat will be mitigated through enhancement of downstream habitat. The District proposes to institute programs to manage substrate, the occurrence of small woody debris, and overhanging vegetation in an effort to optimize local habitat conditions. These programs are set forth in preliminary form in the Steelhead Fisheries Mitigation Plan. (MPWMD:288, 8-A.)

We find that any permit issued for Application 27614 shall require the District to finalize and implement the Steelhead Fisheries Mitigation Plan found in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume II, Attachment 8-A. (Condition 27.)

#### **7.1.9 Project Operating Rules**

Importantly, the District plans to enhance downstream rearing habitat conditions by providing additional flow in accordance with proposed Operating Rules agreed upon by the FWG.

(MPWMD:287,8-38.) It is the desire of the DFG (DFG:94-2,2), the NMFS (MPWMD:289,A-4,17), and the District (MPWMD:291,13) that the



proposed Operating Rules be made a requirement in any permit issued pursuant to Application 27614 by the SWRCB and to remain in force for the lifetime of the project.

Project operation criteria were designed by the FWG around a set of key assumptions which are described in detail in the Completion Report. (MPWMD:289,A4.) As previously mentioned, flows are intended to satisfy, in most years, the biological needs of the phases of the steelhead lifecycle. Large flows are required to rupture the sandbar at the lagoon and attract adults into the lagoon. Substantial flows are required for adults to successfully navigate critical riffles in the lower river and spawn upstream (January-March), and for juveniles to travel downstream (April-May). Finally, lesser flows are needed for rearing (June-December) in the reach upstream of the Narrows. Higher instream flows will also have a beneficial effect on riparian vegetation and associated wildlife resources.

To ensure sufficient flow in all reaches of the Carmel River below the project, three monitoring sites would be established. Except when no flow is required at the lagoon, the Highway 1 stream gage acts as the controlling monitoring site. The District Water Supply Index (MPWMD:289,A-5,23) is the basis for defining hydrologic year type. The index incorporates flexibility to adjust for water year type classifications (these classifications are based upon monthly streamflow), and related streamflow requirements during the month, rather than waiting until the beginning of the next month to make modifications in water year type and streamflow requirements. (MPWMD:289,A-4,7.) The Water Supply Index is based upon cumulative unimpaired inflow at San Clemente Dam. Year classes are based on selected exceedance values calculated from the long-term record (1902-1978) as follows: (MPWMD:289,A-5,22.)

<u>Water Year Class</u>	<u>Non<sup>69</sup> Exceedance Frequency</u>	<u>Cumulative Annual Flow (AF)</u>
Normal or Better	>50%	>48,100
Below Normal	50 - 25%	48,100-31,750
Dry	25 - 12.5%	31,750-14,925
Critically Dry	<12.5%	<14,925

During extended periods of drought, storage would be depleted and the project would have to revert to pre-project flow conditions. By definition, "critically low storage" would occur whenever usable storage in New Los Padres falls below 2,000 af, and would persist until storage exceeds 7,500 af. (MPWMD:287,4-27.) It is estimated that the project would be operating under "revert" conditions about 10 percent of the time (MPWMD:289,A-4,15), resulting in less than ideal conditions for the fishery.

An instream flow analysis was performed to provide information on the ability of the project to actually comply with the proposed instream flow schedule. (MPWMD:289,A-4,15.) The analysis indicates that when the project is not operating under critically low storage conditions, specified instream flows can be met 100 percent of the time. These flows can be accomplished, in part, by reducing the amount of project yield which would be made available for diversion at Cal-Am wells from 23,890 afa to 21,000 afa. (MPWMD:287,1-6.) Thus, we find that any permit issued for Application 27614 shall require the District to maintain minimum instream flow below New Los Padres Dam, at the Narrows and at the lagoon with appropriate adjustments for year types, seasons of the year, and reservoir storage. (Conditions 28 through 31.)

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<sup>69</sup> Non-exceedence is a reference to streamflows which are always met during a particular time period, i.e., streamflows which are not exceeded. Hence, a critically dry year is defined as a year in which the cumulative annual flow does not exceed 14,925 af. This occurs in less than 12.5 percent of the water years.

An attraction event is defined as the occurrence of a 200 cfs flow at the Carmel River Lagoon. Once an attraction event occurs and the system is in transition to migration flows, the declining phase of the hydrograph should be regulated in a manner which simulates natural conditions. The methodology used in the following permit term is based upon review of District Exhibit 287, pages 4-27 to 4-28. Thus, we find that any permit issued for Application 27614 shall require the District to regulate the rate at which flows to the lagoon are reduced once an attraction event has occurred. (Condition 32.)

#### **7.1.10 *Interim Operating Rules***

The District's schedule for constructing the proposed project anticipates that there will be a five- to six-year period between project approval and full project operation. (MPWMD:288,8-A,12.) Prior to project operation, critically low storage conditions will continue to occur on the river. To alleviate the impact of current water diversion practices, the District has implemented a program of fall/winter and spring fish rescues, as well as other measures specified by the Water Allocation Mitigation Program. (SWRCB:45.) The District proposes to continue these efforts, as needed, under project conditions. The District also negotiates an annual Memorandum of Agreement with Cal-Am and DFG to regulate the rate of diversion to the San Clemente Filter Plant and release from the San Clemente Dam to the river. The District would undertake to operate the proposed project to provide a minimum flow of 5 cfs below San Clemente Dam under conditions of critically low storage, conditions substantially similar to present conditions on the river. We find, accordingly, that any permit issued for Application 27614 shall require the District to maintain a minimum flow of 5 cfs at all times below the San Clemente Dam. (Condition 33.)

#### **7.1.11 *Project Operation Impacts on Steelhead***

In addition to the beneficial effect which the flow schedule is expected to have on spawning and rearing habitat, project

construction will affect steelhead adult upstream and juvenile downstream migration in the following ways:

- Opportunities for adult upstream migration will be similar to or better than existing conditions, and significantly worse than natural conditions. This impact is considered significant and unavoidable, though it would only occur during severe drought (MPWMD:287,8-45).
- Opportunities for juvenile downstream transport would on average be substantially better than existing conditions and similar, or slightly worse, than natural conditions (MPWMD:287,8-61).

During critically dry years, and under conditions of critically low storage, there will be insufficient water to provide optimal flow conditions for steelhead. To mitigate the effects of critically dry years, the District should continue the present program of trapping and holding fall and spring migrants.

(MPWMD:287,8-61; MPWMD:289,2-D.) Thus, any permit issued to the District for Application 27614 shall require the District to continue to implement the fisheries measures outlined in the Water Allocation Mitigation Program as described in the Monterey Peninsula Water Supply Project Final EIR/EIS. (Condition 34.)

#### **7.1.12 Project Impact on Fish Passage**

Fifty percent of Carmel River steelhead spawning habitat occurs upstream of Los Padres Dam (MPWMD:287,8-4). An important element of the District's steelhead mitigation program is the construction of new fish trapping facilities upstream and downstream of the new reservoir to facilitate fuller utilization of this habitat. Fish traveling in both directions would be trapped and transported past the reservoir in specially equipped trucks. (MPWMD:287,8-67.) It is anticipated that the new facilities will provide good to excellent upstream conditions for

adults and significantly improved conditions for emigrating smolts (MPWMD:287,8-72), which now suffer 24-percent mortality as they pass over the Los Padres spillway. (MPWMD:287,8-73.)

The trap and truck facilities being considered are experimental because no other similar facilities are currently operating in California. (T,X,103:6.) DFG testified that operation of the facilities should take place in accordance with a Memorandum of Understanding or some other contractual arrangement between the District and DFG. (T,X,93:13.) Such an agreement should establish monitoring and performance standards. (MPWMD:287,8-70.) The District should formulate a Remedial Action Plan to address problems identified by the monitoring measures included in the Steelhead Resource Mitigation Plan. (MPWMD:288, Appendix 8-A.) Such remedies might include additional water below the dam to compensate for unused habitat upstream. (MPWMD:287,8-72.) We find that any permit issued for Application 27614 shall include a condition to require the District to design, construct, and operate the operation of upstream and downstream fish passage facilities for the New Los Padres Project. (Conditions 35 and 36.)

#### **7.1.13 Project Impact on Water Temperature**

Implementation of the operation schedule would result in average minimum dry season flow releases of 18 cfs below the dam. Cool water released from the multilevel outlet structure would influence rearing habitat for a longer distance downstream and create conditions superior to the existing situation. The District proposes to conduct operation studies and temperature simulations during the final design phase of the project to aid in formulating a detailed set of operating rules for managing reservoir releases. These rules will become part of the Steelhead Fisheries Mitigation Plan. (MPWMD:287,8-79.) A condition requiring the construction and operation of the multilevel outlet structure is previously addressed in this decision. (Section 7.3.4.)

#### **7.1.14 Potential Listing of Steelhead Under the ESA**

CSPA, in collaboration with a number of other organizations, submitted a petition to the NMFS requesting that the steelhead be listed under the Federal Endangered Species Act (ESA). The petition was accepted and a decision was due from NMFS by February 14, 1995. (CSPA, 12b, 3.) As of June 20, 1995, no decision has been rendered regarding the eligibility of the Carmel River steelhead. Should the Carmel River steelhead be listed at some time prior to construction of the proposed project, the District should seek a formal biological opinion to determine whether additional mitigation measures are warranted. Thus, we find that any permit issued for Application 27614 shall include a condition to require the District to seek a formal biological opinion from the trustee agency in the event that the Carmel River steelhead become listed as threatened or endangered under either the state or federal endangered species acts. (Condition 37.)

#### **7.2 Cultural Resources**

The proposed project will inundate archeological resources and traditional cultural properties (TCPs). In addition, the project will have an effect on the cultural and religious practices of persons of Esselen descent.

##### **7.2.1 Regulatory Setting**

Cultural resource studies for the New Los Padres Project were undertaken by the District in 1992. These studies were undertaken pursuant to: (a) Section 106 of the National Historic Preservation Act (NHPA) of 1966 (amended in 1992) and (b) the National Environmental Policy Act (NEPA)<sup>70</sup> and CEQA. CEQA Guidelines provide that a public agency following the federal clearance process under the NHPA or NEPA may use the documentation prepared under the federal guidelines in place of

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<sup>70</sup> NHPA is found at 16 USC § 470; NEPA is found at 42 USC § 4321, et seq.

documentation necessary for CEQA. (Title 14, CCR, Appendix K, VI.)

Section 106 process provides for the evaluation and protection of cultural resources via: (1) the identification and evaluation of historic properties; (2) assessment of effects of the undertaking on properties; (3) consultation with the State Historic Preservation Officer (SHPO), and other designated agencies so that an agreement addressing the treatment of historic properties can be developed; (4) comments from the Advisory Council on Historic Preservation (ACHP); and (5) condition imposed upon a project.

For the proposed project, the Army Corp of Engineers (ACOE) is the Federal Lead Agency responsible for compliance with the Section 106 process. MPWMD is the State Lead Agency; the SWRCB, SHPO, and the ACHP are the consulting parties in the process for developing the required agreement necessary for the project to proceed. The Esselen Tribe and Esselen Nation are interested parties in the process.

The National Register of Historic Places (NRHP) was established by statute to list sites deemed to have historical importance (36 CFR 60). If a property is listed or eligible for listing in the NRHP, it is subject to review and comment under Section 106 of the NHPA. Impacts on historic properties must be considered in accordance with the regulations of the ACHP. (36 CFR 800.) If cultural resources are determined not to possess the qualities to be considered "important" under CEQA, or significant in the federal process, they do not have to be given any additional consideration.

#### **7.2.2 Archeological Sites Affected by the Project**

During the inventory phase of the Section 106 process, 22 archeological sites were documented as occurring within the project area. (MPWMD:44,33-34.) Sixteen sites were newly

recorded during the field survey in 1992 and 6 sites were previously recorded during other investigations in the project area. Three of the previously recorded resources were relocated during the 1992 field work and 3 were not relocated as they are known or presumed to have been inundated by the existing Los Padres Reservoir. All 22 sites have prehistoric archeological components. (MPWMD:44,iii.)

All but four of these sites have been characterized as small bedrock milling (BRM) stations with shallow mortar cups which appear to have no or sparse associated cultural constituents. The other four prehistoric sites have midden deposits with dark ashy soil, but with few or no cultural constituents (CA-MNT-481, -1594, -1601, -1604/H). These midden sites are relatively large in area (except CA-MNT-481) and also contain BRM features. Sites that were noted but not formally recorded during the 1992 fieldwork include: (1) the existing Los Padres Dam; (2) an undated rock cairn, possibly a burial; and (3) a Native American "ceremonial site". In July of 1992 limited auger and shovel tests were utilized to determine the presence/absence of subsurface archeological deposits at "all" identified sites. (MPWMD:44,11.)

### **7.2.3 Assessments of Effects**

Project components can adversely affect historic properties either directly or indirectly. Direct impacts may occur when impacts on historic properties cannot be avoided through project redesign or other methods. Demolition or inundation of historic properties and/or bulldozing archeological sites are examples of direct effects. Historic properties can also be affected by indirect impacts (e.g., vandalism and pot hunting) resulting from increased access into the project area. (MPWMD:326,146-155,164,241-242.) The physical effects of inundation may be unavoidable and may damage or destroy historic properties within the inundation zone. Some measures may be possible to avoid adverse effects to historic properties above the reservoir



depending on project design needs, and why the historic properties are important. (MPWMD:300,15:24-16:11.)

Assessment of the project's effects also requires determining how the undertaking will affect those attributes of historic properties that make them NRHP eligible. For most properties within the Area of Potential Effect (APE), determination of how the project will affect the scientific data potential is the primary consideration, although other values including effects on TCPs are considered. (MPWMD:329,146.)

Project effects have been preliminarily assessed for the 22 prehistoric/ethnohistoric archeological resources. Twenty of these resources and 7 TCPs were recommended as eligible for the NRHP. The majority of these resources will be subject to "adverse effects" by inundation, erosion caused by wavecut actions, or by borrow area and staging area operations. It is stated that each resource would likely suffer loss of integrity of setting, feeling, and association; and, for archeological resources, loss of the potential to yield information important in history, or prehistory; for TCPs loss of a tangible referent is also expected. The undertaking is expected to have "no effect" on four resources located well above the proposed reservoir and away from work areas, and project effects were undetermined at two resources due to a lack of detailed project information. (MPWMD:326,146-155; supplemental information titled *Additional Archeological Investigations Prepared As A Supplement To Phase II Cultural Resources Investigations for the New Los Padres Dam and Reservoir Project, Carmel Valley, Monterey County, California* dated August 8, 1994 (SWRCB:1).

#### **7.2.4 Native American Consultation**

A TCP is defined as a specific location that is significant due to its association with cultural practices or beliefs of a living community that are (a) rooted in that community's history and (b) are important in maintaining the continuing identity of the

community. "Culture" is understood to mean the "traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole."

(Bulletin 38, National Park Service.) Such values are intrinsic to the maintenance of cultural traditions and to a group's identity and self-respect. (T,X,4:8-4:20.)

In the vicinity of the proposed project, the principal persons who speak for Native American Esselen descendants are the Nason Family, the Esselen Tribe and the Esselen Nation. Ethno-historical cultural memories provided a bridge between prehistory and the present day. (MPWMD:326,134-133.)

The Nason family who have been documented as direct Esselen descendants have expressed heritage claims to the project vicinity and concerns for the protection of TCPs. (MPWMD:326, Appendix 1,177-185; MPWMD:44,35-37.) The Nasons' identified three specific ceremonial sites (two at recorded archeological sites), and asserted their family's continuous use of the project area for hunting, fishing, and the gathering of food and medicinal plants. (MPWMD:326,89-99.)

In the Phase II study, an ethnographer stated that the relationship of contemporary Esselen descendants with the study area remains strong. For those who have lived on this land all their lives, the area contains the cultural and physical remains, the ancient trails and shrines, and the other sacred places of their ancestors. The possible destruction and/or desecration of these areas is a serious concern for today's Esselen, whether they still live in the area or only come to it now and then. (MPWMD:326,96.) Tom Little Bear Nason of the Esselen Tribe, confirmed these concerns regarding traditional cultural and ceremonial sites in the project area, during testimony at the hearing. (T,IX,122:13-141:25.)

In 1993, the Esselen Nation asserted that "... the various lineages comprising the Esselen Nation have strong ancestral ties to this region." (SWRCB:MPWMD transmittal of Esselen Package dated 2-18-93, Appendix, 6.) Of concern, is the lack of participation by the Esselen Nation. The Nation has not, to date, participated in any ethnographic studies for the New Los Padres Reservoir project.

Both the Esselen Tribe and Esselen Nation have expressed dissatisfaction with the ethnographic work conducted to identify TCPs within the project area. During the hearing, the Esselen Tribe provided testimony to indicate that historic use of the locality by Native Americans for grazing and commercial pack expeditions may have significant time depth and links to traditional lifeways, so that these activities should also be considered within the context of TCPs. (T,X,44:8-54:19.)

Specific problems encountered during the identification of the TCPs include: (1) lack of documentary evidence for continuity of use by the Esselen between c.a. A.D. 1830 and the early 1900s; and (2) most of the ethnographic and ethnohistoric data for the Esselen are extremely fragmentary. (MPWMD:326,99.) Dr. McCarthy testified, however, that the information supplied by the Nason family fits very well within the range of Central California religious and cultural practices. (T,X,41:21-43:19.) She also stated that based upon her review of the available information, additional investigations need to be completed. (T,X,44:1-45:1;T,X,47:4-47:9.)

Although archeological research at sites identified in the project area appears to be adequate for determination of NRHP eligibility, these Native American resources should be considered in the context of all values, including TCPs. Until the traditional use of the region by the Esselen descendants has defined the role that archeological sites have played in their

cultural traditions, the value of archeological sites cannot be fully determined. (SWRCB:1,PA,Attachment 2,11.)

We find that the documentation which has been completed to date for the Esselen people is insufficient; the original ethnographer spent relatively little time with the Nason family, which subsequently resulted in incomplete documentation.

(MPWMD:326,89-99.) Dr. McCarthy testified that additional information regarding the historic livestock and packing operations and ethnobotanical resources would provide supplemental documentation necessary for traditional cultural properties determinations. (T,X,44:1-45:19; T,X,47:4-47:9.) In addition, ethnographers should continue the consultation process by conducting additional interviews and the necessary research which will identify Native American concerns and traditional properties.

#### 7.2.5 Preliminary Eligibility for the NRHP

All parties have determined that additional information should be developed for the evaluation of the cultural resources' eligibility for the NRHP. Thirty-five potential TCPs have been identified. Within the project area, six "sacred places" and a "resource procurement area" are judged to qualify as TCPs significant to the Esselen under NRHP eligibility criteria.

These seven TCPs include: the entire length of the Carmel River, doubly described as the "spirit trail of the dead" and significant as a traditional plant gathering area; CA-MNT-34, presumed to be the capital village of Xasa'uan and located adjacent to the study; the "birthing rock", CA-MNT-1594; "the stone circle" at CA-MNT-1604/H, described as a "baby ritual burial area" associated with the nearby "birthing rock"; "unnamed ceremonial site 1", a prominent rock outcrop ascribed as an "altar"; and "unnamed ceremonial site 3", an "altar" located in a rock outcrop, associated with CA-MNT-37, which had been dynamited. (MPWMD:326,128-145.)

The Phase II report recommends that 20 of the 22 archeological sites and 7 traditional properties are eligible for listing in the NRHP. (MPWMD:326,143-145.) These findings are currently only the recommendations of the consultants.

Thus, we find that until the traditional use of the region by Esselen descendants has defined the role that archeological sites have played in their cultural traditions, the value of archeological sites under more than one criterion cannot be determined. (SWRCB:1, Programmatic Agreement, Attachment 2, 11.) Once ethnographic studies have been completed and all components of the project have been defined, the ACOE will be able to render opinions regarding the NRHP eligibility of properties within the project area in consultation with SHPO and apply the criteria of effect and adverse effect on historic properties in the project area. (T, IX, 217:20-218:1.)

#### **7.2.6 The Section 106 Process of the National Historic Preservation Act**

Among the basic purposes of CEQA is the purpose of "[i]nforming governmental decision makers and the public about the potential, significant environmental effects of proposed projects."

(Title 14, Section 15002(a)(1).) Unless a project is exempt, an initial study and negative declaration or EIR must be prepared and considered at the time a responsible agency considers approval of a proposed project. (Title 14, Section 15096.)

CEQA Guidelines provide that a public agency following the federal clearance process under the NHPA or NEPA may use the archeological documentation prepared under the federal guidelines in place of documentation necessary for CEQA. (Title 14, CCR, Appendix K, VI.) Because elements of the proposed project are subject to federal review and approval, the District opted to comply with federal guidelines for evaluating the project's effects of archeological resources. For shorthand purposes, the federal process is referred to as the Section 106 process, after

Section 106 of NEHA. Although the District adopted its final EIR/EIS for the project on September 19, 1994, the Section 106 process is still under way.

In general, the final EIR/EIS identifies the impacts of the proposed project on archeological resources as potentially significant, depending upon whether certain resources determined as eligible or are listed as "historic properties" pursuant to the Section 106 process.<sup>71</sup> The EIR/EIS proposed mitigation measures are based on the Phase II investigations.

(MPWMD:287,14-19; MPWMD:326,156-166.) The EIR/EIS states that the mitigation measures are considered preliminary and will be developed in further consultation with the appropriate agencies and interested parties pursuant to the Section 106 process. The District, has identified measures which may mitigate the effects on sites determined to be significant; however, it also recognized that such mitigation may not reduce project effects to less than a significant level and adopted a statement of overriding consideration. (MPWMD:312,76-84,115-116.)

Responsible agencies are directed to presume that a final EIR is adequate if litigation is not commenced unless: (a) substantial changes (1) are proposed for the project or (2) occur with respect to the circumstances under which the project is undertaken or (b) new information becomes available which was not known at the time the EIR was certified as complete.<sup>72</sup> (CEQA Section 21167.2, 21167.) When litigation is commenced, responsible agencies are directed to presume a final EIR is adequate until such time as a court determines otherwise. (CEQA

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<sup>71</sup> For example, the EIR states: "Thirteen cultural resource sites have been identified in the 24 NLP Reservoir project area that would be inundated and/or destroyed as a result of the proposed project. This is considered a potentially significant impact as all thirteen may be eligible for listing in the National Register...." (MPWMD:287,14-15.)

<sup>72</sup> No substantial changes are proposed for the project or have occurred with respect to the circumstances under which the project is undertaken and no new information is available which would warrant preparation of a supplemental EIR.

Section 21167.3.) Thus, when reviewing the District's EIS/EIR, the SWRCB will proceed in accordance with those sections of CEQA and its guidelines which direct responsible agencies to presume that EIRs comply with the requirements of CEQA.

#### **7.2.7 Development of Mitigation Measures Via the Section 106 Process**

If it is determined that the project will have adverse effects on historic properties, the ACOE will consult with SHPO, ACHP, SWRCB, District, and interested parties including the Esselen Tribe and the Esselen Nation, to avoid or minimize adverse effects on historic properties. Measures resulting from this consultation are usually documented in a Memorandum of Agreement (MOA) or a Programmatic Agreement (PA). An MOA usually occurs when all of the technical studies have been completed. However, it is not developed until the effects of a project on cultural resources or historic properties are known. Since the effects of the project will not be known for at least several months, a PA can be used to conclude the Section 106 process. (T, IX, 217:22-218:7.)

On May 2, 1995 a PA was executed by ACOE, SHPO, ACHP, SWRCB and the District. The PA specifies the remaining studies that need to be undertaken and the steps to be accomplished in order to ascertain and finalize historic properties mitigation. Once the ethnographic studies have been completed, the determinations of eligibility and effect can be made, and appropriate mitigation measures can be determined. The Native Americans and appropriate agencies will participate in these determinations. The specific participation protocols for all parties are specified in the PA and in the MOUs between the District, the ACOE, the Esselen Tribe and the Esselen Nation. The completion of the NHPA, Section 106 process and implementation of its terms, and compliance with the PA and MOUs satisfy the requirements of CEQA for addressing cultural resources which are considered to be "important" or unique. Accordingly, we find that any permit issued for

Application 27614 shall require the District to protect important cultural resources by compliance with the PA and the MOUs. (Conditions 42 through 47.)

#### **8.0 PROTEST RESOLUTION--ENVIRONMENTAL ISSUES ONLY**

The environmental protests are listed in Table 6. In general, the protestants allege that implementation of the project would result in further reductions in streamflow and declining water table elevations, thus causing additional damage to public trust steelhead and riparian vegetation resources. In addition, several protestants allege that the proposed project will reduce channel sediment transport capability and could result in seawater intrusion. The Esselen Tribe's protest alleges that the proposed project would cause impacts to "significant" traditional cultural properties which would be "culturally devastating" to the tribe. The following is a brief review of specific protests.

#### **8.1 DFG Protest**

DFG protest states that maintenance of sufficient streamflow and retention of critical steelhead spawning and rearing habitat is necessary to the continuance of various fish and wildlife species. Following the filing of the protest, project modification and proposed mitigation measures resulted in DFG's conditional support of the project. The following are DFG's conditions for support of the project (DFG:94-2,7):

1. SWRCB adopt as permit conditions the proposed Operating Rules and instream flow requirements as defined in Tables 4-5A and 4-5B in the EIR/EIS. (MPWMD:287,4-25.)
2. SWRCB adopt as permit conditions all mitigation measures concerning public trust fish and wildlife resources in the EIR/EIS and Certification Findings. (MPWMD:313.)
3. SWRCB require the District to conduct specific additional investigations to: (1) further define the Operating Rules



and instream flow requirements for the reach immediately downstream from the new dam, and (2) prepare a report acceptable to the DFG on these investigations.

4. SWRCB shall retain jurisdiction to modify the proposed Operating Rules and instream flow requirements immediately below the new dam as justified by results of additional investigations, and as recommended by the DFG and the NMFS.
5. SWRCB dedicate the instream flows required by the Operating Rules as water appropriated and reserved for protection of fish and wildlife resources.
6. SWRCB monitor the instream flow for fish and wildlife use dedication in perpetuity.
7. SWRCB declare the Carmel River as Fully Appropriated at the close of these proceedings.
8. SWRCB hold further hearings once results from the mitigation monitoring program are available to ensure that the public trust is protected.
9. SWRCB require the District to demonstrate that it has the financial and other resources committed to ensure implementation of the mitigation measures in perpetuity, during the final design phase of the project and prior to solicitation of bids for construction.
10. SWRCB require the District to complete the final Steelhead Fisheries Mitigation Plan (MPWMD:288,8-A) to the satisfaction of the DFG, SWRCB, and the NMFS during the final design phase of the project and prior to solicitation of bids for construction.

11. SWRCB reserve jurisdiction over fish passage facilities to modify the reservoir operation schedule to improve steelhead habitat below the dam, in the event fish passage facilities fail and the SWRCB determines that corrective action is required to protect the steelhead resource.
12. SWRCB require the District to evaluate current fish rescue operations as identified in the 1990 Water Allocation Program Mitigation Plan.

These conditions were presented to the District's Board and were approved, with the exception of condition 7. (T:XI,20:6.) Of these conditions, all but conditions 3, 4, 9 and 12 have been previously discussed in this decision. Special permit terms are required to address DFG protest dismissal conditions 3, 4, 9, and 12. Thus, any permit issued for Application 27614 should include conditions to: (1) conduct additional investigations to further define the instream flow requirements in the reach immediately downstream of the New Los Padres Dam and prepare a final report of these investigations, (2) retain jurisdiction to modify the fishery bypass flows based upon the results of said investigations, (3) require the District to document that sufficient long-term financial resources have been committed to fund all mitigation measures, and (4) conduct studies to determine the effectiveness of the fish rescue operations specified in the Water Allocation Mitigation Program and the Steelhead Resource Mitigation Plan. (Conditions 38 through 40.)

## **8.2 CRSA Protest**

CRSA's protest alleges that the project would have serious adverse effect on fish, wildlife, recreation, and vegetation. Dismissal conditions included provision of adequate instream flows for all steelhead life stages, fish passage facilities, temperature control facilities, and a bedload management program. The mitigation measures required by this decision, and the

associated permit terms, address CRSA's concerns and the protest should be dismissed.

### **8.3 CSPA Protest**

CSPA alleges that the project will cause adverse impacts to various steelhead life stages and riparian habitat due to reductions in flow during normal and below normal water years. They request that any decision issued by the SWRCB protect and restore public trust assets of the Carmel River watershed and fully comply with Fish and Game Code Section 5937 and provisions of CEQA, including consideration of cumulative impacts. The mitigation measures required by this decision, and the associated permit terms, address CSPA's concerns and the protest should be dismissed.

### **8.4 DPR Protest**

DPR protests on the basis of potential impacts to the riparian corridor and the Carmel River lagoon. DPR states that their protest may be withdrawn if it can be shown that the District's project will have no significant impact on the lagoon-wetland complex at the mouth of the Carmel River and that information developed in an EIR would be necessary to evaluate such impacts. DPR failed to supply specific dismissal conditions, did not comment on either the draft or final EIR/EIS, and did not participate in the hearing.

The lagoon is presently impacted by water diversion and sediment accumulation. Under project conditions, however, the lagoon would receive year-round flow in 75 percent of the years (MPWMD:287,7-34) and it is assumed that this would generally have a beneficial effect. Increased dry season flows, however, could increase sand transport into the lagoon and potentially reduce habitat values (MPWMD:287,7-56). As mitigation, the District proposes to annually monitor the lagoon volume and sand transport into the lagoon. If a reduction in habitat value is determined, corrective action should be taken. Thus, any permit issued for

Application 27614 should contain a condition requiring the District to: (1) monitor the volume of the lagoon and sand transport into the lagoon, (2) evaluate the significance of the impacts to the lagoon, and (3) if necessary, initiate a program to prevent reduction in habitat value. (Condition 41.)

#### **8.5 Esselen Tribe Protest**

The Esselen Tribe protest was filed by Fred Nason, Fred Nason Jr., and Tom Nason. The protest alleges:

1. The original and supplemental EIR/EISs failed to consider several Native American historical, cultural, religious, village, fishing and gathering sites and the adverse impacts which the project would cause.
2. The original and supplemental EIR/EISs failed to document 11 additional cultural resources which will be adversely impacted by the dam in its new location.
3. Approval of Application 27614 would not be in the public interest because of the destruction, by permanent inundation, of significant Native American cultural, religious, and historical resources. These resources include: the birthing rock and associated deposit, sacred altars, various bedrock mortars, a village site, various middens, burial grounds, traditional fishing sites, and hunting and gathering sites. In addition, there are numerous sacred ceremonial sites which have not been shown to non-members of the Tribe for fear that identification would lead to desecration.

Finally, the protest states that members of the Esselen Tribe have made their livelihoods off the lands since the earliest time of recorded history. The concerns of the Esselen Tribe have previously been addressed in this decision. This decision includes measures which may result in the mitigation of some but

not all of the concerns of the Esselen Tribe. (Conditions 42 through 47.)

### 8.6 Other Protestants and Issues

The protests filed by **Odello Brothers, Leo Lutes, and Wolter Properties** allege that the District's project could induce seawater intrusion, lower water table elevations, and alter streamflow thus damaging steelhead. The protests state that they may be dismissed if the prior rights of the protestants are recognized by the District. An environmental condition will not satisfy the prior right claims of these protests. This decision includes a condition which protects valid and properly exercised riparian, overlying, and pre-1914 appropriative rights.

(Condition 9.) Thus, we find that these protests should be dismissed.

The protest filed by **California Trout, Inc.** (Cal Trout) alleges impacts to the Carmel River flow regime and inundation of steelhead spawning and rearing habitat. The protest states that dismissal conditions can be determined only after review of the environmental document. Cal Trout did not comment on either the draft or final EIR, nor did they submit protest dismissal conditions during the hearing. In the absence of specific dismissal conditions, we find that the mitigation measures included as a feature of the proposed project and required by this decision will reduce the impacts to less than significant levels. Thus, Cal Trout's protest should be dismissed.

**Willis Evans** protested on environmental and public trust grounds. Protest dismissal conditions called for public hearings, the completion and certification of a final EIR/EIS, and the establishment of agreed-upon instream flows. The hearings and EIR are a matter of record. Instream flows requirements have been agreed upon by the responsible resource agencies and included as a proposed conditions for this permit. Thus, Mr. Evan's protest should be dismissed.

The **Sierra Club** and **John Williams** allege that the proposed project may result in further riverbank erosion, accumulation of sediment in the downstream channel, and loss of steelhead and riparian habitat. Evidence was offered by the District that provision of reliable instream flow during most years would be beneficial to the 116 acres of riparian habitat in the lower river (MPWMD:287,9-80) and result in a substantial increase in steelhead spawning and rearing habitat (MPWMD:287,8-38). Impacts to channel geometry are considered by the District to be potentially significant. As it is unknown at this time whether these impacts will occur or the degree of severity of such impacts. A formal program to monitor changes in channel geometry is proposed by the District. This decision includes conditions which require the District to monitor changes in channel geometry and to initiate such corrective action as may be appropriate. (Condition 16.) Thus, these protests should be dismissed.

The **Asoleado Water Company, Pt. Sur Corporation, Roger and Josephine Williams, and A. C. and Linda Markkula** protests allege that project impacts cannot be evaluated prior to completion of an EIR. The District has completed and certified a Final EIR/EIS (MPWMD:287-290); therefore, these four protests should be dismissed.

**Cachagua Community Center** listed a variety of construction-related impacts as the basis of their protest. These effects are considered significant and unavoidable and are so addressed in the District's Statement of Overriding Considerations. Water quality concerns have been addressed in this decision by requiring the District to apply for a waste discharge permit. The issues of noise, dust, and traffic are the responsibility of the lead agencies, which in this case are the District and the ACOE. We find, therefore, that this protest should be dismissed.

## 9.0 REQUEST FOR TIME EXTENSION AND FOR CHANGES TO PERMIT 7130B

Permit 7130B authorizes storage of 15,970 afa at the existing Los Padres Reservoir. The District has petitioned for a time extension to develop water under Permit 7130B and, among other matters, to change the point of diversion to the location of the proposed New Los Padres Reservoir. If such changes were approved, the water which would be used under this permit would be diverted and stored at the same location and used for the same purposes as the water sought under Application 27614 for the New Los Padres Project.

### 9.1 Applicable Law

Title 23, CCR, Section 840, et seq. applies to extensions of time. Section 844 states:

"An extension of time within which to complete an application, to commence or complete work or apply water to full beneficial use will be granted only upon such conditions as the board determines are in the public interest and upon a showing to the board's satisfaction that due diligence has been exercised, that failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and that satisfactory progress will be made if an extension of time is granted ...."

Water Code Section 1398(b) provides:

"After any hearing on a petition to extend the period or periods, the board may revoke the permit in accordance with Section 1410."

"Period" refers to the time specified in the permit for: beginning construction work, completing construction, or putting water to beneficial use. (Section 1398(a).)

Water Code Section 1410, et seq. applies to the revocation of permits. Section 1410(a) states:

"There shall be cause for revocation of a permit if the work is not commenced, prosecuted with due diligence, and completed or the water applied to beneficial use as

contemplated in the permit and in accordance with the this division and the rules and regulation of the board."

Title 23, CCR, Section 850 also pertains to the revocation of permits. It provides:

"When it appears to the board that a permittee may have failed to commence or complete construction work or beneficial use of water with due diligence in accordance with the terms of the permit, the regulations of the board and the law, or that a permittee or licensee may have ceased beneficial use of water, or that he may have failed to observe any of the terms and conditions of the permit or license, the board may consider revocation of the permit or license. The board will notify the permittee or licensee of the proposed revocation. The notice will state the reasons for the proposed revocation and provide an opportunity for hearing upon request of the permittee or licensee. In the case of a permit, a request for extension of time may also be considered at such hearing. Nothing in this section shall be construed as limiting the board's authority to take action pursuant to Water Code Section 1831."<sup>73</sup>

## 9.2 Notice of Hearing

On June 19 1992, the SWRCB issued a hearing notice which included issues pertaining to Application 27614 and the request for time extension and petition for changes to Permit 7130B. Among other matters the following issues were noticed:

"7. Should the District be given an extension of time to begin and complete construction, and put the water to maximum beneficial use under Permit 7130B? If so, until when?

"8. Should Permit 7130B be revoked for failure to construct the project and put water to maximum beneficial use?"

The Staff Summary for Hearing was attached to the notice of hearing. The summary briefly describes the history of the

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<sup>73</sup> Section 1831, et seq. sets forth the SWRCB's authority to issue cease and desist orders.



development, or the lack thereof, under Permit 7130. (Pp. 8 and 9.)

### 9.3 Development of Water Under Permit 7130B

Application 11674 was filed on December 30, 1946. On July 7, 1948, Decision 582 was adopted by the State Engineer approving a permit for the application.<sup>74</sup> Decision 582 approved issuance of Permit 7130 in the amount of 19,000 afa, with the following condition:

"Of the 19,000 acre-feet per annum hereinabove specified in Paragraph 2(b) of the application, permittee shall develop and store an amount of water not to exceed 6,000 acre-feet per annum until such time as the Department acting through the State Engineer may, after further hearing held either by the Department upon its own initiative or upon the motion of any of the parties participating in the hearing of April 14, 1948, or their successors in interest, after due notice to the interested parties, authorize the storage and use of an additional amount of water."

The time to complete full beneficial use ended on December 1, 1975, almost twenty years ago.

Los Padres Reservoir was constructed in 1949 with a capacity of only 3,000 af, pursuant to Permit 7130. On August 6, 1974, the SWRCB held a hearing to determine whether the 13,000 afa<sup>75</sup> portion of Permit 7130 should be revoked or whether the permittee, Cal-Am, had the intent and financial resources to proceed within a reasonable time to develop a project to appropriate the 13,000 afa. Order No. WR 75-17 found that Cal-Am did not have adequate financial resources to construct additional reservoir facilities under the permit. The Order noted that others, such as the ACOE or a public agency might be interested

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<sup>74</sup> At one time, the State Engineer within the Department of Water Resources exercised the water right functions of the SWRCB.

<sup>75</sup> 13,000 afa = 19,000 afa - 6,000 afa

in constructing a multipurpose dam under the permit in the future.

On May 18, 1976, Cal-Am assigned 13,000 af of Permit 7130 to the District's predecessor and retained 6,000 af under Permit 7130. Cal-Am and the District became co-permittees, although each party retained separate assignments of water under the permit. On January 26, 1983, Cal-Am and the District informed the SWRCB that a total of 15,970 af should be assigned to the District. Cal-Am retained 3,030 af for its use under the permit. The SWRCB approved the reassignment of water and, by Order dated May 2, 1984, Permit 7130 was split into Permits 7130A for 3,030 afa and Permit 7130B for 15,970 afa. The original permit was revoked.

The following condition was included in Permit 7130B on May 2, 1984:

"Project plans and proof of the necessary financing along with a time schedule for completing the work shall be submitted for approval on or before December 1, 1984 or this permit will be revoked."  
(Condition 7.)

The District filed Petitions for Extension of Time on December 14, 1984 and September 2, 1986. The SWRCB has not acted on the District's requests for an extension of time to complete construction and full beneficial use for Permit 7130B beyond December 1, 1984. By letter dated October 23, 1984, the District requested an extension of time for permit condition 7, to extend the time to provide plans and proof of project financing to December 1, 1986. The District has also petitioned for extensive changes in Permit 7130B. (Hearing issue 7.)

#### **9.4 Lack of Due Diligence by District and Its Predecessors**

Application 11674 was filed 49 years ago and permitted shortly thereafter. In 1976 Cal-Am assigned most of its rights under Permit 7130 to the District's predecessor. In 1984 the SWRCB split Permit 7130 and ordered the District to submit project

plans and proof of the necessary financing along with a time schedule for completing the work to the SWRCB by December 1, 1984, or the permit will be revoked. By letter dated October 23, 1984, the District requested an extension of time to December 1, 1986, to meet the requirements of permit condition 7. No action was taken on the time extension request.

During the 1992 hearing, the District did not explain why plans for developing water under Permit 7130B were not prepared at an earlier date. Further, the District did not submit proof of project financing. We find, therefore, that the requirements of permit condition 7 issued in May 2, 1984, have not been met. The District and its predecessors have had about 48 years to develop water under Permits 7130 and 7130B. With the exception of 3,030 af developed by Cal-Am during the early years, no project facilities have been constructed and no water has been used under Permits 7130 and 7130B. Thus, we find that Permit 7130B should be revoked for the lack of due diligence of the District and its predecessors to develop the water authorized under Permits 7130 and 7130B, the failure to comply with condition 7 of the May 2, 1984 Order and failure to show good cause for an extension of time.

#### **9.5 Revocation of Permit 7130B Will Not Adversely Affect the Proposed New Los Padres Project**

The District should not be adversely affected by the revocation of Permit 7130B. The projected demand for the planned "buildout" within District boundaries is calculated to be about 22,750 af in a normal water year. (MPWMD:312,17, Finding 173.) The District plans to construct a 24,000 af capacity reservoir for the proposed project and via Application 27614 seeks to appropriate 29,000 afa via storage and direct diversion. Standing alone, Application 27614 can provide the 22,750 afa which the District has indicated is needed at planned buildout and to fill the proposed reservoir. Consequently, revocation of Permit 7130B

will not result in inadequate appropriative rights to construct the proposed 24,000 afa New Los Padres Reservoir.<sup>76</sup>

#### **10.0 MANDATORY CEQA FINDINGS**

For the purposes of considering whether to approve Application 27614 by the District, the SWRCB is a responsible agency under CEQA. (Public Resources Code Section 21069.) When approving an application for a project, a responsible agency must adopt conditions to avoid or mitigate adverse environmental project effects within the scope of its jurisdiction. Failing to avoid or mitigate adverse effects, a responsible agency must adopt a statement of overriding consideration. (Public Resources Code Sections 21002.1, 21081; 14 CCR, Sections 15091 and 15093.)

#### **10.1 Parts of the Project Subject to SWRCB Approval**

The proposed project involves construction and operation of the 24,000 af New Los Padres Dam, associated fish passage facilities, and necessary access roads. In addition, water right Application 27614 seeks to use existing Cal-Am wells as points of rediversion for stored project water and for water which would be directly diverted. The environmental effects subject to SWRCB jurisdiction include the land within the inundation zone, lands surrounding the proposed reservoir which are subject to either temporary or permanent construction impacts, and the entire Carmel River channel and riparian area downstream of the project which could be affected by altered flow regimes.

#### **10.2 Adoption of EIR/EIS and Lead Agency Findings**

The District is the lead agency for purposes of CEQA. Charged with issuing a Clean Water Act Section 404 permit, the ACOE is the lead agency for purpose of the National Environmental Policy Act (NEPA). The District and the ACOE have prepared a joint EIR/EIS for the project.

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<sup>76</sup> In addition, Cal-Am serves water within the District and has some legal rights to deliver water from the Carmel River.

On September 19, 1994, the District adopted the EIR/EIS for the proposed project. On the same date, the District's Directors passed Resolution 94-12 (MPWMD:313). The resolution found that the final EIR complied with CEQA and adopted the Findings for Certification. The resolution states that even with mitigation, the project would have significant or potentially unavoidable impacts on flow in the river, fisheries, vegetation, and cultural resources. (MPWMD:312,112-117.) The resolution also finds, however, that the New Los Padres Project is the superior project alternative because it is the only alternative which would:

- Correct existing environmental damage in the lower Carmel River by providing year-round flow to the lagoon in three out of four years,
- Provide maximum benefit to the steelhead resource, in some cases exceeding "natural" conditions. (MPWMD:312,20.)

### **10.3 Nonjurisdictional Project Impacts**

The proposed project will have other significant or potentially unavoidable impacts in the areas of traffic, air quality, noise, land use, and planning and recreation. (MPWMD: 312.) The District has adopted measures to mitigate impacts to:

- (1) traffic, air quality, and noise (MPWMD:312,89-91); and
- (2) land use, planning and recreation (MPWMD:312,68-73).

### **10.4 Conditions Adopted to Mitigate Project Effects**

Sections 6.0 through 8.5 of this decision discuss the adverse affects of the proposed project on fisheries, vegetation, and cultural resources subject to the SWRCB's jurisdiction and provide that conditions shall be included in any permit issued to the District to mitigate such effects. Conditions 1 through 47 of this decision set forth the conditions which the District must comply with as a condition of any permit issued by the SWRCB.

#### 10.5 Statement of Overriding Consideration

Notwithstanding the fact that this decision requires conditions to mitigate project effects, the issuance of a permit to the District will result in some effects which cannot be fully mitigated if the proposed project is constructed. The following effects would not be mitigated or substantially lessened:

- Under project conditions, no surface flow will be in the lower reaches of the Carmel River during critically dry or severe drought periods.
- Reduced opportunities for upstream steelhead migration compared to natural conditions would occur in dry or critically dry years.
- Impacts to riparian vegetation downstream of the proposed project during critically dry years due to diversion and drawdown of the alluvial aquifer.
- Impacts to traditional cultural properties which are determined to be eligible for listing in the National Historic Register pursuant to the NHPA Section 106 process.

The SWRCB finds that the advantages of the proposed project outweigh the environmental disadvantages because the:

(1) project will divert water to storage during periods of abundance and release the water to the Carmel River during periods when the river has little natural flow, (2) project will be operated in a manner which will significantly mitigate for the effects of existing diversions from the alluvial aquifer on steelhead and riparian vegetation in the lower Carmel during most types of water years, (3) project will make a legal source of supply available to persons receiving water from Cal-Am for which there is not an adequate basis or right, and (4) project will provide a far more dependable supply of water to Cal-Am customers during dry and critically dry water years. Thus, we find that

Application 27614 should be approved notwithstanding environmental effects which are not avoided or fully mitigated.

#### 11.0 CONCLUSIONS

From June 1 to October 31, a significant amount of available water is required to satisfy claimants of paramount rights for the use of water. The quantity of water required to serve such rights is approximately 3,705 afa. Unappropriated water, however, is available for appropriation from November 1 of each year to June 30 of the following year. Application 27614 should be approved for 42 cfs of direct diversion and storage of 24,000 afa, not to exceed a combined total of 29,000 afa.

No evidence was submitted to demonstrate that the District's proposed project would interfere with prior riparian, overlying, and/or pre- or post-1914 appropriative rights. The District has stipulated to recognize valid riparian, overlying, and pre-1914 appropriative claims. Any permit issued for Application 27614 should expressly provide that the permit is junior to the rights of persons diverting water for reasonable beneficial use under valid and properly exercised riparian, overlying, and pre- and post-1914 appropriative claims of right which have a priority which is superior to the priority of Application 27614. In addition, any permit issued to the District should include conditions to protect persons and applicants for unappropriated water who are using established quantities of water within the watershed of origin, as specified in Table 13, irrespective of the priority of such applications *vis a vis* the District's application.

Existing diversions from the Carmel River have adversely affected the public trust resources in the river. Such diversions have resulted in loss of riparian habitat in the lower river and the near extinction of the Carmel River steelhead run. The diversions by Cal-Am and others are not the sole cause of current conditions in the Carmel River. One significant cause of current

conditions, is the series of dry and critically dry years during the late 1980s and early 1990s. Nevertheless, Cal-Am's combined diversions from the Carmel River constitute the largest single impact to the instream beneficial uses of the river.

The District proposes to operate the New Los Padres Project to mitigate the effects of these ongoing diversions from the river. Mitigation would be accomplished, in large part, by diverting water to storage during the months when water is abundant and releasing the water down the Carmel River for rediversion at Cal-Am's existing wells during months when there is little natural flow in the river. In addition, the District has adopted numerous measures necessary to mitigate the effects of existing diversions from the river as well as the effects of its proposed project. Any permit issued for Application 27614 will require the District to implement these measures as a condition of diverting water from the river.

The proposed project will also inundate archeologic resources and have an effect on the cultural and religious practices of persons of Esselen descent. The District treats impacts to archeological resources as potentially significant, depending upon whether certain resources become listed as "historic properties" pursuant to the NHPA Section 106 process. Similarly, mitigation measures are treated as preliminary and will be developed in further consultation with the appropriate agencies and interested parties pursuant to the Section 106 process. Any permit issued for Application 27614 will require the District to avoid, protect, or mitigate important cultural resources by compliance with the Programmatic Agreement prepared in accordance with Section 106.

Permit 7130B should be revoked for the lack of due diligence of the District and its predecessors to develop the water authorized under Permits 7130 and 7130B, the failure to comply with condition 7 of the May 2, 1984 Order and failure to show good cause for an extension of time. The District should not be



adversely affected by the revocation of Permit 7130B. Standing alone, approval of Application 27614 in the amount of 29,000 afa can provide the 22,750 afa which the District has indicated is needed at planned buildout and to fill the proposed reservoir. Consequently, revocation of Permit 7130B will not result in inadequate appropriative rights to construct the proposed 24,000 afa New Los Padres Reservoir.

Thus, in consideration of all of the foregoing, we find that approval of Application 27614 is in furtherance of Article X, Section 2 of California's Constitution requiring "that the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable." Finally, in accordance with Water Code Section 1253, the terms and conditions included herein will "best develop, conserve and utilize in the public interest the water sought for appropriation."

No additional water is available for appropriation from the Carmel River between May 1 to December 31 of each year. The staff of the SWRCB is directed to include the Carmel River among those streams determined to be fully appropriated during all or part of each year in accordance with Water Code Section 1205.

#### ORDER

**NOW, THEREFORE, IT IS ORDERED** that Application 27614 is approved subject to conditions. Issuance of the permit shall be subject to the District first submitting to the Chief, Division of Water Rights, amended application maps showing all points of diversion/rediversion with the information required by Title 23, California Code of Regulations, Section 715(c). The permit shall contain standard permit terms 10, 11, 12, and 13 and the following additional terms:

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**Permit Conditions:**

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 42 cubic feet per second by direct diversion and 24,000 acre-feet per annum by storage from November 1 of each year through June 30 of the succeeding year.
2. The total amount of water to be taken from the source shall not exceed 29,000 acre-feet from November 1 of each year through June 30 of the succeeding year. (Permit term 5e.)
3. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (Permit term 5i.)
4. The amount authorized for appropriation may be reduced in the license if investigation warrants. (Permit term 6.)
5. Construction work shall begin within four years of the date of this permit and thereafter shall be prosecuted with reasonable diligence. (Permit term 7.)
6. Construction work shall be completed by December 31, 2003. (Permit term 8.)
7. Complete application of the water to the authorized use shall be made by December 31, 2020. (Permit term 9.)
8. This permit shall not be construed as conferring upon the permittee right of access to the points of diversion. (Permit term 22).
9. Permittee's rights under this permit are junior to the rights of persons diverting water for reasonable beneficial use under valid and properly exercised riparian, overlying,

and pre- and post-1914 appropriative claims of right which have a priority which is superior to the priority of Application 27614.

10. The priority of this permit shall be junior to any permit issued on the applications set forth in Table 13 or for the persons named<sup>77</sup> in Table 13 for an amount of water not to exceed the quantity set forth in the column titled "Quantity Reserved by SWRCB For Future Appropriation".<sup>78</sup> Applicants can request the State Water Resources Control Board (SWRCB) to modify the amounts in this column in accordance with the procedures in this condition.

Persons identified in Table 13 that have not filed an application to appropriate water must file an application by December 29, 1995 to benefit from this condition. To the extent such applicants and persons claim riparian, overlying, pre-1914 appropriative or other rights to use the water, they shall not be entitled to a post-1914 appropriative right for water in excess of established quantities of use as a result of this permit condition. Any priority obtained for a permit by virtue of this condition shall be void if the permittee and/or others divert more water under the permit and claimed underlying rights than is authorized on the face of the permit; however, the priority shall not be voided for the diversion of de minimis amounts which can reasonably be attributed to operational uncertainties.

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<sup>77</sup> Several persons named in Table 13 do not have an application on file with the SWRCB.

<sup>78</sup> No quantity of water is set forth in Table 13 for Kirk, Lufkin, Lutes, Markkula, Pt. Sur Corporation, Tregaea Trust, and Woltor because the hearing record does not contain adequate information; nevertheless, these persons may seek an application under the procedures established herein.

Upon request by an applicant, a protestant, or the District, notification to the District and petitioner, and opportunity for comment, the SWRCB will review whether the amount set forth in the column entitled "*Quantity Reserved by SWRCB For Future Appropriations*" should be increased or decreased, at such time as an application is processed; however, no reconsideration will be provided for amounts based upon a stipulation between the District and an applicant, except in those instances where the stipulation is subsequently revised or new stipulation is entered into by the District with respect to Table 13 quantities.

Request for review shall be submitted and accompanied by prima facie evidence of established quantities of use to the Chief, Division of Water Rights, on or before December 29, 1995. Requests for review submitted after this date shall not be considered. The criterion for review shall be whether the applicant had an established reasonable beneficial use of water and the amount of such use<sup>79</sup> on or before November 22, 1994. Only recorded water use for the period January 1, 1987<sup>80</sup> through November 22, 1994 shall be considered. The Chief, Division of Water Rights, is delegated authority to modify the quantities identified in Table 13. This condition is not a restriction on exercise of valid riparian, pre-1914 appropriative, or post-1914 appropriative rights which are senior to the permit issued pursuant to Application 27614, or valid rights to diversion of percolating ground water.

11. Permittee shall not divert water under this permit unless and until California American Water Company (Cal-Am) has obtained an alternate supply of water for its illegal

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<sup>79</sup> Recorded water use shall be based either on records of meter readings or well production records.

<sup>80</sup> Limited meter readings are available for the Carmel River Valley beginning in 1987.

diversions from the Carmel River. A contract with permittee to obtain water made available under this permit is one means by which Cal-Am can obtain a legal supply of water in lieu of its existing diversions.

12. The New Los Padres Dam is of such size as to be within the jurisdiction of the Department of Water Resources as to safety, and construction under this permit shall not be commenced until the Department has approved the plans and specifications for the dam. (Permit term 48.)
13. Permittee shall consult with the Division of Water Rights and develop, in conformance with Water Code Section 10610, et seq., and implement a water conservation plan or actions. The proposed plan or actions shall be presented to the SWRCB for approval within one year from the date of this permit or such further time as, for good cause shown, may be allowed by the State Water Resources Control Board (SWRCB). A progress report on the development of a water conservation program may be required by the SWRCB at any time within this period.

All cost-effective measures identified in the water conservation program shall be implemented in accordance with the schedule for implementation found therein." (Permit term 29B.)

14. The permittee shall prepare an Erosion Control Plan. The plan shall be submitted to the Chief of the Division of Water Rights, State Water Resources Control Board, for approval prior to project construction.
15. In accordance with Sections 1601, 1603, and/or Section 6100 of the California Fish and Game Code, no work shall be started on the diversion and no water shall be diverted under this permit until permittee has entered into a stream

alteration agreement with the California Department of Fish and Game (DFG) and/or the DFG has determined that measures to protect fishlife have been incorporated into plans for the construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee. (Permit term 63.)

16. Prior to construction, permittee shall develop and implement a program in consultation with the California Department of Fish and Game (DFG) to monitor changes in channel capacity and growth of riparian vegetation downstream of the project. The program shall be submitted to the Chief, Division of Water Rights, for approval prior to initiation of construction activities. Changes shall be monitored for a period of 20 years from issuance of Permit after which time the program will be re-evaluated. Permittee shall submit the results of the monitoring program to the State Water Resources Control Board (SWRCB) and DFG annually with the Progress Report by permittee.

If reduction in pre-project main stem channel capacity is confirmed, or changes in channel geometry increase the risk of bank erosion, and if inspection of sediment deposition indicates fishery habitat degradation, permittee in consultation with SWRCB, DFG and other responsible resource agencies, shall devise and implement measures to correct the adverse changes.

17. In order to prevent degradation of the quality of water during and after construction, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Coast Region, or by the State Water Resources Control Board. (Permit term 100.)

18. For protection of the downstream fishery, permittee shall install and operate a multilevel intake structure on the outlet works of the New Los Padres Dam. The structure shall be designed to provide temperature control and maximum reaeration of released water. The design of the intake structure shall be approved by the Department of Fish and Game prior to project construction.
19. To mitigate for loss of mixed hardwood forest and coast live oak woodland, permittee shall acquire the rights to a minimum of 380 acres of property in the immediate project vicinity to be preserved as open space and wildlife habitat.
20. To mitigate for loss of valley oak woodland, permittee shall implement the Valley Oak Woodland Mitigation Plan as specified in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume II, Attachment 9-B.
21. To mitigate for construction staging area impacts, permittee shall implement the Construction Staging Area Mitigation Plan as specified in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume II, Attachment 9-E. Monitoring shall occur for a period of 20 years to ensure success in meeting pre-established success criteria. The results of the monitoring program shall be submitted to the Chief, Division of Water Rights. Any modification in the mitigation plan is subject to the review and approval of the Chief, Division of Water Rights, subject to appropriate conditions.
22. Prior to construction, permittee shall finalize the Riparian and Wetland Habitat Mitigation and Monitoring Plan for review and approval by resource agencies participating in the Interagency Vegetation Working Group and the Chief, Division of Water Rights. Permittee shall commence

implementation of the final Plan within one year of construction completion.

23. Prior to construction, permittee shall collect, clean, and place in cold storage seeds of the Douglas' Spineflower and the Lewis' Clarkia. Permittee shall apply the seeds to the construction staging area upon project completion along with the revegetation mix.
24. Permittee shall maintain in good working order all riparian irrigation systems owned or operated by permittee under its Water Allocation Program Environmental Impact Report, 5-Year Mitigation Program (November 1990) for use as needed during dry or critically dry water years, as defined in Table C, when no flow is to be maintained at the lagoon, or under conditions of critically low storage in New Los Padres Reservoir when no flow is required at the Narrows.
25. Permittee shall implement the Wildlife Habitat Monitoring Program outlined in the Monterey Peninsula Water Supply Project Final EIR/EIS, Volume III, Appendix 9-G until Application 27614 is licensed. Survey data and analysis of results shall be submitted annually to the Department of Fish and Game (DFG) for review and comment. If, after review, DFG determines need for mitigation, permittee shall within one year of such a finding, submit to the State Water Resources Control Board, Chief, Division of Water Rights, for review and approval a plan detailing specific measures which will be implemented. Upon approval by the Chief, Division of Water Rights, permittee shall implement the approved measures.
26. Prior to construction, permittee shall in consultation with Department of Fish and Game and the National Marine Fisheries Service finalize the Spawning Habitat Mitigation



Plan outlined in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume II, Appendix 8-B. The plan shall be submitted to the State Water Resources Control Board, Chief, Division of Water Rights, for review and approval. Upon approval, the permittee shall implement the plan.

27. During the final project design phase, and prior to solicitation of bids for construction, permittee shall, to the satisfaction of the Department of Fish and Game, the National Marine Fisheries Service and the State Water Resources Control Board, Chief, Division of Water Rights, finalize the Steelhead Fisheries Mitigation Plan found in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume II, Attachment 8-A. Said plan shall establish a numerical goal against which the success of the plan may be measured.
28. Permittee shall at all times maintain minimum instream flow at the lagoon, the Narrows, and below New Los Padres Dam as specified in Table A and Table B of this permit. The flow shall depend on hydrologic year type, season, and reservoir storage conditions. Hydrologic year types shall be based on the Water Supply Index as specified in Table C of this permit. Permittee shall incorporate a daily timestep in its hydrologic forecasting so that the Water Supply Index can be upgraded on a daily basis.
29. Once the project authorized by this permit becomes operational, permittee shall assure that any water delivered to California American Water Company shall not result in surface water diversion to the San Clemente Filter Plant in excess of 16 cfs in Normal or Better years, 5.6 cfs in Below Normal Years, and 3.5 cfs in Dry or Critically Dry years.



PERMIT TABLE A		
MINIMUM INSTREAM FLOW REQUIREMENTS BELOW NEW LOS PADRES DAM		
JANUARY-MARCH	APRIL-MAY	JUNE-DECEMBER
<b>Normal or Better Years</b>	<b>Normal or Better Years</b>	<b>Normal or Better Years</b>
Maintain 20 cfs below New Los Padres Dam for juvenile rearing until an attraction event occurs.  Once an attraction event <sup>3</sup> occurs, maintain 50 cfs below New Los Padres Dam for migration, spawning, and incubation purposes.	Maintain 40 cfs below New Los Padres Dam for smolt emigration.	Maintain 20 cfs below New Los Padres Dam for juvenile rearing.
<b>Below Normal Years</b>	<b>Below Normal Years</b>	<b>Below Normal Years</b>
Same flow requirements as Normal or Better Years.	Same flow requirements as Normal or Better Years.	Same flow requirements as Normal or Better Years.
<b>Dry Years</b>	<b>Dry Years</b>	<b>Dry Years</b>
Same flow requirements as Normal or Better Years except that once an attraction event occurs, maintain 20 cfs below New Los Padres Dam for migration, spawning, and incubation purposes.	Maintain 30 cfs below New Los Padres Dam for smolt emigration.	If usable storage in New Los Padres Reservoir is greater than 5000 AF, maintain 20 cfs below New Los Padres Dam for juvenile rearing.  If usable storage in New Los Padres Reservoir is less than 5000 AF, maintain 10 cfs below New Los Padres Dam for juvenile rearing.
<b>Critically Dry Years</b>	<b>Critically Dry Years</b>	<b>Critically Dry Years</b>
Same flow requirements as Normal or Better Years except that once an attraction event occurs, maintain 20 cfs below New Los Padres Dam for migration, spawning, and incubation purposes..	Maintain 20 cfs below New Los Padres Dam for smolt emigration.	Maintain 10 cfs below New Los Padres Dam for juvenile rearing.
<b>Critically Low Storage</b>	<b>Critically Low Storage</b>	<b>Critically Low Storage</b>
Maintain 5 cfs below New Los Padres and San Clemente Dams.	Maintain 5 cfs below New Los Padres and San Clemente Dams.	Maintain 5 cfs below New Los Padres and San Clemente Dams.

Notes for Tables A, B and C:

1. Water Year classifications are based on the District Water Supply Index, computed from the reconstructed long-term record of unimpaired flow at the San Clemente Dam.
2. "Critically Low Storage" occurs whenever usable storage in New Los Padres Reservoir falls below 2,000 af and persists until usable storage exceeds 7,500 af.
3. An attraction event is defined as occurrence of 200 cfs at the Carmel River Lagoon.

**PERMIT TABLE B**

**MINIMUM INSTREAM FLOW REQUIREMENTS  
AT CARMEL RIVER NARROWS AND LAGOON**

JANUARY-MARCH	APRIL-MAY	JUNE-DECEMBER
<b>Normal or Better Years</b>	<b>Normal or Better Years</b>	<b>Normal or Better Years</b>
<p>Maintain 5 cfs to the lagoon for juvenile rearing until an attraction event is projected.</p> <p>Whenever an attraction event is projected, maintain 200 cfs to the lagoon for the duration of the attraction event.</p> <p>Following an attraction event, provide migration flows of 200 to 60 cfs to the lagoon, depending on estimated natural recession rates.</p> <p>Following the migration period, maintain 40 cfs to the lagoon and 70 cfs at the Narrows for spawning.</p>	<p>Maintain 40 cfs to the lagoon for smolt emigration.</p>	<p>Maintain 5 cfs to the lagoon for juvenile rearing.</p>
<b>Below Normal Years</b>	<b>Below Normal Years</b>	<b>Below Normal Years</b>
<p>Same flow requirements as Normal or Better Years</p>	<p>Same flow requirements as Normal or Better Years</p>	<p>Same flow requirements as Normal or Better Years</p>
<b>Dry Years</b>	<b>Dry Years</b>	<b>Dry Years</b>
<p>Same flow requirements as Normal or Better Years except that:</p> <p>(1) Whenever an attraction event is projected, maintain either 200 cfs in January, 100 cfs in February, or 75 cfs in March to the lagoon for the duration of the attraction event.</p> <p>(2) Following the migration period, maintain 40 cfs to the lagoon and 50 cfs at the Narrows for spawning.</p>	<p>Maintain 30 cfs to the lagoon for smolt emigration.</p>	<p>Same flow requirements as Normal or Better Years except that:</p> <p>If usable storage in New Los Padres Reservoir is less than 5000 AF, maintain 10 cfs at the Narrows for juvenile rearing. No flow is required at the lagoon.</p>

*Continued next page*



PERMIT TABLE C				
WATER YEAR SUPPLY INDEX CUMULATIVE UNIMPAIRED INFLOW AT NEW SAN CLEMENTE DAM (AF)				
	WATER YEAR CLASS			
	Normal or Better	Below Normal	Dry	Critically Dry
End of Oct	>200	> 200 - 100	>100 - 1	0
Oct-Nov	> 1,000	1,000 - 500	500 - 200	< 200
Oct-Dec	> 4,100	4,100 - 1,700	1,700 - 1,175	< 1,175
Oct-Jan	> 11,800	11,800 - 5,450	5,450 - 4,100	< 4,100
Oct-Feb	> 26,300	26,300 - 14,400	14,400 - 7,550	< 7,550
Oct-Mar	> 39,100	39,100 - 21,950	21,950 - 10,925	< 10,925
Oct-Apr	> 46,400	46,400 - 28,300	28,300 - 12,975	< 12,975
Oct-May	> 47,400	47,400 - 30,650	30,650 - 14,425	< 14,425
Oct-Jun	> 48,000	48,000 - 31,550	31,550 - 14,900	< 14,900
Oct-Jul	> 48,100	48,100 - 31,700	31,700 - 14,925	< 14,925
Oct-Aug	> 48,100	48,100 - 31,750	31,750 - 14,925	< 14,925

NOTE: Classes derived from monthly unimpaired flows to San Clemente Dam for the period of 1902-1978. (MPWMD:289,A-5,23.)

33. Until the project authorized by this permit becomes fully operational, permittee shall continue to negotiate with California American Water Company and the Department of Fish and Game to maintain, insofar as possible a minimum 5 cfs bypass flow below San Clemente Dam as measured at the Sleepy Hollow weir.
  
34. To prevent stranding of spring and fall steelhead juveniles and smolts during critically dry conditions, permittee shall continue to implement the fisheries measures outlined in the Water Allocation Mitigation Program as described in the Monterey Peninsula Water Supply Project Final EIR/EIS (March 1994), Volume III, Appendix 2-D.

35. Permittee shall, in consultation with the Department of Fish and Game, design and construct upstream and downstream fish passage facilities for the New Los Padres Project. The design plans shall be submitted to the State Water Resources Control Board, Chief, Division of Water Rights, prior to commencement of construction of fish passage facilities. The permittee shall fully fund the construction and continued operation of the upstream and downstream fish passage facilities. An annual Memorandum of Understanding (MOU) shall be executed between the permittee and the Department of Fish and Game defining operation of the fish passage facilities. Permittee shall record and maintain records of numbers of adult and juvenile steelhead trapped and transported by the facilities. The MOU shall be submitted to the State Water Resources Control Board, Chief, Division of Water Rights, annually.
36. Permittee shall, in consultation with the Department of Fish and Game and the National Marine Fisheries Service, develop a formal Remedial Action Plan to address problems which may occur with the fish passage facilities. Should the facilities prove unsuccessful, the State Water Resources Control Board may, under its continuing jurisdiction, alter the project instream flow schedule (Tables A and B) to increase habitat below the dam.
37. Should the Carmel River steelhead become listed as threatened or endangered under either the State or the Federal Endangered Species Acts prior to construction of the works authorized by this permit, permittee shall seek a formal biological opinion from the trustee agency and implement additional feasible mitigation measures identified in said opinion.

38. Prior to construction, permittee shall, in consultation with the Department of Fish and Game, conduct additional investigations to further define the instream flow requirements in the reach immediately downstream of the New Los Padres Dam. Permittee shall prepare a final report of these investigations and submit the report to the Department of Fish and Game and the State Water Resources Control Board. Under its continuing authority, after notice and opportunity for hearing, the State Water Resources Control Board may modify the fishery bypass flows in this permit, based upon the results of said investigations.
39. During the final project design phase, and prior to solicitation of bids for construction, permittee shall provide documentation to the State Water Resources Control Board that sufficient long-term financial resources have been committed to fund all mitigation measures specified in this permit to assure their continuing, full implementation.
40. Permittee shall, in consultation with the Department of Fish and Game, conduct studies to determine the effectiveness of fish rescue operations specified in the Water Allocation Mitigation Program and the Steelhead Resource Mitigation Plan. The results shall be submitted to the State Water Resources Control Board, Chief, Division of Water Rights, for review and approval.
41. Permittee shall annually monitor the volume of the Carmel River Lagoon and actual sand transport into the lagoon. Annual reports shall be submitted to the California Department of Parks and Recreation, Department of Fish and Game, and the State Water Resources Control Board, Chief, Division of Water Rights for review. Such monitoring shall take place for a period of 20 years, after which the program shall be evaluated. If increased sediment transport is



observed, the permittee shall, in consultation with the Department of Parks and Recreation and the Department of Fish and Game, evaluate the significance of the impacts and initiate a program to prevent reduction in habitat value.

42. For the protection of historic properties, including both prehistoric/ethnohistoric archeological resources and traditional cultural properties, permittee shall adhere to the May 2, 1995 "*Programmatic Agreement Among the U.S. Army Corps of Engineers, San Francisco District, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Issuance of a Permit Under Section 404 of the Clean Water Act for the New Los Padres Dam and Reservoir Project.*" Permittee shall continue to consult with the U.S. Army Corps of Engineers, the State Water Resources Control Board, the State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Native Americans regarding cultural resources until all stipulations of the Programmatic Agreement and resultant Historic Properties Management Plan and any Historic Properties Treatment Plans have been completed to the satisfaction of all the parties. Any modifications to the Programmatic Agreement are subject to the approval of the Chief of the Division of Water Rights. The permittee shall also comply with the "*Procedure for the Protection of Historic and Cultural Properties*" (36 CFR 60) and the implementing regulations of the Advisory Council on Historic Preservation, 36 CFR 800.
43. Permittee shall implement the mitigation measures regarding the archeological and traditional properties of importance to the Native Americans that result from the National Historic Preservation Act Section 106 process as set forth in the Historic Properties Management Plans and the Historic

Properties Treatment Plans in the special permit term regarding the Programmatic Agreement.

44. Permittee shall submit an annual progress report regarding cultural resources to the State Water Resources Control Board, Chief, Division of Water Rights, until such time that the cultural resource work has been completed or this permit is licensed.
45. The State Water Resources Control Board reserves jurisdiction to require the permittee to implement such additional mitigation measures for protection of traditional cultural properties as may be necessary in the event the results of the National Historic Preservation Act Section 106 process does not meet with the satisfaction of the State Water Resources Control Board.
46. For the protection of historic properties including both prehistoric/ethnohistoric archeological resources and traditional cultural properties of importance to the Native Americans, permittee shall include the Native Americans as participants in the National Historic Preservation Act Section 106 process as specified in the Programmatic Agreement and the Memorandum of Understanding which were executed by the Tribe, the Nation, the District, and the U.S. Army Corps of Engineers.
47. Any mitigation measures that result from the process outlined in the Programmatic Agreement and in the Memorandums of Understanding, with the Esselen Tribe and Nation, are subject to the approval of the State Water Resources Control Board. If these measures are acceptable to the Chief, Division of Water Rights, permittee shall be responsible for full implementation of these measures.

IT IS FURTHER ORDERED that Permit 7130B is herewith revoked for want of due diligence.

**CERTIFICATION**

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of a decision duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 6, 1995.

AYE:           John Caffrey  
                  Mary Jane Forster  
                  Marc Del Piero  
                  James M. Stubchaer  
                  John W. Brown

NO:            None

ABSENT:       None

ABSTAIN:      None

  
\_\_\_\_\_  
Maureen Marché  
Administrative Assistant to the Board