

Keith B.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 98-04

In the Matter of Decision 1632,
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
and
Order WR 95-10,
CALIFORNIA-AMERICAN WATER COMPANY

SOURCE: Carmel River

COUNTY: Monterey County

**ORDER AMENDING DECISION 1632 AND ORDER WR 95-10
PURSUANT TO SETTLEMENT OF LITIGATION**

BY THE BOARD:

1.0 BACKGROUND

On July 6, 1995, the State Water Resources Control Board (SWRCB) adopted Decision 1632 (D-1632) approving Application 27614 of the Monterey Peninsula Water Management District (MPWMD) subject to conditions and revoking Permit 7130B of the MPWMD for lack of diligence in developing the proposed project authorized by the permit. On July 6, 1995, the SWRCB also adopted Order WR 95-10 (Order) regarding four complaints filed against the California-American Water Company (Cal-Am). The Order requires Cal-Am to terminate unlawful diversions from the Carmel River and to comply with specified conditions.

The MPWMD, Cal-Am, the Sierra Club, the Carmel River Steelhead Association, and the California Sportfishing Protection Alliance filed petitions for writ of mandate in Monterey County Superior Court (*Monterey Peninsula Water Management District, et al. v. State Water Resources Control Board* (Monterey County Superior Court No. M 33519), *Monterey Peninsula Water Management District, California-American Water Company v. State Water*

Resources Control Board (Monterey County Superior Court No. M 33520), and *Sierra Club, Inc., et al. v. State Water Resources Control Board* (Monterey County Superior Court No. 105610)) against the SWRCB challenging certain provisions included in D-1632 and the Order.

All of the parties to the above cited lawsuits have negotiated a proposed stipulation for judgment (stipulation) to resolve the pending litigation. The proposed stipulation includes amendments to D-1632 and the Order.

The authority delegated to the Executive Director of the SWRCB generally includes authority to approve proposed stipulations for judgment in settlement of litigation. (SWRCB Resolution 90-15.) Portions of stipulations that require amendment of decisions or orders of the SWRCB must be approved by the SWRCB, however. (Water Code section 183.)

The Executive Director of the SWRCB has the authority to approve the proposed stipulation for judgment except for the proposed amendments to D-1632 and the Order. The Board concludes that settlement of the litigation as contemplated in the proposed stipulation for judgment is in the best interest of the state, and that the proposed amendments to D-1632 and the Order are reasonable, in the public interest, and supported by the evidence in the record of D-1632 and the Order. Accordingly, the proposed amendments to D-1632 and the Order which are included in the stipulation are adopted by this order and are set forth below.

ORDER

IT IS HEREBY ORDERED THAT Decision 1632 shall be modified as follows:

1. On page 28, paragraph 3, the reference to RM 15 shall be deleted and shall be replaced with RM 17.2.
2. On pages 88, 89, and 90, delete paragraphs 9.4 and 9.5 in their entirety and replace those paragraphs with the following language:

Permit 7130B shall not be revoked, but instead shall remain valid subject to all of the conditions which apply to Application 27614, as set forth in the order portion of this Decision, except that the season of diversion under Permit 7130B shall remain October 1 to May 31.

Notwithstanding any other provision of this Decision 1632, direct diversions and diversions to storage for the New Los Padres Project pursuant to Application 27614 shall be allowed year-round, provided the project is operated in accordance with the schedule set forth in Permit Tables A, B, and C for the period of time water is physically available over and above fish flow requirements, and provided further that until the reservoir project authorized by Permit 20808 (Application 27614) becomes fully operational, no water may be diverted pursuant to Permit 20808 (Application 27614), either by direct diversion or diversion to storage except between November 1 and the following June 30; provided further that until the project authorized by Permit 20808 becomes fully operational no water may be diverted pursuant to Permit 7130B except between October 1 and the following May 31.

The total quantity of water originating in the Carmel River diverted to beneficial use by the California-American Water Company and the Monterey Peninsula Water Management District (including direct diversion and rediversion of previously stored water, but not including diversions to storage) for municipal, domestic, industrial and irrigation purposes of use, including rights established by License 11866, Permit 7130B, Application 27614, Application 30215, pre-1914 appropriative rights and riparian rights, shall not exceed (a) 16,000 acre-feet per annum or (b) such lesser amount identified in the Supplemental EIR on the Carmel River Dam as annual beneficial use requirements associated with total project yield or the California-American Water Company production limit. This limit may be modified upon further order of the State Water Resources Control Board.

3. On page 96, Condition 5 establishing a construction start date of four years from the date of the Decision, shall be modified to read instead: four years from certification of the Carmel River Dam Supplemental EIR.
4. On page 96, Condition 6, delete "December 31, 2003" and replace it with "December 31, 2005."

5. On page 113, the last paragraph of the Order reading "IT IS FURTHER ORDERED that Permit 7130B is herewith revoked for want of due diligence." is deleted in its entirety and no substitute language is to be inserted in its place.

IT IS FURTHER ORDERED THAT Order WR 95-10 shall be modified as follows:

1. On page 41, Condition 4 shall be deleted and replaced to read as follows:

Cal-Am shall maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest practicable extent during periods of low flow. Cal-Am shall minimize diversions from the Seaside aquifer whenever flow in the Carmel River exceeds 40 cfs at the Highway One Bridge from November 1 to April 30. The long-term yield of the basin shall be maintained by using the practical rate of withdrawal method.

2. On page 41, Condition 5 shall be deleted and replaced to read as follows:

To the maximum extent feasible without inducing sea water intrusion or unreasonably affecting the operation of other wells, Cal-Am shall satisfy the water demands of its customers by extracting water from its most downstream wells.

3. On page 41, the first sentence of Condition 6 shall be deleted and the following language shall be inserted in its place:

Cal-Am shall conduct a study of the feasibility benefits and estimated costs of supplying water to the areas now served by the Carmel Valley Filter Plant from its more nearby wells downstream of the plant and shall also conduct a similar study of utilizing the existing or expanded Begonia Treatment Plant or other facilities located further downstream in lieu of the Carmel Valley Filter Plant. This latter study shall be completed within one year of the date of entry of this Order. Petitioners shall have an opportunity to comment on the scope of the study. The study shall be under the direction of the Division of Water Rights, and will be conducted by a consultant approved by the Division. If the Chief, Division of Water Rights, finds that the measures identified in the studies are feasible, Cal-Am must implement supplying water from the facilities identified by the Division according to a schedule approved by the Division of Water Rights.

The remainder of Condition 6 shall remain the same.

4. On page 44, Condition 13 shall be modified as follows:
Subparagraph (a) shall be deleted and replaced to read as follows:

(a) Reports of the monthly total amounts being: (1) pumped from wells and (2) diverted from the Carmel River. Reports of the total monthly amount being pumped from wells shall show the amount being pumped from each well and shall show the location of each well.

Subparagraph (c) shall be deleted and replaced to read as follows:

(c) Reports of the progress being made in complying with conditions 4, 5, 6, 7, 8, and 9.

Subparagraph (d) shall be added to read:

(d) Cal-Am shall submit a quarterly water budget 30 days after approval by the District.

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IT IS FURTHER ORDERED THAT this order shall take effect upon entry of the order of judgment approving the stipulation for judgment to settle petitions for writ of mandate in *Monterey Peninsula Water Management District, et al. v. State Water Resources Control Board* (Monterey County Superior Court No. M 33519), *Monterey Peninsula Water Management District, California-American Water Company v. State Water Resources Control Board* (Monterey County Superior Court No. M 33520), and *Sierra Club, Inc., et al. v. State Water Resources Control Board* (Monterey County Superior Court No. 105610).

CERTIFICATION

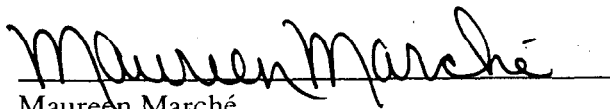
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 19, 1998.

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

NO: None

ABSENT: None

ABSTAIN: None



Maureen Marché
Administrative Assistant to the Board