

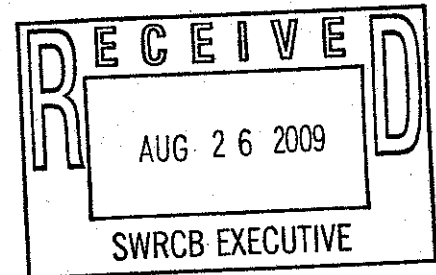


**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

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August 26, 2009

Chairman Charles R. Hoppin  
State Water Resources Control Board  
Joe Serna, Jr./Cal-EPA Building  
1001 I Street, Second Floor  
Sacramento, CA 95814



**Subject: July 27, 2009 Draft SWRCB Cease and Desist Order WR 2009-00XX in the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company**

Chairman Charles R. Hoppin and Members of the Board:

The Monterey Peninsula Water Management District (Water Management District) timely intervened in all proceedings related to the captioned Draft Cease and Desist Order (CDO) relating to the unauthorized diversion and use of water from the Carmel River in Monterey County. The Water Management District participated in all pre-hearing and post-hearing sessions, called and examined witnesses, presented oral argument and filed post-hearing briefs in an effort to further the Water Management District's statutory authority as the integrated manager of all waters that benefit the Monterey Peninsula area. This letter presents the Water Management District's comments on the draft CDO that the State Water Resources Control Board (SWRCB) issued on July 27, 2009. Representatives of the District also intend to make oral presentations related to these concerns.

At the outset, the Water Management District wishes to clarify that it does not challenge or object to the core findings of the SWRCB in the draft CDO. Specifically the District observes that the draft CDO correctly concludes:

- California American Water (Cal-Am) is in violation of Water Code section 1052 by making unauthorized diversion or use of water; and
- Cal-Am has not complied with Condition 2 of Order 95-10 requiring that Cal-Am diligently implement actions to terminate its unlawful diversions.

Nonetheless, the Water Management District observes the draft CDO contains serious errors of fact and logic. Conclusions and actions proposed in the draft CDO threaten the public health, safety and welfare of the citizens of the Monterey Peninsula if it is adopted in its present form.

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As detailed below, the Water Management District believes the draft CDO can be modified so its objectives can be met in a manner to avoid this threatened harm. Based on these concerns, the Water Management District objects to the present form and contents of the draft CDO.

1. **The Draft CDO is arbitrary and capricious as it fails to account for health and safety impacts of Carmel River diversion limits to be imposed upon Cal-Am, and its customers.**

Paragraph 2 of the Ordering provisions on page 57 of the draft CDO requires Cal-Am to immediately reduce its diversions from the Carmel River, and to cause increased additional reductions each year to those diversions.

Mark Stretars, Senior SWRCB Engineer testified in these proceedings (Exhibit PT-49, page 4) that the SWRCB relied on a health and safety standard for individual residential water consumption of 75 gallons per person per day (gppd). Mr. Stretars referred to Section 697(b) of Title 23 of the California Code of Regulations in that testimony. He stated "a figure of 75 gallons per person per day (gppd) was a reasonable allowance for domestic use that would not jeopardize public health and safety". No other evidence was presented related to the minimum quantity of water needed for residential health and safety. Diversion limits proposed in the draft CDO will reduce the amount of water available to individual Cal-Am customers to a level less than that allowed by the Title 23, section 697(b).

Based on Water Year 2007 data, single-family residential use in Cal-Am's main system averaged approximately 68 gppd, i.e., 6,508 acre-feet used by 85,326 single-family residents in WY 2007. This value accounts for both indoor and outdoor use, but does not include system losses due to unaccounted-for-water uses.

Insofar as residential consumption in the Cal-Am system is already less than the health and safety standard referenced by the Senior SWRCB Engineer, any further reduction could harm health and safety. The evidentiary record does not show that the forced reduction in water use is feasible or reasonable. To the extent the significant effect of reductions is ignored, the draft CDO is arbitrary and capricious.

A breakdown of the annual reductions required by the draft CDO and the amounts of water that Cal-Am will be allowed to divert from the Carmel River each year during the WY 2010 through WY 2041 period is shown on the enclosed table, *Allowable Diversions from Carmel River Sources by Cal-Am for Customer Service Based on SWRCB Draft Cease and Desist Order WR 2009-00XX, (Enclosure 1)*. The shaded row in the table shows the original base diversion that was specified in Order WR 95-10 (14,106 af) and the base diversion that has been in effect since WY 1997 (11,285 af). More specifically, the table shows the three types of reductions in diversions from the Carmel River that will be required each year starting in WY 2010. These reductions include a "Base Reduction" of 307 afa that results from changing the current effective base diversion from 11,285 afa to 10,978 afa, an "Immediate Reduction" of 549 afa that is

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attributed to reductions in Cal-Am's system losses, and "Annual Reductions" of 121 afa for the first five water years and 242 afa for each succeeding year. The savings associated with the Annual Reductions are attributed to reductions in Cal-Am's system losses, additional customer retrofitting, and reduced use of potable water for outdoor irrigation. The Base Reduction and Immediate Reduction values are constant values that will apply each year until Cal-Am's unauthorized diversions are eliminated. The Annual Reduction values are cumulative and will increase each year until Cal-Am's unauthorized diversions are eliminated. The sum of all the required reductions for each year are shown under the "Total Reductions" heading and range from 977 af in WY 2010 to 7,909 af in WY 2041.

If these reductions are adopted as drafted in the CDO, the maximum amounts of water that Cal-Am could divert each year from its Carmel River sources for customer service in its main distribution system are shown under the "Allowable Diversions" heading, i.e., column seven of **Enclosure 1**. As shown, if the draft CDO is adopted, Cal-Am's allowable diversions would range from 10,308 af in WY 2010 to 3,376 af in WY 2041. The proposed reductions in WY 2010 will require Cal-Am to reduce its diversions from the Carmel River by 27% relative to the original base diversion, and 9% relative to the current base diversion.

The amount of water allowed for use by the draft CDO is not reasonable.

- 2. The Water Management District must be recognized as a full Party to this proceeding, and afforded equal rights to petition the State Water Board Deputy Director for Water Rights for further relief under the CDO.**

The Water Management District was created by the California Legislature in 1977<sup>1</sup> as a special district and approved by the voters in 1978. The California Legislature conferred on the Water Management District sole authority to integrate management of the ground and surface water resources within the Monterey Peninsula area. This area encompasses not only the waters of the Carmel River System, but also the waters of the Seaside Groundwater Basin.

When the Legislature created the Water Management District, it was given the power, both express and implied, necessary to carry out the objects and purposes of its mandate (§118-301). This includes the power to enact ordinances and resolutions and to adopt regulations to carry out its purposes (§118-308). Perhaps one of Water Management District's broadest powers appears in §118-325. This provides, "The district shall have the power as limited in this law to do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district..."

The draft CDO does not properly recognize the legislative delegation of authority to the Water Management District, and does not properly afford the District full Party status. Further, as

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<sup>1</sup> Statutes of 1977, Chapter 527, as amended (found at West's California Water Code Appendix, Chapters 118-1 to 118-901).

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noted below, the draft CDO also improperly affects the terms of the water right (Permit 20808A – Application 27614A) jointly held by the Water Management District and Cal-Am.

As set forth in Ordering Paragraph 2 d., only Cal-Am is afforded the right and opportunity to petition the State Water Board Deputy Director for Water Rights for relief from annual reductions imposed under condition c.(2).

The Water Management District objects to this limitation. The draft CDO must recognize the legislative authority of the Water Management District, properly afford the District full Party status, and enable the District to seek relief from the provisions of the CDO upon a showing of good cause.

3. **The draft CDO should be modified to remove the separate requirements imposing a moratorium on the setting of new Cal-Am water meters, or limiting expansions of water use.**

The draft CDO, at paragraph 2 on page 58, states,

Until Cal-Am has terminated its unlawful diversions; Cal-Am shall comply with all of the following:

- a. Cal-Am shall not divert water from the Carmel River for new service connections that were not provided a “will serve commitment” before \_\_\_\_\_ . (Insert date of first public workshop to consider the draft order.)

- b. Cal-Am shall not divert water from the river for any increased use at existing service addresses resulting from a change in zoning or use and that was not provided a “will serve commitment” (or similar commitment) before \_\_\_\_\_ . (Insert date of first public workshop to consider the draft order.)

This provision is unjust and can frustrate the purposes meant to be achieved by the CDO.

The Water Management District, under its legislatively delegated authority as integrated water manager, has for several decades allocated small increments of water to the cities served by Cal-Am. The amount of water allocated for this program from new supplies has not been increased since 1993. The District’s allocation program has resulted in a “defacto moratorium” on new water use. Water remaining for use under the allocation program is limited and subject to many restrictions. The cities and county within the Water Management District have carefully safeguarded this unique water supply to facilitate planned needs such as medical care facilities, senior and assisted living sites, low income housing and other uses of value to each unique community. The amount of water that remains in the allocation is relatively minor, too little to

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cause a significant effect upon the Carmel River. Cities have judiciously preserved their unused allocation as an exercise of restrained and prudent planning. The draft CDO needlessly penalizes those jurisdictions for their frugal water planning.

The proposed moratorium is an unjust and unneeded result. If water demand cannot be managed to avoid triggering water rationing, the Water Management District's current rules require a moratorium together with implementation of Stage 5 rationing (designed to cause an aggregate 20% reduction in water use). Should water users in the Monterey Peninsula area be able to meet the CDO reductions without triggering Stage 5, however, no justification exists for imposing a moratorium. To do so would force further economic stagnation upon the region, and can result in harm to the health and safety of the community.

- 4. The draft CDO unjustly determines that the water entitlements held by the Pebble Beach Company, and others, are subject to all limitations imposed upon Cal-Am's diversions from the Carmel River. This is unjust.**

The draft CDO, beginning at page 49, reverses the long enunciated position of the SWRCB that use of the 365 afa water entitlement by Pebble Beach Company (PBC) and others within the Del Monte Forest was entitled to special treatment. For reasons more completely stated in comments provided by PBC, this conclusion is unjust. The PBC water entitlement dates to 1989. These entitlements were essential to fund the Carmel Area Wastewater District/Pebble Beach Community Services District (CAWD/PBCSD) Wastewater Reclamation Project. Parties invested tens of millions of dollars in reliance upon the entitlements. It is important to note that all expenses related to the CAWD/PBCSD Reclamation Project, a state-of-the-art and model means to reduce potable water demand on golf courses in the Del Monte Forest, caused a reduction in water diversions that would otherwise have been diverted from the Carmel River. The Water Management District was an original partner in the development and financing of this project. The draft CDO should be modified to enable continued recognition of the unique and ongoing fiscal sponsorship of PBC.

- 5. Prerequisites limiting requests for relief from the CDO are not appropriate.**

The draft CDO, at Ordering Paragraph 2 d., states three (3) separate conditions Cal-Am must meet before it can petition the State Water Board Deputy Director for Water Rights for relief from annual reductions imposed under condition c.(2). The draft CDO can be construed that relief, thus, may not be granted if the effect of the CDO harms public health and safety. Other prior conditions limiting a request for relief must be removed. If the CDO poses a threat to public health or safety, the petition for relief is appropriate and must be allowed. Any contrary provision would be arbitrary and capricious.

**6. Post relief conditions relating to the CDO are not appropriate.**

The draft CDO, at Ordering Paragraph 2 d., states two (2) separate conditions that limit relief the State Water Board Deputy Director for Water Rights may grant from annual reductions imposed under condition c.(2). As drafted, granted relief may be discontinued even when the effect shall harm public health and safety. Other conditions limiting the continuation of relief must be deleted from the draft CDO. If the CDO poses a threat to public health or safety, relief granted by petition must be allowed. Any contrary provision would be arbitrary and capricious.

**7. The base amount of water Cal-Am is allowed to divert from the Carmel River should be 11,285 afa.**

The draft CDO modifies Cal-Am's base annual Carmel River diversion value from the base set in Order WR 95-10. The draft CDO, at Ordering Paragraph 2 c., states, "Commencing on October 1, 2009, Cal-Am shall not divert more water from the river than the base of 10,978 afa ..." The Water Management District objects to the SWRCB selection of this base annual Carmel River diversion value for Cal-Am for a variety of reasons, as follows:

- The base annual Carmel River diversion value proposed for Cal-Am is unfair. Footnote 32 at page 42 (based on MPWMD-Exhibit DF2) shows the *average* Cal-Am annual diversion between 1996 and 2007 to be approximately 10,967 af. This average is comprised of years in which Cal-Am's Carmel River diversion exceeded the proposed base amount. While the SWRCB can require Cal-Am to reduce diversions, it should do so by a CDO that directly causes a reduction, not by imbedding a reduction requirement that exceeds past practice by adopting an unsupportable new base annual diversion value.
- A logical flaw underlies selection of a base annual Carmel River diversion value for Cal-Am based solely upon past water consumption data. One cannot assume that the reduced level of water demand resulted entirely from water conservation practices. Factors attributable to the severe economic recession must be considered. Hotel occupancy in the Monterey Peninsula area has decreased significantly in recent years. Restaurant sales are equally low. Other businesses have suffered. All this means that water use has been depressed, and it can be assumed that this use will rebound as the economy improves. The base annual Carmel River diversion value proposed for Cal-Am should not presuppose that past reductions in water use can be replicated in future years. Cal-Am's base diversion cannot be set based upon an assumption that past water use will fairly predict future water use.
- Reliance on a different base annual Carmel River diversion value for Cal-Am confuses the public, complicates understanding of water conservation performance standards, and may cause ambiguous interpretation of the CDO. The existing base annual diversion of 11,285 af was established in Order WR 95-10. This amount has been applied continuously since Water Year 1997. This was the base Carmel River diversion quantity presented to the Court in the Seaside

Basin adjudication (*Cal-Am v. City of Seaside, et al*; Case No. M66343, dated March 27, 2006; SBW-2) and it is the base Carmel River diversion quantity used by the California Public Utilities Commission (CPUC) in the draft environmental impact report (EIR) that evaluates Cal-Am's Coastal Water Project and its alternatives. Water conservation and water rationing standards have been stated and promulgated as percentage reductions from past use. Even the draft CDO characterizes mandatory reductions in terms of a percentage required (e.g., at page 58, "Commencing on October 1, 2009, Cal-Am shall reduce diversion from the river by 5 percent, or 549 afa.") A change to the base diversion value is not necessary as the SWRCB can require reductions from the existing 11,285 af established in Order WR 95-10. A change to the base, however, complicates water conservation assessment, and makes meaningless comparisons of past and future conservation measures. For all purposes, the base annual Carmel River diversion value for Cal-Am should be set at 11,285 af.

8. **The draft CDO directs Cal-Am to offset Carmel River water diversion based upon water saved by reduced water loss, retrofit and outdoor irrigation efforts; but water saved by these programs has been double counted. The draft CDO concludes the same efforts offset both Cal-Am Seaside Basin water production as well as Cal-Am's Carmel River production. Not enough water use can be saved to achieve both goals.**

The draft CDO, beginning at page 41, notes Cal-Am gets approximately 25% of its supply from the Seaside basin, but also finds the Seaside Basin adjudication (*Cal-Am v. City of Seaside, et al*; Case No. M66343, dated March 27, 2006; SBW-2) causes the mandatory reduction of water Cal-Am can produce from that basin. The draft CDO, at page 42, finds both that "the adjudication will decrease the supply of water available to Cal-Am for its customers" and "Nevertheless, we conclude that Cal-Am should be prohibited from increasing its diversions from the river to offset the loss of production by aggressively implementing: (1) the retrofit program; the program to reduce the use of potable water for outdoor irrigation; and the main replacement program..."

Unfortunately, the same activities used to reduce Cal-Am reliance on Seaside Basin production are referenced in the draft CDO, at page 58, as the basis for further reductions to Cal-Am's diversions from the Carmel River, "Commencing on October 1, 2009, the base shall be further reduced by 121 afa per year through savings that will accrue from (1) reduced system losses, (2) the retrofit program, and (3) the reduction of potable water used for outdoor irrigation." This was based upon the earlier rationale stated in the draft CDO at page 41, "We conclude, therefore, that water saved by retrofitting properties should be used to reduce Cal-Am's diversions from the river." and "We also conclude that the water saved by reducing the use of potable water for outdoor irrigation should be used to reduce Cal-Am's diversions from the river."

This is double counting. Water savings cannot both offset Seaside Basin water production to satisfy the adjudication ramp-down, and also offset annual reductions in Carmel River diversions. The evidentiary record does not support these offsets to both water supplies. Indeed, no evidence supports that the proposed activities will cause a sufficient reduction in water use to offset the court-ordered Seaside Basin ramp-down. Without an offset, the amount of water

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available for consumptive use will be threatened, and no analysis exists in the record to show that this lowered water supply will not threaten and even harm the public health, safety and welfare of the citizens of the Monterey Peninsula area.

9. **The draft CDO arbitrarily quantifies the amount of water to be saved (by reason of programs to limit system leaks reduction, retrofit, and outdoor irrigation limits) and based thereon miscalculates the amount that can be deducted from Cal-Am's production allowance.**

The draft CDO, at page 58, assumes discrete water use savings will purportedly accrue from reduced Cal-Am system losses, retrofit programs, or reduction of potable water use for outdoor irrigation. No evidence is cited from the hearing record to support these quantified savings. The SWRCB may require programs such as Cal-Am main replacement, retrofit and outdoor irrigation limits, but any assumption as to specific quantities of water that can be saved from these efforts is wishful thinking as the water savings are not supported by evidence in the hearing record. Further, as stated in greater detail below, even if these programs save the water assumed in the draft CDO, the order is flawed because those same water savings are needed to offset the court-ordered ramp down of Cal-Am's Seaside Basin water production.

The draft CDO erroneously concludes Cal-Am can initially save an additional 121 afa each year due to reduced system losses, retrofit, and outdoor irrigation efforts. Compounding this error, the evidentiary record does not support the conclusion in the draft CDO that the rate of annual savings attributable to these programs can increase to an additional 242 af of saved water each year, beginning October 1, 2014.

The evidentiary record does not support this level of offset, and does not support the dates by which the water savings rate is assumed to increase. The hearing record offers no support that these reductions will not threaten the public health, safety and welfare of the citizens of the Monterey Peninsula area. As such, both the quantity of saved water that is assumed in the draft CDO, and the date on which the savings rate is required to double, are arbitrary and capricious.

In the alternative, it is suggested that the CDO may be modified to require Cal-Am to implement water savings programs system loss reduction, retrofit, and outdoor irrigation limitations. The CDO should not assume that any discrete amount of water will be saved by these efforts, however, and instead should determine Carmel River diversion offsets based upon actual, verifiable conserved water data.

10. **The draft CDO purports to justify the initial annual Carmel River diversion reduction rate of 121 afa by three programs, namely by correcting system leaks, completing customer retrofits, and reducing outdoor irrigation. The draft CDO assumes that each of these efforts to conserve water, however, shall be exhausted in eight (8) years. No rationale is stated for continued reduction of Carmel River diversion by Cal-Am after that time. No rationale is stated whatsoever for**



**accelerating the annual reduction from 121 afa to 242 afa.**

Addressing system losses, the draft CDO, at page 40, states "Cal-Am should be required to (a) reduce its system losses by about 549 afa; and immediately commence work to reduce the losses. Further we are of the opinion that with the application of sufficient resources it should be feasible for Cal-Am to accomplish the work of replacing its mains within eight years. Thus, Cal-Am should be required to reduce its diversions from the river by 68 af per year until it has achieved 549 afa of savings."

Addressing the retrofit program, the draft CDO, at page 40, states "About two-thirds of the properties within MPWMD have been retrofitted. [citation omitted.] In our view, most of the remaining properties will probably be retrofitted within the next eight years, i.e., within 30 years of 1987." On page 41 the draft CDO calculates that this amounts to "41 af of additional savings per year for eight years."

Addressing outdoor irrigation savings, the draft CDO, at page 41, states "We are of the opinion that it should be feasible to save 100 af over eight years, or roughly 12 af per year."

The draft CDO is entirely devoid of any rationale to justify the continued ramp down of Cal-Am Carmel River diversion after eight years. There is no evidentiary basis in the hearing record as to how the accelerated annual reduction (from 121 afa to 242 afa) can be achieved. The assumed rate at which water may be saved, and the date on which the savings rate is required to double, are arbitrary and capricious. Without an identified means to achieve this reduction, the amount of water available for consumptive use will be threatened. No analysis exists in the record shows this lowered water supply does not threaten public health, safety and welfare of the citizens of the Monterey Peninsula area.

- 11. The CDO should consider, as an alternative to the additional limits imposed upon Cal-Am and the community, alternate mitigation efforts as presented testimony and argument presented by the Water Management District.**

Table 1 of the draft CDO, at page 45, shows a variety of mitigation measures that can help maintain and even restore the Carmel River. The testimony of Water Management District General Manager Darby Fuerst and other Water Management District witnesses support the proposition that alternative means exist to protect the Carmel River, other than compelling water use reductions. The SWRCB is asked to consider some of these mitigations as an alternative to diversion reductions to avoid the severe impact and harm to the citizens of the Monterey Peninsula area that may result from a reduced water supply.

- 12. Objection to modified terms and conditions of SWRCB Permit 20808A.**

The draft CDO improperly modifies terms and conditions of a water right (Permit 20808A – Application 27614A) jointly held by the Water Management District and Cal-Am. This water

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right is used to supply and store water for the District's Phase 1 Aquifer Storage and Recovery (ASR) Project. Permit 20808A is derived from and based upon Permit 20808 that was issued to the Water Management District for its planned New Los Padres Dam Project, the background of which is referenced beginning on page 34 of the draft CDO.

Notice of these proceedings failed to name the District as a Party, and failed to refer to Permit 20808A. (See January 15, 2008 Notice of Proposed CDO; See also March 5, 2008 Notice of Proceeding – CAW-10.) The key issue noticed for the hearing does not refer to Permit 20808A, and fails to note the Water Management District's rights to that Permit. Having to intervene in the matter as an interested participant, the District was not afforded full Party status. It was afforded less time to argue, and subjected to a more stringent page limit for the briefs it submitted. Nonetheless, the draft CDO proposes new conditions on the District's permit that differ from its established water right.

The draft CDO proposes to modify terms and conditions of Permit 20808A. This action exceeds both the stated scope of this proceeding and the key issue. This action impairs the District's vested interest in Permit 20808A without affording proper notice or an opportunity to be heard. As such, the draft CDO violates the District's right to due process.

The District objects to any modification to the terms or conditions of Permit 20808A in this proceeding.

**13. The draft CDO contains several factual and mathematical errors. These require correction.**

An errata sheet is enclosed to this comment letter that identifies many errors of fact and miscalculation that are imbedded in the draft CDO (Enclosure 2). The final CDO should correct these errors.

**14. Support resolution of 2006 NOAA Settlement Agreement**

The Water Management District supports SWRCB's recommendation that the National Oceanic and Atmospheric Administration (NOAA) and National Marine Fisheries Service ((NMFS) give prompt attention to resolving any remaining disputes concerning the 2006 Settlement Agreement with Cal-Am so that funds for projects to mitigate the effects of its diversions upon the steelhead in the Carmel River are made available.

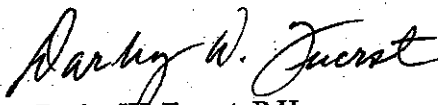
**15. Conclusion**

For the reasons stated above, the Water Management District asks that the SWRCB decline to issue the CDO in the form shown on the July 27, 2009 draft CDO.

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In the event the SWRCB determines to issue a CDO, however, the Water Management District respectfully requests that a stay of the order be issued pursuant to Water Code section 1832 to enable further review. Water Code section 1832 provides, "Cease and desist orders of the board shall be effective upon issuance thereof. The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part an cease and desist order issued pursuant to this chapter.

Respectfully submitted,



Darby W. Fuerst, P.H.  
General Manager

Enclosures

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**Allowable Diversions from Carmel River Sources by Cal-Am for Customer Service  
Based on SWRCB Draft Cease & Desist Order WR 2009-00XX  
(All Values in Acre-Feet)**

<b>Water Year</b>	<b>Base Diversion</b>	<b>Base Reduction</b>	<b>Immediate Reduction</b>	<b>Annual Reduction</b>	<b>Total Reductions</b>	<b>Allowable Diversions</b>	<b>Unauthorized Diversions</b>
2009	14,106				2,821	11,285	7,909
2010	10,978	307	549	121	977	10,308	6,932
2011	10,978	307	549	242	1,098	10,187	6,811
2012	10,978	307	549	363	1,219	10,066	6,690
2013	10,978	307	549	484	1,340	9,945	6,569
2014	10,978	307	549	605	1,461	9,824	6,448
2015	10,978	307	549	847	1,703	9,582	6,206
2016	10,978	307	549	1,089	1,945	9,340	5,964
2017	10,978	307	549	1,331	2,187	9,098	5,722
2018	10,978	307	549	1,573	2,429	8,856	5,480
2019	10,978	307	549	1,815	2,671	8,614	5,238
2020	10,978	307	549	2,057	2,913	8,372	4,996
2021	10,978	307	549	2,299	3,155	8,130	4,754
2022	10,978	307	549	2,541	3,397	7,888	4,512
2023	10,978	307	549	2,783	3,639	7,646	4,270
2024	10,978	307	549	3,025	3,881	7,404	4,028
2025	10,978	307	549	3,267	4,123	7,162	3,786
2026	10,978	307	549	3,509	4,365	6,920	3,544
2027	10,978	307	549	3,751	4,607	6,678	3,302
2028	10,978	307	549	3,993	4,849	6,436	3,060
2029	10,978	307	549	4,235	5,091	6,194	2,818
2030	10,978	307	549	4,477	5,333	5,952	2,576
2031	10,978	307	549	4,719	5,575	5,710	2,334
2032	10,978	307	549	4,961	5,817	5,468	2,092
2033	10,978	307	549	5,203	6,059	5,226	1,850
2034	10,978	307	549	5,445	6,301	4,984	1,608
2035	10,978	307	549	5,687	6,543	4,742	1,366
2036	10,978	307	549	5,929	6,785	4,500	1,124
2037	10,978	307	549	6,171	7,027	4,258	882
2038	10,978	307	549	6,413	7,269	4,016	640
2039	10,978	307	549	6,655	7,511	3,774	398
2040	10,978	307	549	6,897	7,753	3,532	156
2041	10,978	307	549	7,053	7,909	3,376	0

**Errata Sheet for  
July 27, 2009 Draft Cease and Desist Order WR 2009-00XX in the Matter of the  
Unauthorized Diversion and Use of Water by the California American Water Company**

Following are suggested corrections to the draft CDO and requested clarifications. The corrections and points for clarification are shown in *italics*.

**Page 5, fourth paragraph.** The last sentence indicates that Cal-Am's current legal rights to water in the river that may be used to supply peninsula cities is 3,316 afa recognized in Order 95-10 plus 2,246 afa under Permit 20808A for a total of 5,562 afa. The sentence should be corrected to read "plus 2,426 afa under Permit 20808A for a total of 5,742 afa".

**Page 5, footnote 7.** The footnote should be corrected to read "851 afa is subtracted from this number to adjust for storage loss due to siltation at Los Padres Reservoir", i.e., 3,030 afa - 2,179 afa = 851 afa.

**Page 12, first paragraph.** The second sentence should be corrected to read "Cal-Am failed to conserve 20 percent during 1997 water year and on October 20, 1997, Administrative Civil Liability Complaint No. 262.10-03 (ACL) was issued to Cal-Am".

**Page 32, second paragraph.** The third item should be corrected to read "Cal-Am has diverted an average of 7,602 afa without a basis of right for the past 13 years". This error results from the fact that the first value under the "Unauthorized Annual Diversion" heading of Table 1 of PT Exb. 11A, i.e., 8,739, is incorrect and should read 8,379, (11,755 afa - 3,376 afa = 8,379 afa). Similarly, the "Avg. Annual Diversion" value under the "Unauthorized Annual Diversion" heading should read 7,602 afa.

**Page 32, footnote 25.** The second sentence should be corrected to read "*Water Year 1999 (October 1, 1998 to September 30, 1999)*, was the year in which unlawful diversions were the lowest".

**Page 33, third paragraph.** The third and fourth sentences should be corrected to read "... MPWMD sought to obtain public approval of the New Los Padres Project and authorization to fund the project. In late 1995, the project approval vote failed".

**Page 33, fourth paragraph.** The second sentence should be corrected to read "First, in 1996 USFWS listed the California Red-legged Frog as a threatened species and in 1997 NMFS listed the Carmel River steelhead population as a threatened species under the federal Endangered Species Act".

**Page 34, second paragraph.** In the list in the first sentence, the second item should be corrected to read "additional groundwater production from the *Paralta* well ..."

**Page 35, first paragraph.** The first sentence that begins on page 34 should be corrected to read "Permit 20808A authorizes the diversion of up to 2,426 afa of water from the Carmel River to underground storage in the Seaside Groundwater Basin from December 1 of each year to May 31 of the succeeding year at a maximum instantaneous rate of diversion of 6.7 cfs". The second

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sentence should be corrected to read "The project is commonly identified as the *Phase 1* ASR Project". Also, as noted above, the third sentence should be corrected to read "plus 2,426 afa under Permit 20808A, for a total of 5,742 afa".

**Page 35, third paragraph.** The last sentence that continues on page 36 should be clarified to read "... (c) the manager of MPWMD estimates that Cal-Am will not be able to eliminate its illegal pumping from the river with deliveries *from its proposed Coastal Water Project* before 2016, at the earliest; 21 years after adoption of Order 95-10". According to the General Manager of the Marina Coast Water District, Jim Heitzman, it is possible that Cal-Am could eliminate its illegal pumping from the river with deliveries from the proposed Regional Project before 2016.

**Page 38, third paragraph.** The second sentence should be corrected to read "Depending upon the water year type, the quantity that may be diverted to storage can range from zero up to 2,426 af".

**Page 39, first paragraph.** The last sentence should be clarified to read "Assuming the desalination plant is operated at a constant rate *and no production is used for future growth*, the plant could reduce diversions from the river by about 0.8 af per day, or about 0.4 cfs".

**Page 39, third paragraph.** The fourth sentence should be clarified to read "The General Manager of the MPWMD is of the opinion that water supply mains must be replaced to reduce Cal-Am's *'real'* system losses". In this context, "real losses" refer to physical losses from the pressurized system and the utility's storage tanks, up to the point of consumption. This volume includes water lost through all types of leaks, breaks, and overflows. In contrast, "apparent losses" refer to all inaccuracies associated with customer billing, as well as data handling errors (meter reading and billing), plus unauthorized consumption (theft or illegal use).

**Page 40, second paragraph.** The conclusion in the first and second sentences that "Cal-Am should be required to (a) reduce its system losses by about 549 afa; and (b) immediately commence work to reduce the losses" and the "opinion" that "with application of sufficient resources it should be feasible for Cal-Am to accomplish the work of replacing its mains within eight years" and that "Cal-Am should be required to reduce its diversions from the river by 68 af per year until it has achieved 549 afa savings" should be substantiated and reconciled. Specifically, it should be explained whether the 549 afa of savings due to reduction of system losses will occur immediately in the first year, e.g., 549 af during Water Year (WY) 2010, or will be spread out over the next eight years, e.g., 68 afa during WY 2010 through WY 2017, or both, e.g., 617 af in WY 2010, 685 af in WY 2011, 753 af in WY 2012, 821 af in WY 2013, 889 af in WY 2014, 957 af in WY 2015, 1,025 af in WY 2016, and 1,093 af in WY 2017. Also the significance of the eight-year implementation schedule should be explained.

**Page 40, fourth paragraph, and page 41, first paragraph.** The "view" in the fifth sentence that "most of the remaining properties will probably be retrofitted within the next eight years, i.e., within 30 years of 1987" and will save "as much as 330 afa of water" should be clarified

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and substantiated.

**Page 42, first paragraph.** The conclusion in the fifth sentence that "Water to offset the loss of groundwater production" from the Coastal Subareas of the Seaside Groundwater Basin due to the Seaside Basin Adjudication "may be found by aggressively implementing: (1) the retrofit program; (2) the program to reduce the use of potable water for outdoor irrigation; and (3) the main replacement program in conjunction with reduced consumption managed by a program like MPWMD's Regulation XV, prohibiting waste and non-essential water use" should be substantiated and reconciled with previous assumptions regarding water savings from these programs. Also, the assumption in the last sentence that "such efforts should offset the loss of groundwater production within three years" should be explained.

**Page 53, second paragraph.** The fourth sentence should be corrected to read "It is doubtful whether any correspondence from a State Water Board officer or employee expressing how the Board intends to apply the law may be relied on as a guarantee that the Board will follow that course of action even *if* the Board later determines that doing so would be contrary to law of public policy".

**Page 55, first paragraph.** The conclusion in the second sentence that "(a) the lower 9.5 miles of the Carmel River bed is dry for 5 to 6 months of the year" is outdated and should be corrected to read "(a) the lower 6.5 miles of the Carmel River is dry for five to six months of the year".

**Page 56, second paragraph.** The second sentence should be corrected to read "Cal-Am has diverted an average of 7,602 afa from the river without a basis of right for the past 13 years, and in the roughly the 10-year period since it achieved the 20 percent reduction required by Condition 3 of Order 95-10...".

**Page 56, fifth paragraph.** The second sentence should be corrected to read "Other projects or regulatory actions will make additional water available to Cal-Am, including: (1) the *Phase 1* ASR Project; (2) the City of Sand City Desalination Project; (3) the reduction of system losses within the Cal-Am distribution system; (4) the retrofit program; and (5) reducing the use of potable water for outdoor irrigation".

**Page 58, second paragraph.** The requirement under item 2, part a that "Cal-Am shall not divert water from the Carmel River for new service connections that were not provided a "will serve commitment" before \_\_\_\_\_" should be amended to clarify whether or not this restriction would apply to new service connections that may be served in whole or in part from Cal-Am's sources of supply in the Seaside Groundwater Basin.

**Page 58, second paragraph.** The requirement under item 2, part b that "Cal-Am shall not divert water from the river for any increased use at existing service addresses resulting from a change in zoning or use and that was not provided a "will serve commitment" (or similar commitment) before \_\_\_\_\_" should be amended to clarify whether it is a change in land use, e.g.,

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residential to commercial, or the amount of water use, i.e., increased use due to a remodel or addition, at the existing service address that would trigger this provision.

**Page 58, footnote 48.** The footnote should be corrected to read "Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a basis of right. ( $3,376 + 7,602 = 10,978$  afa).

**Page 58, last paragraph, and page 59 first paragraph.** In the first sentence that begins on page 58, the basis for increasing the required annual reductions from 121 afa to 242 afa commencing on October 1, 2014, should be provided. In addition, the basis for continuing savings beyond the initial eight-year period should be provided. For example, assuming that 330 af are saved between WY 2010 and WY 2017 by retrofitting all remaining Cal-Am connections, what is the basis for assuming that 82 afa ( $41 \text{ afa} \times 2 = 82 \text{ afa}$ ) will be saved from retrofitting in WY 2018?

**Page 59, third paragraph.** The sentence should be clarified to read "Sand City Desalination Plant: 94 af shall be subtracted from the base plus any quantity of production not served to new growth within Sand City, *based on actual production from the plant*".

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