



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board



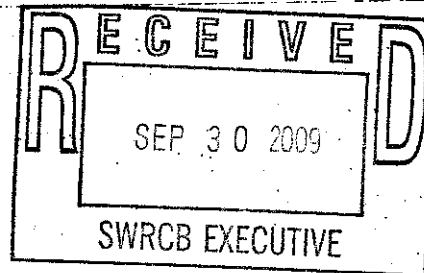
Arnold Schwarzenegger
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September 30, 2009

VIA E-MAIL

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
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commentletters@waterboards.ca.gov



Dear Ms. Townsend:

COMMENT LETTER: CAL-AM REVISED PROPOSED CEASE AND DESIST ORDER AGAINST CALIFORNIA AMERICAN WATER COMPANY

The Prosecution Team submits this letter in response to the State Water Resources Control Board's (State Water Board) revised proposed cease and desist order dated September 16, 2009 in the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company (Cal-Am). The State Water Board issued a reformatted version of the revised proposed cease and desist order on September 28, 2009 (Revised Draft CDO).

Generally, the Prosecution Team supports the adoption of the Revised Draft CDO and its inclusion of December 31, 2016 as a date certain by which Cal-Am must cease all unlawful diversions. One procedural matter that has yet to be addressed by the State Water Board is the Prosecution Team's request for official notice of Public Utilities Commission Decision 09-05-029 and 09-07-021. The Prosecution Team's request was submitted on September 9, 2009 along with our Response in Support of Official Notice.¹ The Prosecution Team asks that the State Water Board rule on this request.

The Prosecution Team has the following comments, suggested edits, and requests for clarification concerning the Revised Draft CDO. Proposed deletions and additions to the actual text of the Draft CDO are made in strikeout/underline format.²

¹ The Sierra Club's September 8, 2009 letter concerning Sierra Club's (July 16, 2009) Request for Official Notice, also requests that the State Water Board take judicial notice of Public Utilities Commission Decision 09-05-029 and 09-07-021 in addition to Decision 09-07-023.

² Page number and/or footnote numbers provided herein are in references to the September 28, 2009 reformatted version of the Revised Draft CDO.

California Environmental Protection Agency



Order Conditions:Condition 3.a.(2)

To further improve the enforceability of the Revised Draft CDO, the Prosecution Team recommends that footnote 53 be deleted or revised because as it is currently written it creates an ambiguity as to what the CDO requires Cal-Am to do by December 31, 2016. Accordingly, footnote 53 should be deleted or revised to state something substantially similar to the following:

To the extent that Cal-Am fails to terminate its continues to illegal diversions of water from the Carmel River after December 31, 2016, Cal-Am is in violation of this Order and subject to enforcement, potential administrative civil liability and/or referral to the Attorney General's Office. If illegal diversions continue after December 31, 2016, Cal-Am is required, at a minimum, to continue incrementally reducing its illegal diversions in accordance with this condition. Should Cal-Am fail to meet this minimum requirement, it will also be in violation of condition 3.a.(2) and subject to additional enforcement and/or administrative civil liability.

Condition 3.a.(3)

The Prosecution Team recommends that the first sentence be amended to read "...and which will be is supplied to Cal-Am customers...". This edit clarifies that the actual amount reported by Cal-Am on its quarterly report, as required by condition 5(b) of the draft order, is subtracted from the base amount. Even though the amount of ASR water actually supplied to Cal-Am customers by extraction from the Seaside Groundwater Basin cannot be exactly determined or distinguished from the Seaside groundwater, Condition 3.c. states that Cal-Am should use stored groundwater to supply the needs of its customers and reduce diversions from the river, and that "Cal-Am's illegal diversions from the river shall be reduced at the same rate water is pumped from the groundwater basin" Accordingly, the Prosecution Team requests confirmation that unless Cal-Am submits an alternative operating plan that is approved by the Deputy Director for Water Rights, compliance with this condition requires Cal-Am to use all the ASR water it pumped from the river during the previous collection season as authorized by Permit 20808A; and that quantity shall be subtracted from the base amount in accordance with this condition.

Condition 3.b.

The Revised Draft CDO allows either Cal-Am or the Monterey Peninsula Water Management District (MPWMD) to petition the State Water Board's Deputy Director for Water Rights for relief from annual reductions to the base amount. One prerequisite to

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being granted such relief is that "demand for potable water by Cal-Am customers has been reduced by 13 percent." Footnote 55 goes on to explain that "[f]or purposes of measuring compliance, the 13 percent reduction shall [be] measured against the adjusted base required by this condition for the year in which the conservation requirement is imposed."

The Prosecution Team seeks clarification on how to determine when demand has been reduced by 13 percent. Footnote 55 pertains to an adjusted based amount of water diverted from the Carmel River, but Cal Am's customer demand for potable water is a quantity of water based on Cal-Am's total diversions (or Production) from all sources. Consequently, the Prosecution Team believes Footnote 55 must be expanded to relate customer demand to the diversion amount after annual reductions.

Attachment 1

The Prosecution Team suggests making changes to Attachment 1, Table 1 of the Revised Draft CDO as reflected in Attachment 1 hereto.

The Prosecution Team requests that the State Water Board consider the above comments, suggested edits, and requests for further clarification of the contents of the Revised Draft CDO.

Sincerely,



Yvonne West, Staff Counsel
Office of Enforcement

cc: Cal-Am Service List (attached)

Jim Kassel, Assistant Division Chief,
Division of Water Rights (e-mail)

Attachment 1 - Prosecution Team's Recommended Revision to Revised CDO
 Table 1

Projected Reductions in Illegal Diversions from the Carmel River

Water Year (Oct - Sept)	Base Amount ¹	Mandatory Cumulative Annual Reduction ²	Estimated ASR Project Operational Yield ³	Estimated Sand City Desalination Plant ⁴	Estimated Small Project Output ⁵	Estimated Coastal Water Project Output ⁶	Total of Mandatory Reduction	Total Estimated Amount Diverted from Carmel River	Estimated Amount Diverted w/o Valid Basis of Right
2009-10	10,978	549	145	75	0	0	769	10,209	6,833
2010-11	10,978	670	145	290	0	0	1,105	9,873	6,497
2011-12	10,978	791	145	280	0	0	1,216	9,762	6,386
2012-13	10,978	912	145	270	0	0	1,327	9,651	6,275
2013-14	10,978	1,033	145	260	0	0	1,438	9,540	6,164
2014-15	10,978	1,154	145	250	0	0	1,549	9,429	6,053
2015-16	10,978	1,275	145	240	0	0	1,670	9,308	5,932
2016-17	10,978	1,396	145	230	0	0	1,781	9,197	5,700
2017	40978	4769	445	220	0	0	4,892	3376	0
							43854		

- 1.) Cal Am diverts 3,376 afa under legal rights and, on average 7,602 afa without a valid basis of right. (60 AFA of 3,376 AFA is assumed diverted under riparian right to riparian vegetation along Carmel River.)
- 2.) Reduction in 2009-10 is initial amount of 5% (549 ac-ft). Starting in 2010-11 add 121 ac-ft each year until 2014 when the annual reduction be 3.) Average amount diverted for Phase 1 ASR project from water year 1994-1995 to 2006-2007 (R.T. Phase 1, Vol. I pp. 41-42). Amount may increase when Phase 2 of the ASR project becomes operational.
- 4.) Number may vary based on actual production from desalination plant. Assumes 3 months of operation in 2009-10.
- 5.) Production from small projects cannot be estimated at this time.
- 6.) Estimated production of Coastal Water Project (R.T. Phase 2, Vol. V, p. 1333).

**DIVISION OF WATER RIGHTS PROSECUTION TEAM'S
SERVICE LIST OF PARTICIPANTS**

September 30, 2009

**(PARTICIPANTS TO BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS
AND OTHER DOCUMENTS.)**

**(Note: The participants whose E-mail addresses are listed below agreed to accept
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