

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS
901 - P Street, Sacramento, CA 95814
P. O. Box 2000, Sacramento, CA 95812-2000
(916) 324-5622

STATE WATER RESOURCES CONTROL BOARD

MAR -5 PM 2:09

DIV. OF WATER RIGHTS SACRAMENTO

COMPLAINT

NUMBER: 411
2620(27)-01-05

(Complies with Section 820, Title 23, California Code of Regulations)

I, Scott Hennessy, Chair, Ventana Chapter of the Sierra Club
(Name) (Phone No.)
P.O. Box 5667, Carmel, CA 93921
(Address) (Street Number and City or Box Number, Route Number and Post Office) (Zip Code)

wish to enter a complaint against the diversion of water made by:
California-American Water Company
(Name) (Phone No.)
404 W. Franklin, Monterey, CA 93940
(Address) (Zip Code)

The alleged diversion is located on: Carmel River
(Name of Spring, Stream, or Body of Water)

at a point within _____ 1/4 of _____ 1/4 of Section _____, T _____ R _____, _____ E&M in the
County of Monterey. The general location is as follows:

(Name of Road, Distance to Nearest Town, etc.)

I specifically complain that to the best of my knowledge, the following situation or condition is occurring:
See attachment

The situation is causing injury to me as follows:

Unauthorized and unreasonable diversions are causing environmental damage

(If your discussion of the situation requires more space, please add additional pages)

I (have, have not) contacted the alleged offender.

The alleged offender's intentions are: _____

I offer the following possible solution to the situation:

See attachment

My diversion is located on: N.A.
(Name of Spring, Stream, or Body of Water)

at a point within _____ 1/4 of _____ 1/4 of Section _____, T _____, R _____, _____ B&M, in the
County of _____

My use of water is as follows: _____

The basis of my claim to divert water is:

- a) An appropriative right under License No. _____, Permit No. _____, Application No. _____.
- b) A Riparian or pre-1914 claim supported by Statement of Water Diversion and Use No. _____
- c) Other (Describe): _____

A copy of this Complaint has been sent to the alleged offender by regular mail
(Certified Mail) (Regular Mail) (Personal Delivery)

I declare under penalty of perjury that to the best of my knowledge, the above are true statements.

Scott Hemmery 2-27-91
Signature Date

Signature Date

Send original Complaint to the Division of Water Rights and a copy to the alleged offender.
Forms for submitting an Answer to the Complaint will be sent to the alleged offender by the Division
of Water Rights

This is a complaint by the Ventana Chapter of the Sierra Club regarding diversions of water from the Carmel River by the California-American Water Company (Cal-Am) and its wholly-owned subsidiary, Water West.

First, we complain that Cal-Am's diversion from San Clemente reservoir during low flow periods is an unreasonable method of diversion.

Second, we complain that diversions by Cal-Am and Water West from the underground flow of the Carmel River are unauthorized.

Description of Cal-Am's water supply system

Cal-Am owns and operates two small reservoirs on the Carmel River, and about a dozen wells along the river downstream from the reservoirs (well locations are listed in a previous complaint by the Carmel River Steelhead Association). Cal-Am also owns and operates wells in Seaside, a hydrologically distinct area. Water West obtains its entire supply from wells in the alluvial aquifer of the Carmel River. Attachments A and B, figures from Kapple and others (1984) and Kondolf and Curry (1986), show the area and locations of some of Cal-Am's wells.

Carmel River water is diverted to storage at both reservoirs during the rainy season. During the dry season, water is released from the upstream Los Padres reservoir for rediversion downstream. Historically, water was rediverted to use from San Clemente reservoir. In recent years, the Monterey Peninsula Water Management District (MPWMD) and the Dept. of Fish and Game have required Cal-Am to release some water from San Clemente for downstream rediversion from the wells.

Cal-Am diversions from San Clemente reservoir and the Carmel Valley wells since 1970 are shown in Figure 1. Diversions from the reservoir and flow above the main

well field (discharge at the USGS gage at Robles del Rio) in 1988 and 1989 are compared in Figures 2 and 3.

Beginning about three miles downstream from San Clemente, the Carmel River flows over and through an alluvial aquifer, which is divided into two unequal volumes by a bedrock constriction called the Narrows. The Narrows is about nine miles from San Clemente, and nine miles from the ocean. Surface flow in the river usually ceases at some point downstream from the Narrows in June or July. Thereafter, water can be released from San Clemente for rediversion with only minor evaporative losses. In normal years, there is continuous surface flow over the aquifer above the Narrows, but in dry years there is a reach with only subsurface flow.

Cal-Am's diversion from San Clemente reservoir during period of low flow is unreasonable.

The Carmel River presents an excellent opportunity to maximize the beneficial use of water diverted to storage by releasing it into the stream channel for rediversion downstream. To some extent, such releases and rediversions are already required by an ordinance of the Monterey Peninsula Water Management District. However, Cal-Am has continued to divert approximately four cubic feet per second from the reservoir through the summers of the recent dry years. This has resulted in significant environmental damage, including de-watering of several miles of stream channel, with consequent loss of instream uses. To use the language of Decision No. 1400, the present operation of the system, "while satisfying one water requirement, eliminates the possibility for multiple beneficial uses of the water, and is not sound management of the water resource."

The loss of habitat for steelhead from diversions of four cfs can be estimated from

the attached figure from Dettman and Kelley (1984), together with minimum flow data from the USGS gage at Robles del Rio, downstream from San Clemente dam (Attachment C and Figure 4). When flows are low, small increases in flow result in large increases in habitat.

There are two public parks on the river above the Narrows, and other areas with effective public access to the river. These allow significant recreational use of the river, which is severely impacted by Cal-Am's diversions from San Clemente.

Article 10, Section 2 of the California Constitution requires that waters of the state "be put to beneficial use to the fullest extent of which they are capable," and prohibits unreasonable methods of diversion. Cal-Am's diversions at San Clemente during low flow seasons preclude beneficial instream uses downstream, and so preclude full beneficial use of the water. Accordingly, Cal-Am's diversions from San Clemente reservoir during periods of low flow are unreasonable, and violate Article 10, Section 2.

This is an environmental problem with a clear engineering solution. Cal-Am needs to improve its system to allow diversions from the dam to cease during periods of low flow. Evidently, this will require capital investment as well as higher operating costs; according to past statements by Cal-Am, parts of its main between San Clemente and the Narrows are too old and dilapidated to withstand the higher pressures that would be required to supply the upper valley with water from the wells below the Narrows. However, extra expense does not excuse Cal-Am from constitutional requirements, and it seems likely that the dilapidated main should be replaced in any event.

Cal-Am and Water West divert water from the subsurface flow of the Carmel River without authorization.

There can no longer be serious question whether water in the Carmel Valley alluvial aquifer is the subsurface flow of the Carmel River, or whether it is subject to appropriation. All the information necessary to establish that water in the Carmel Valley alluvial aquifer is subject to appropriation is presented in Plate 1 of Kapple and others (1984), "Map showing simplified geology, thickness of alluvium, nodes and elements, discharge and recharge distribution, and computed and measured water levels for Carmel Valley, Monterey County, California." Much additional information (e.g. Logan, 1983; Maloney, 1984) is already in the SWRCB files, and much more is available from the Monterey Peninsula Water Management District. The Division of Water Rights staff has written a memo the file concluding that the water is subject to appropriation.

The effects of Cal-Am's diversions on the surface flow of the Carmel River are shown in Figures 5 and 6, which compare mean monthly discharge in 1984 and 1987 at the Robles del Rio gage, upstream of the wells, with discharge at the Near Carmel gage, downstream of all but one of Cal-Am's wells. Water year 1984 (Figure 5) followed a very wet year with continuous flow to the ocean. In consequence, there was little depletion of the aquifer, and fall flows at the Near Carmel gage tracked those at Robles del Rio. Unfortunately, Fall 1984 was the exception that proves the rule; following a moderately dry winter, flow ceased at the Near Carmel gage at the beginning of July, 1984.

In water year 1987, a dry year following a moderately wet year, flow at the Near Carmel gage lagged flow at Robles del Rio until March, when the aquifer was mostly recharged, but then ceased in late April.

Action by the SWRCB on these issues is long overdue.

1. Cal-Am's diversions from the subsurface flow of the Carmel River were discussed during a hearing on August 6, 1974. Even though the environmental effects of these diversions had by then been the subject of public controversy (Monterey Peninsula Herald, 1966; Zinke, 1971; Stone, 1971), the SWRCB made no effort to regulate them, but to the contrary, encouraged that they be increased (hearing record, questions by Mr. Wolley and Mr. Maughan, pp. 25-26, attached).

2. The diversions were again brought to the SWRCB's attention during the CEQA process for four new wells in Carmel River. The SWRCB staff decided not to require permits for the four new wells, on the grounds that an alleged "confining layer" separated the portion of the aquifer tapped by the new wells from the underflow of the river (Williams, 1983). SWRCB staff analysis at this time clearly indicated that Cal-Am wells farther up the valley did tap the underflow of the river (memo by Bruce Wormold). However, the SWRCB took no action to require Cal-Am to obtain permits for these wells, even though extensive loss of riparian habitat and bank erosion had by then occurred in the area around these wells (Groeneveld and Gripenrog, 1985; Kondolf and Curry, 1986).

3. The California Department of Fish and Game urged the SWRCB to reconsider its decision not to require permits for the four new wells. Instead, the SWRCB postponed making a decision, pending further study of the issue and development of a plan to mitigate the effects of the diversions (Carla Bard, letter dated August 4, 1981). The resulting studies showed clearly that Cal-Am's wells were pumping water that is subject to appropriation by the SWRCB (Williams, 1983; Maloney, 1984). The SWRCB continued to do nothing.

4. When the Carmel River Steelhead Association filed a formal complaint about the unauthorized diversions in 1987, the SWRCB again encouraged development of a local solution that would again delay formal action by the SWRCB. The resulting "Interim Relief Plan" has failed to prevent massive loss of riparian vegetation in the lower Carmel Valley, caused by continued unauthorized diversions from the subsurface flow of the Carmel River, and has failed to eliminate unreasonable diversions from San Clemente dam.

5. The Residents Water Committee filed a second complaint in 1989. Over 12,000 local residents signed a petition, filed along with the complaint, urging the SWRCB to require permits for the wells. The SWRCB has still not acted.

Relief Requested

First, the SWRCB should direct Cal-Am to show cause why diversions from San Clemente dam during periods of low flow should not be enjoined.

Second, the SWRCB should immediately notify Cal-Am and Water West that they must obtain permits for their wells.

Third, the SWRCB should require Cal-Am and Water West to pay for the development and implementation of a program to restore the public trust resources damaged or destroyed by their unauthorized or unreasonable diversions.

REFERENCES

- Dettman, D.H. and D.W. Kelley (1986) Assessment of the Carmel River steelhead Resource. Unpubl. Rept. to the MPWMD.
- Groeneveld, D.P. and T.E. Griepentrog (1985) Interdependence of groundwater, riparian vegetation, and streambank stability. In: Proceedings, Riparian Ecosystems and their Management: Reconciling Conflicting Uses, 1st North American Riparian Conference, April 15-18, 1985, Tucson, Arizona.
- Kanple, G.W., H.T. Mitten, T.J. Durbin, and M.J. Johnson (1984) Analysis of the Carmel Valley alluvial ground-water basin, Monterey County, California. U.S. Geological Survey, WRI 83-4280
- Kondolf, G.M. and R.R. Curry (1986) Channel Erosion along the Carmel River, Monterey County, California. *Earth Surface Processes and Landforms*, 11:307-319.
- Logan, J. (1983) The Carmel Valley Alluvial Aquifer: Bedrock geometry, hydraulic parameters and storage capacity. Unpubl. Rept. to the MPWMD
- Maloney, L.M. (1984) Aquifer-stream interaction in the lower Carmel Valley, July 1983-January 1984. Unpubl. Rept. to the MPWMD
- Monterey Peninsula Herald, 1966, 27 October.
- Stone, E.C. (1971) The dynamics of vegetation change along the Carmel River. Unpubl. rept. to Cal-Am.
- Williams J. (1983) Legal status of Carmel Valley groundwater, Carmel River Watershed Management Plan Working Paper Number Six. Unpubl. Rept. to CDFG.
- Zinke, P.J. (1971) The effects of water well operation on riparian and phreatophyte vegetation in middle Carmel Valley. Unpubl. rept. to the Carmel Valley Property Association.

ATTACHMENT A

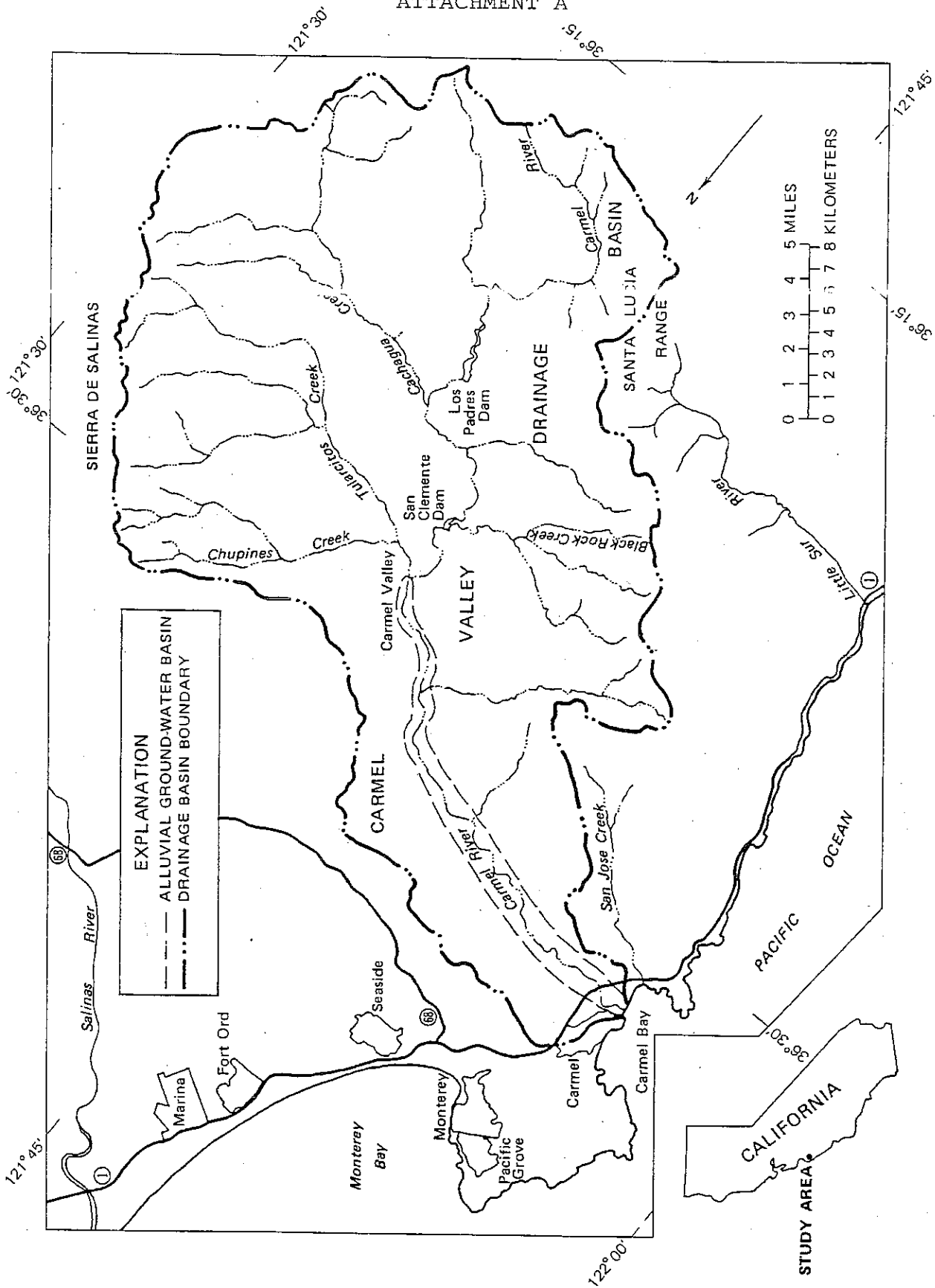


FIGURE 1. — Carmel Valley drainage basin and alluvial ground-water basin.

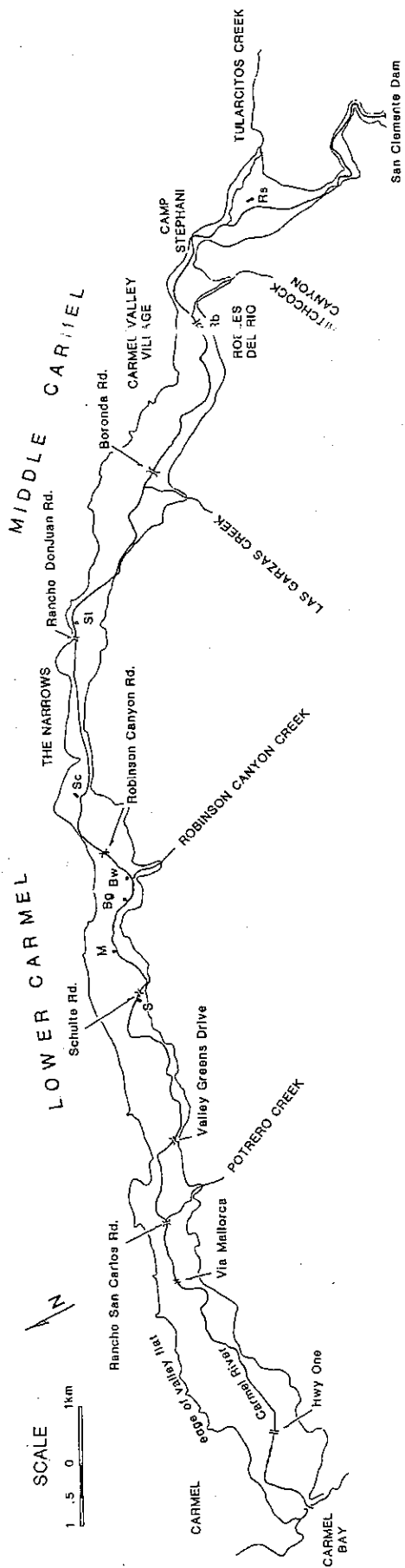


Figure 2. Location map, Middle and Lower Carmel River (Base from USGS Monterey, Seaside, and Carmel Valley 7.5' quadrangles). Locations of Cal-Am producing wells:
 S = Schulte, M = Manor, Bg = Begonia, Bw = Berwick, Sc = Scarlett, St = Stanton, Rb = Robles

ATTACHMENT C

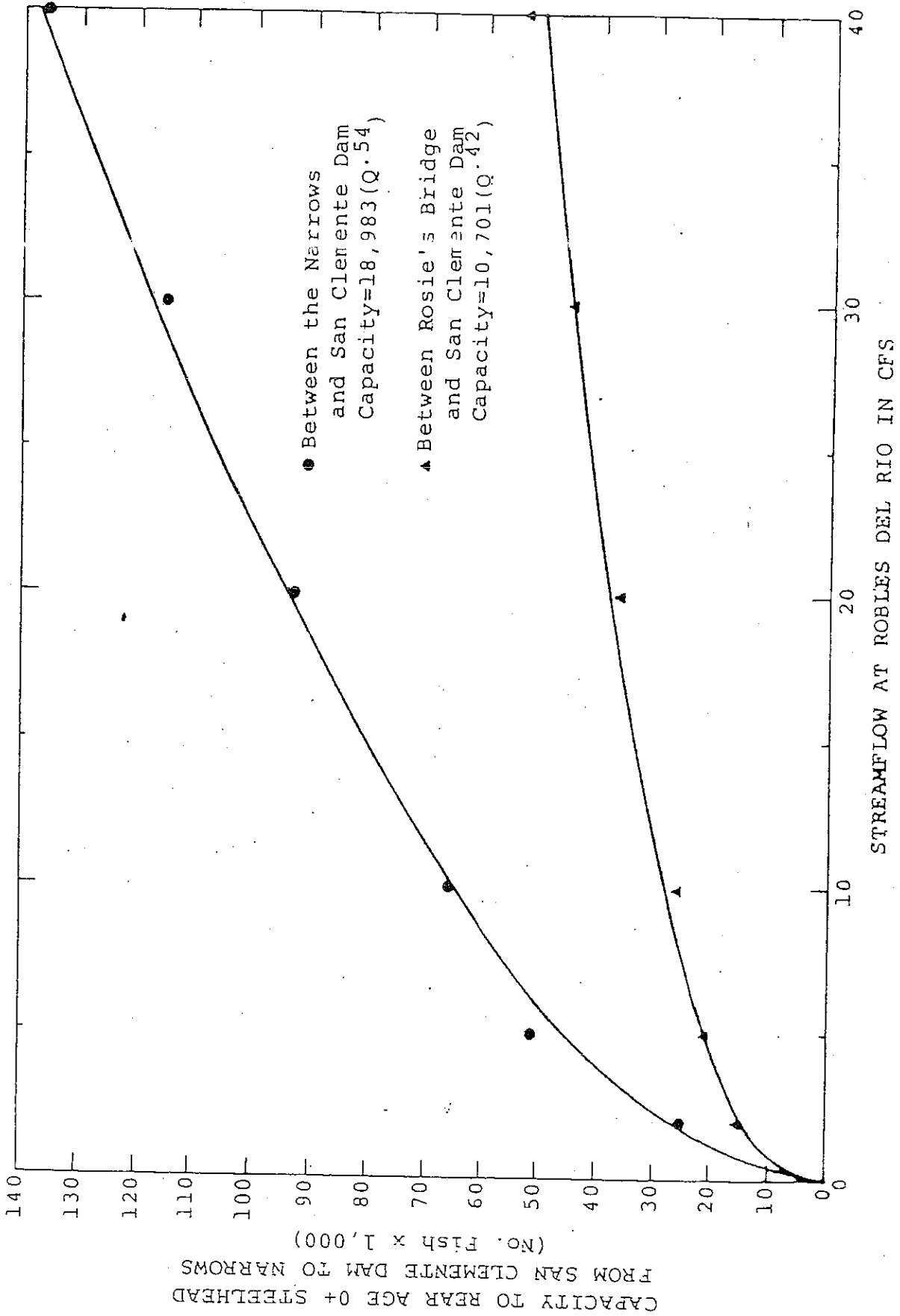


Figure IV-12. Relationships between capacity to rear age 0+ steelhead in the Carmel River between the Narrows and San Clemente Dam and Rosie's Bridge and San Clemente Dam, and streamflow at Robles del Rio.

ATTACHMENT D

Text of discussion during a hearing on August 6, 1974, "In the Matter of Permit 7130 Issued on Application 11674, California-American Water Company, Permittee" (emphasis added).

Mr. Wolley: Drawing your attention to Exhibit No. 2, the interim opinion of the Public Utilities Commission, on Page 6 it says Standards-- referring to the Standard International Corporation-- consulting geologists estimated that much greater use could be made of water stored in the larger aquifer underlying Carmel Valley. This storage, used in conjunction with the present surface storage facilities could result in tripling the present safe yield from Carmel Valley wells to an estimated 15,000 acre-feet. Cal-Am did not present any evidence, however, that it was ready, willing and able to provide additional wells, water treatment, and transmission facilities needed to effect greater use of underground supplies.

Now, would you explain the Company's position at the hearing in view of the shortage of water?

Mr. Hays: I might mention that subsequent to these hearings before the Public Utilities Commission and the testimony received in those, the matter of the available underground water supply of the Carmel River has been discussed, and the Department of water Resources has prepared a report for the County, in which we participated in part of the cost, of the available water supply of the underground. We, at the present time, have pumping facilities on wells located in the Carmel Valley to produce a total of 18,000 acre-feet of water on an annual basis. In order to

produce that and have the quality such that we would want to serve it to our customers, we would need to expend an additional \$450,000 or possibly more, for the construction of an iron removal plant at the latest developed well, and the design of this plant is in the process of study and estimates right now. We have the capacity to pump much greater quantities from the Carmel Valley than we have in the past.



Mr. Wolley: I have no further questions.

Mr. Robie: Mr. Maughan.

Mr. Maughan: On that same page, Mr. Hayes, let me pursue Mr. Wolley's question a little further. **That kind of an expenditure seems to be so much less than the reservoir expenditure; doesn't that seem like a pretty good alternative to pursue very vigorously right now?**

FIGURE 1

CAL-AM PRODUCTION

Carmel Valley Wells  and San Clemente Diversions 

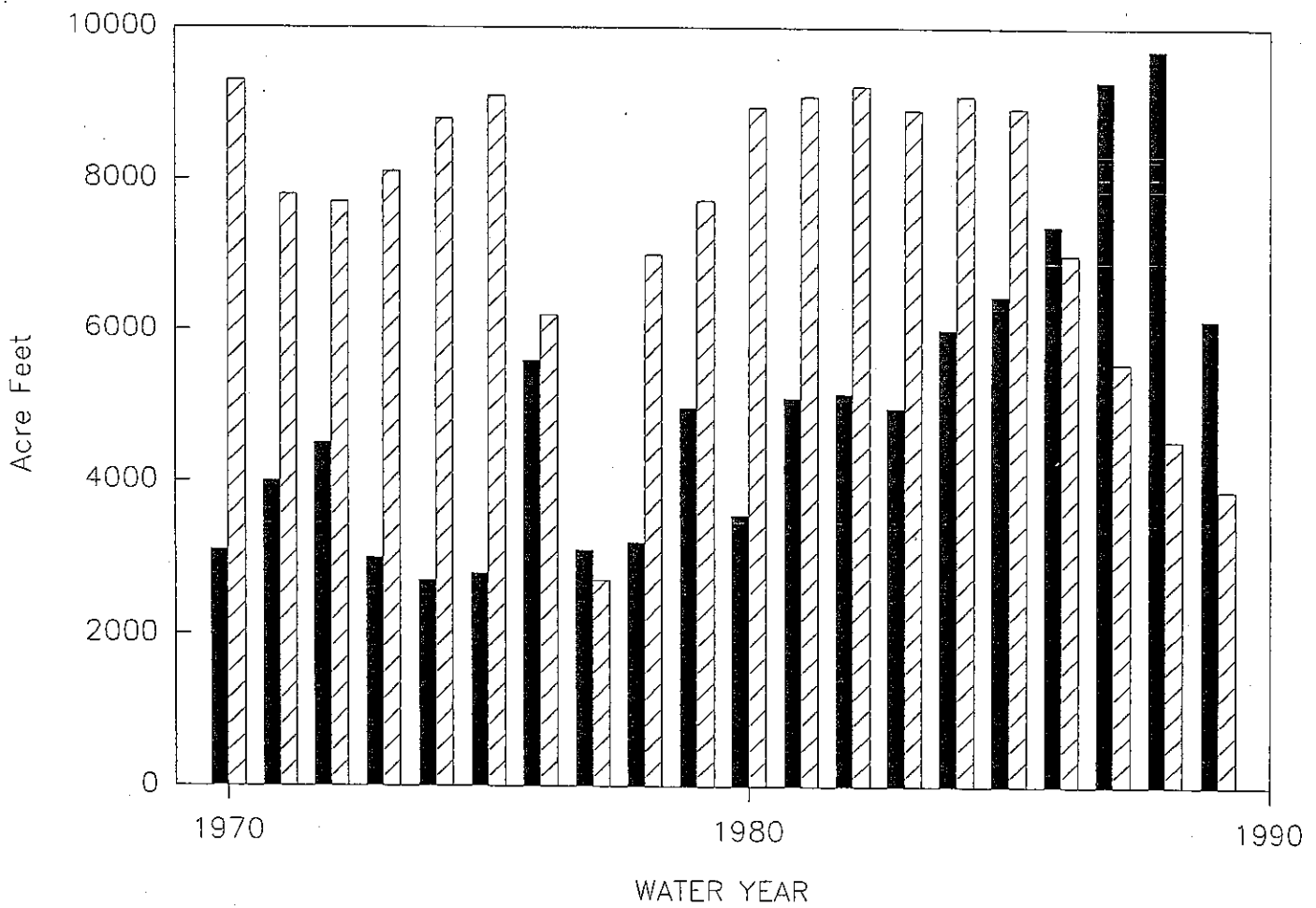


FIGURE 2

San Clemente Diversions and Robles Discharge
1988

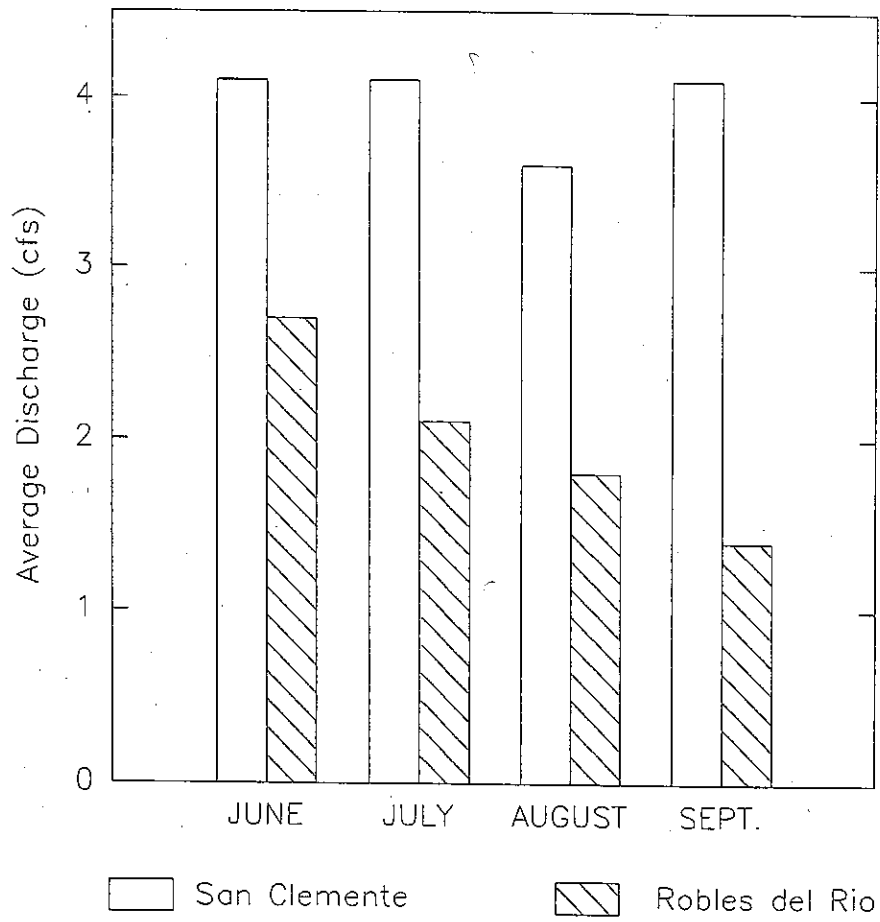


FIGURE 3

San Clemente Diversions and Robles Discharge
1989

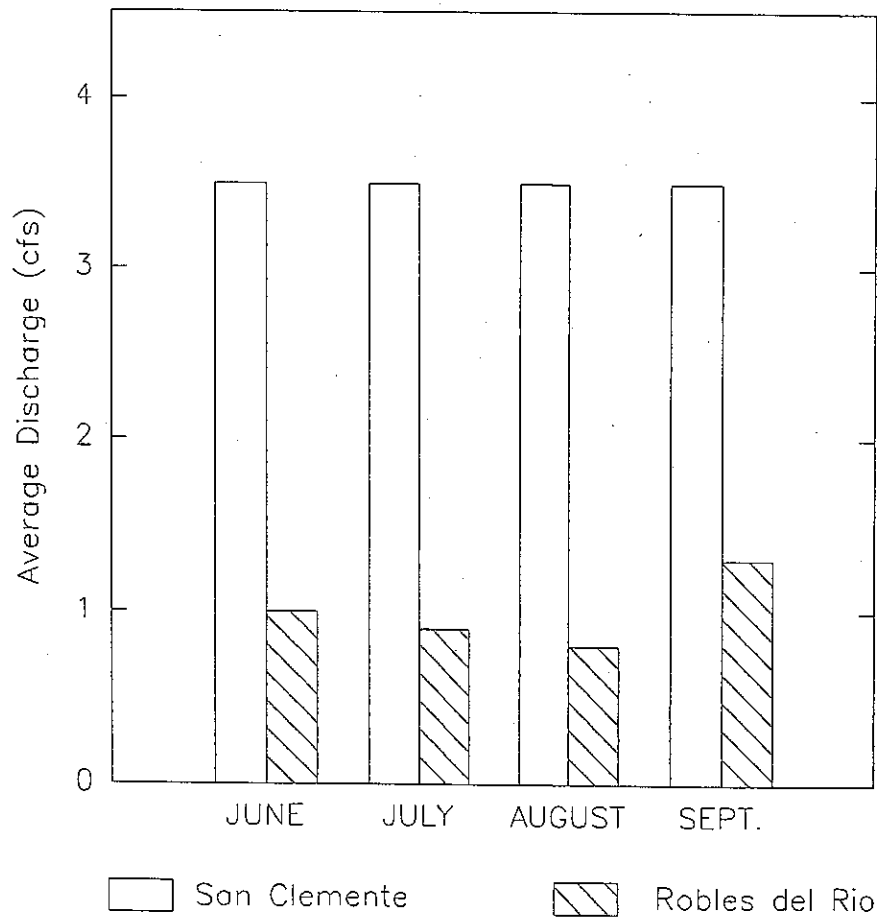


FIGURE 4

Minimum Flows at Robles del Rio

Calendar Years 1957 - 1988

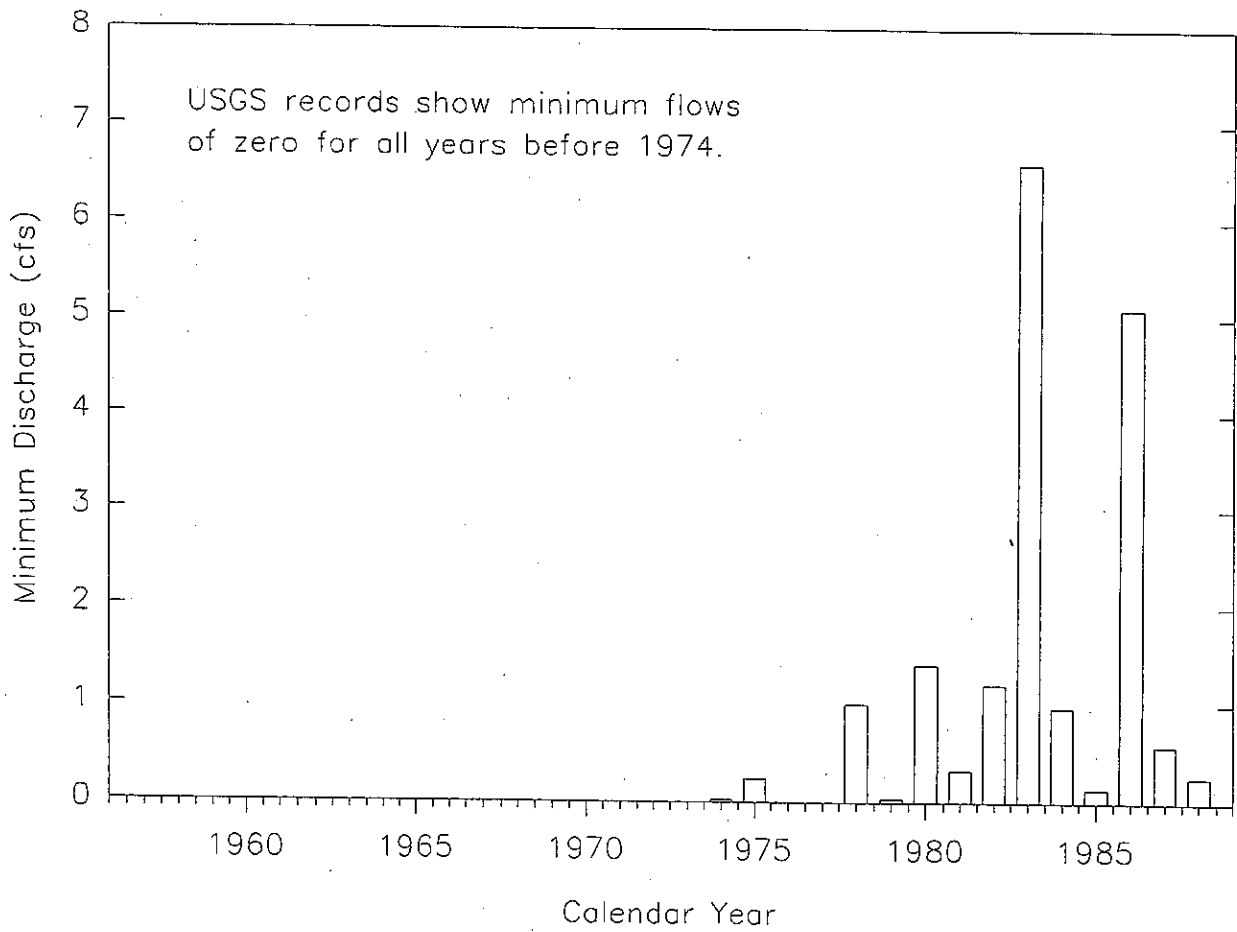


FIGURE 5

CARMEL RIVER, 1984
Monthly Mean Discharge

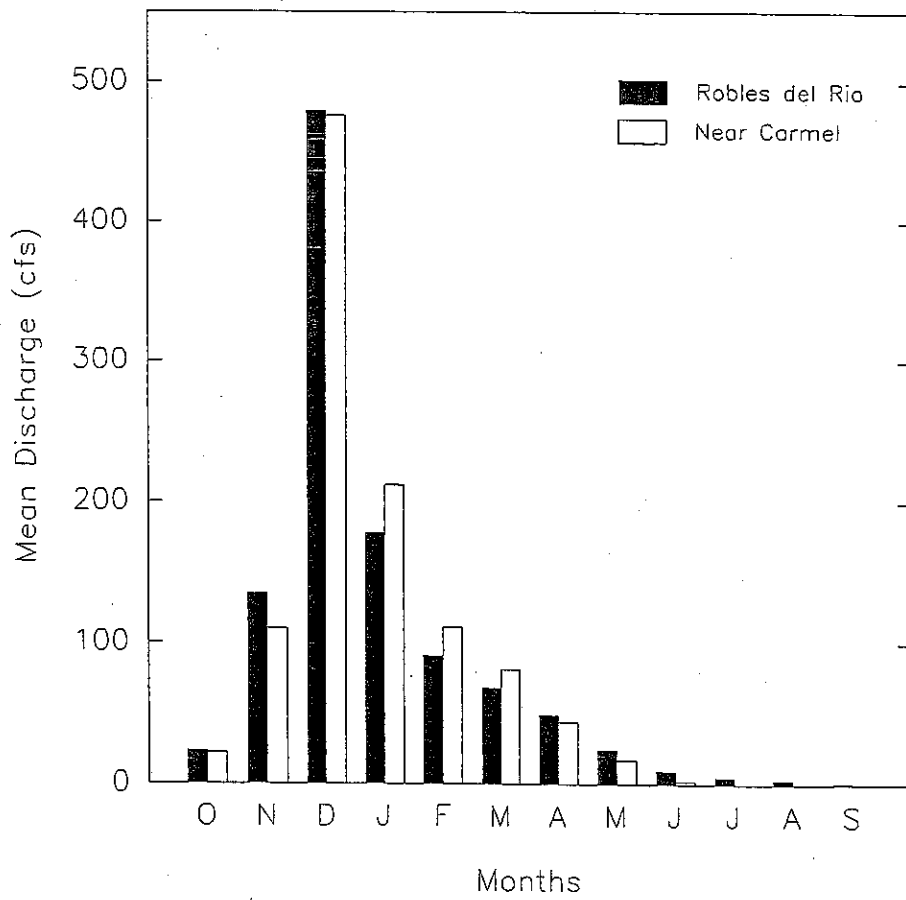


FIGURE 6

CARMEL RIVER, 1987
Monthly Mean Discharge

