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June 11, 2008

Via e-mail: wrhearing@waterboards.gov
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Board Members and Hearing Officers
State Water Resources Control Board
1010 I Street
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**Re: Proposed Draft Cease and Desist Order No. 2008-XXXX-XXX,
California American Water**

Dear Hearing Officers Baggett and Wolff:

I write on behalf of California American Water Company ("CAW") to you in your capacity as the hearing officers in the proceeding to consider the above-referenced proposed order. CAW writes to present objections to the written testimony filed by the Carmel River Steelhead Association ("CRSA") and the Ventana Chapter of the Sierra Club ("Sierra Club"). For the reasons stated below, CAW respectfully requests that their testimony not be accepted.¹

CRSA's testimony should be dismissed because it is not relevant to the issues presented for the first phase of the hearing. The parties, other participants, the hearing team, and the hearing officers devoted extensive resources to define the scope of the proceeding. In its May 29, 2008 letter, the hearing officers conclusively stated that the

¹ Given the significance of these deficiencies, CAW wanted to quickly raise these concerns. If the hearing officers desire legal briefing on this issue, CAW will prepare and file such a pleading.

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scope of the first phase of this hearing (potential basis for liability) is limited to two questions: (1) whether CAW is in violation of Water Code section 1052, and (2) whether CAW is in violation of condition 2 of Order WR 95-10. The testimony provided by CRSA (testimony of Dr. Roy Thomas and testimony of Roger Williams), however, fails to establish facts relevant to one, if not both, of those issues. The CRSA testimony instead seeks to advance evidence about the Carmel River and fishery resources. Therefore, CRSA's testimony is not relevant to the first phase of this hearing, and the hearing officers should thus not accept it.

The hearing officers must also not accept the testimony of the Sierra Club. It does not appear to have been filed in a timely fashion. The May 13, 2008 ruling by the hearing officers unequivocally provided that, "for Phase I, the deadline for receipt and service of the list of exhibits, proposed witness testimony, exhibits and witness qualifications is **Friday, June 6, 2008, no later than 12 noon.**" (emphasis in original). The Sierra Club appears to have filed their testimony with the State Water Board hours after the noticed deadline had passed and therefore it should not be accepted.²

The submitted Sierra Club testimony is also substantively improper. The Sierra Club presents no foundation for the testimony of Dr. John Williams. The submitted testimony is outside of Dr. Williams' asserted expertise. The Sierra Club includes a resume for its witness, Dr. John Williams, that may demonstrate expertise, however, the resume does not support Dr. Williams' testimony concerning legal issues or legal conclusions presented therein.³

The subject matter of the Sierra Club's testimony is also beyond the scope the Sierra Club identified in its notice of intent submitted on March 12, 2008. The Sierra Club's notice of intent states that Dr. Williams would present testimony on the, "Effects of Cal-Am activities on Steelhead and proposed modifications to CDO." The submitted testimony does not address that issue.

² Likewise, the State Water Board prosecution team ("prosecution team") may have failed to file its testimony and exhibits before the stated deadline, and, if that is the case, it could be rejected.

The prosecution team provided CAW with a draft letter requesting submission of revised testimony, which the prosecution team filed today. If the hearing officers accept the prosecution team's initial (possibly filed late) testimony, then CAW has no objections to the prosecution team's request.

³ Evidence is defined as "testimony, writings, material objects or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." (Cal. Evid. Code, § 140.)

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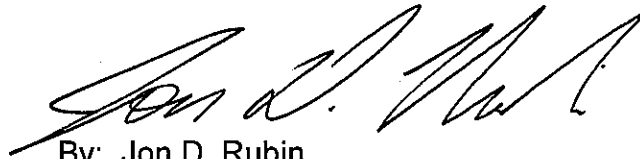
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Thank you in advance for your prompt consideration of the objections raised by this letter.

Very truly yours,

DIEPENBROCK HARRISON

A Professional Corporation

A handwritten signature in black ink, appearing to read "Jon D. Rubin". The signature is fluid and cursive, with a large initial "J" and "R".

By: Jon D. Rubin

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cc: Service List [copy attached] *(Via e-mail and U.S. Mail)*
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CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER

JUNE 19, 2008 HEARING

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