

California Department of Fish and Game

Policy Statement in Support of Draft Cease and Desist Order Issued Against California American Water for Unauthorized Diversion of Water from Carmel River

As the trustee agency for California's fish and wildlife resources, the Department of Fish and Game (DFG) supports the issuance of a Cease and Desist Order against California American Water Company (Cal-Am) for unauthorized diversion of water from the Carmel River. In 1995, the State Water Resources Control Board (SWRCB) issued Order 95-10 clarifying that Cal-Am shall divert no more than 3,376 acre-feet per year (afy) of Carmel River water. Over the last ten years, Cal-Am's annual diversion has ranged from 9,500 afy to 11,000 afy to the detriment of Carmel River Steelhead and other wildlife resources that rely on certain water flows and healthy habitat functions for survival. Over the years, low water levels and streamflow have resulted in low steelhead production, and decreased productivity of habitats within and along the river channel.

DFG concurs with the SWRCB that an enforcement action is warranted and that specific and attainable deadlines should be set to bring Cal-Am into compliance with Order 95-10. However, DFG also urges the SWRCB to recognize that solutions to this issue may expand well beyond the scope of this enforcement action. A key to restoring adequate instream flows and improved river and estuary function in the Carmel River watershed is the commitment of multiple interested parties to work in unison to conduct studies to further understand the watershed, and to consider a broad array of options to ensure reliable water supply while protecting natural resources.

We believe that it is important to recognize that solutions to the problem of excessive diversions from the Carmel River may not be reached until Cal-Am secures new water sources. DFG is aware that there are currently many actions pending that could benefit the watershed including mechanisms to increase water use efficiency in Cal-Am's service area, water conservation plans, and construction of a strategy to address the San Clemente Dam sedimentation and habitat issues that could result in improved Steelhead passage. Cal-Am also has current options on the table for offsetting unauthorized diversions. Cal-Am is exploring the construction of a desalination facility along with a plan to develop an Aquifer Storage and Recovery (ASR) project that diverts flows from the Carmel River during the winter and stores them in an aquifer that can be drawn upon during low flow periods. The first phase of the ASR project is currently underway with the issuance by SWRCB of Amended Permit 20808A to Monterey Peninsula Water Management District (MPWMD) and Cal-Am.

DFG is optimistic that Cal-Am will be able to secure new water sources, but believes interim measures should be taken to protect biological resources while Cal-Am works towards compliance with Order 95-10. For example, DFG believes that Cal-Am should devote time and resources to conduct studies on the Carmel River estuary. In the most recent SWRCB water right matter considering the adoption of Amended Permit 20808A, DFG and the National Oceanic and Atmospheric Administration (NOAA) recommended

to SWRCB that instream flow schedules be included as a condition in the permit to ensure that the Carmel River Steelhead population would benefit in critical dry water year types by increasing the likelihood of elevated (above historical) fall flow levels in the Narrows and Lagoon reach. These instream flows are a necessary and positive step toward enhancing steelhead survival, but lack effort to increase estuary function. Removal of the Los Padres or San Clemente dams, current options on the table, would increase river and estuary function, but the earliest component (San Clemente Dam) may occur in five years or longer. In the meantime, the estuary would benefit from increased study to identify effective measures to increase its value and function. Cal-Am could devote financial resources to get these studies initiated. Cal-AM could also commit resources to participate in ongoing fish salvage projects that currently include entities such as DFG, MPWMD and the Carmel River Steelhead Association. Finally, Cal-Am could devote financial resources towards fish facility improvements on the Carmel River to help sustain and promote steelhead production.

DFG has been involved in many projects on the Carmel River, and continues to work cooperatively with Cal-Am to ensure adequate consideration is given to protecting the resources. In addition to recommendations to the SWRCB that instream flow schedules, among other protective terms, be included as a condition in the permit for the first phase of the ASR project, DFG is also a party to a Memorandum of Understanding to address the issue of operating water diversions in a manner that would directly offset the unauthorized pumping by Cal-Am, consistent with SWRCB Order 95-10. Further, DFG has partnered with Cal-Am and NOAA to help facilitate the implementation of a settlement agreement that will result in habitat improvement along the Carmel River.

In summary, DFG believes that Cal-Am is in violation of Order 95-10, and the unauthorized diversions have had an adverse impact on the biological resources of the Carmel River. The SWRCB should proceed with an enforcement action to prevent additional harm to the public trust resources of the Carmel River, and specific and attainable deadlines should be set to help bring Cal-Am into compliance with Order 95-10. Again, DFG believes that this challenge extends beyond the scope of this enforcement proceeding, and the SWRCB should consider the broad array of actions currently being explored or initiated by Cal-Am to alleviate the water shortage in the Carmel River. We also believe that all parties to this proceeding would benefit from a broader understanding of all the efforts currently underway in the Carmel River watershed to increase water supply reliability while protecting resources. If a thorough understanding of these efforts is not provided as a result of this proceeding, DFG suggests SWRCB explore options to aid in facilitating this discussion, such as a workshop.