



Cal/EPA

**State Water
Resources
Control Board**

**Division of
Water Rights**

Mailing Address:
P.O. Box 2000
Sacramento, CA
95812-0100

901 P Street
Sacramento, CA
95814

PT - 4



Pete Wilson
Governor.

OCTOBER 20 1997

Mr. Larry D. Foy
California-American Water Company
50 Ragsdale Drive, Suite 100
Monterey, CA 93942-0951

Dear Mr. Foy:

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. 262.10-03
CARMEL RIVER IN MONTEREY COUNTY**

The State Water Resources Control Board (SWRCB) issued Order WR 95-10 in 1995 regarding the unauthorized diversion of water by the California-American Water Company (Cal-Am) from the Carmel River watershed. At that time, the SWRCB deferred enforcement action and instead established water conservation goals and other actions Cal-Am could take to reduce the effects of its diversions as it sought to obtain an adequate legal water supply.

Cal-Am has not complied with the intent of Order WR 95-10. Therefore, the SWRCB is issuing the enclosed administrative civil liability complaint. The complaint provides detailed information regarding the alleged violation and fines being assessed. Cal-Am has the right to request a hearing before the SWRCB. Information pertinent to a hearing request is found in paragraphs 9 and 10.

In accordance with paragraph 11 of the enclosed complaint for illegal diversion of water from the Carmel River, you must remit \$168,000 to the SWRCB within 30 calendar days from the date of this letter unless a hearing is requested.

Remit payment to:

Edward C. Anton, Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000



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Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

Mr. Larry D. Foy

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OCTOBER 20 1997

Please return one copy of this letter with your payment to ensure proper accounting.

Sincerely,

ORIGINAL SIGNED BY

Edward C. Anton, Chief
Division of Water Rights

CERTIFIED

Enclosure

cc: Walt Pettit (w/encl.)
State Board Members (w/encl.)

bcc: AHS, BAK, RJ, JJ, TH, JO, KDM, SRH, LLA, DRB RSS
(w/encl).

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Diversion of Water)
by: California-American Water) ADMINISTRATIVE CIVIL
Company) LIABILITY COMPLAINT
from: Carmel River and Carmel River) No. 262.10-03
Subterranean Stream)
in the County of Monterey)
_____)

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated Water Code section 1052(a), which states:

"The diversion or use of water subject to this division other than as authorized in this division is a trespass."

2. Water Code Section 1052(b) provides that the State Water Resources Control Board (SWRCB) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.

ALLEGATIONS

3. The following facts are the basis for the alleged violation:

On July 6, 1995, the SWRCB adopted Order 95-10 which finds that Cal-Am has the following legal rights to divert water from the Carmel River:

- a. 1,137 acre-feet per annum (afa) pre-1914 appropriative right for direct diversion¹. The following percentages of the pre-1914 right were

¹ Cal-Am's pre-1914 appropriative right was originally used for domestic, stockwatering and irrigation purposes of use. Cal-Am's predecessor provided its Monterey, Pacific Grove, Carmel and other county customers with domestic and stockwater throughout the year under this right. (1994 Carmel Hearing, Cal-Am Ex. 131) The right is presently used for domestic, municipal and industrial purposes of use. (Statement of Water Diversion and Use No. 8538)

utilized each month of the 1996-97 water year²:
October 7.7; November 5.1; December 5.3;
January 7.1; February 7.1; March 10.0; April 9.1;
May 9.2; June 8.6; July 8.8; August 10.8; and
September 11.2. Consequently, the 1,137 afa was
utilized as follows: October 87.5 af; November
58.0 af; December 60.3 af; January 80.7 af;
February 80.7 af; March 113.7 af; April 103.5 af;
May 104.6 af; June 97.8 af; July 100.1 af; August
122.8 af; and September 127.3 af.

- b. 60 afa riparian right for direct diversion (10 af per month on a 6-month diversion basis extending from April 1 through September 30 of each year),
- c. An appropriative water right to store 3,030 afa in Los Padres Reservoir under License 11866. The authorized collection to storage season extends from October 1 of each year to May 31 of the following year. Reservoir storage is presently limited to 2,179 afa, due to siltation within the reservoir. Water is released from the reservoir to flow down the Carmel River to the San Clemente Dam. At the San Clemente Dam, the water is directed into a pipeline which conveys the water to the San Clemente Filter Plant (San Clemente F.P.). The Cal-Am compliance submittals document the quantity of water diverted to the San Clemente F.P.

The sum total of Cal-Am's legal rights to divert water equals 3,376 afa, after taking into consideration the present 2,179 af capacity of Los Padres Reservoir. These rights have specific conditions pertaining to the use of water. Consequently, any violations of the legal rights must be separately analyzed for each right.

- 4. Cal-Am utilizes the following 21 wells to divert the water identified in 3(a) and 3(b): Russell No. 2 and 4, Robles No. 3, Panetta Nos. 1 and 2, Garzas No. 3, West Garzas No. 4, Los Laureles Nos. 5

² The proportion of the pre-1914 water right used each month is presumably the same as the monthly proportion of total yearly demand. The calculation of the percentages relies solely upon monthly demand for Carmel River water (San Clemente Dam diversions, Carmel River wells and Water West wells are used in this calculation).

and 6, Stanton, Scarlett Nos. 6 and 8, Berwick Nos. 7 and 8, Begonia, Manor No. 2, Schulte, Pearce, Cypress, San Carlos and Rancho Cañada. The wells were installed in the Carmel River subterranean stream on different dates from 1947 through 1989, and span a distance of more than 14.5 river miles. Diversion at the 21 wells (and any replacement or additional new facilities) is authorized only where pumping is within Cal-Am's pre-1914 appropriative or riparian rights.

5. Cal-Am operates two storage facilities, San Clemente and Los Padres Reservoirs. Cal-Am constructed San Clemente Reservoir in 1921 and was unable to substantiate any valid basis of right for storage in this facility in the 1994 Carmel River hearing. (Order WR 95-10, pp. 22 and 23, footnote 12)

Cal-Am operates Los Padres Reservoir pursuant to License 11866. The license authorizes storage in Los Padres Reservoir and rediversion of released stored water at San Clemente Dam. Whenever Cal-Am releases as much water from storage in Los Padres Reservoir as it is rediverting to San Clemente F.P., it is operating within the parameters of License 11866. Operation in a direct diversion mode must be accomplished under the pre-1914 appropriative right of Cal-Am, since no other right exists for diversion or rediversion at this facility.

6. The 1996-97 water year started on October 1, 1996 and ended on September 30, 1997. Total diversions from the Carmel River by Cal-Am for the 1996-97 water year were 12,847 af. Therefore, Cal-Am diverted water in excess of its existing riparian, pre-1914 appropriative and License 11866 rights.
 - a. Cal-Am utilized License 11866 to redivert water to San Clemente F.P. from July 1, 1997 through September 30, 1997. From October 1, 1996 through June 30, 1997, Cal-Am had only its pre-1914 appropriative right as a basis for diversion to San Clemente F.P.
 - b. Cal-Am utilized its pre-1914 appropriative and riparian rights to divert water at the Carmel River wells throughout the year, and diverted

water in excess of those rights³ during every month of the 1996-97 water year.

- c. Analyzing the combined quantity of water which Cal-Am diverted to San Clemente F.P. and the Carmel River wells from October 1, 1996 through June 30, 1997, the SWRCB concludes that Cal-Am diverted in excess of its riparian, pre-1914 appropriative and License 11866 rights on these dates: October 3 to 31; November 3 to 30; December 3 to 31; January 4 to 31; February 3 to 28; March 4 to 31; April 3 to 30; May 4 to 31; June 3 to 30.

Analyzing the quantity of water which Cal-Am diverted from its Carmel River wells from July 1, 1997 through September 30, 1997, the SWRCB concludes that Cal-Am diverted in excess of its riparian and pre-1914 appropriative rights on these dates: July 4 to 31; August 4 to 31; September 3 to 30.

The total number of days of violation is 336.

PROPOSED CIVIL LIABILITY

7. In Order WR 95-10, the SWRCB found that Cal-Am's diversions were having an adverse effect on: (a) the riparian corridor below river mile 18.5; (b) wildlife depending upon the corridor; and (c) steelhead and other fish which inhabit the river. (Order WR 95-10, pp. 25-8, 33-34) To date, Cal-Am has not reduced total diversions from the river. In each year since the adoption of Order WR 95-10, Cal-Am's total diversions from the Carmel River have increased when the diversions should be decreasing. Order WR 95-10 specifies a water conservation goal of 11,285 af for the 1996-97 water year. Total diversions were 12,847 af for the 1996-97 water year.

The continuous pattern of increasing water use shows that Cal-Am has not implemented a plan adequate to meet the requirements of Order WR 95-10; Cal-Am diverted more than the 11,285 afa specified in

³ The monthly distribution of the pre-1914 appropriative right is listed in 3(a) footnote 2; the 60 afa riparian right was utilized during the April 1 to September 30 irrigation season at the rate of 10 af per month.

condition 3. Thus, the maximum civil penalty should be levied on Cal-Am for diverting water in excess of its legal rights.

The maximum administrative civil liability that can be imposed by the SWRCB for each violation, namely diversion in excess of the pre-1914 appropriative, riparian and License 11866 rights, is \$500 for each day in which a trespass occurs.

8. You are alleged to have been in violation of Water Code section 1052(a) for the 1996-97 water year for diversions in excess of legal rights as listed in paragraph 6. The total number of days of violation is 336 days. The civil liability is \$168,000 (336 days at \$500 per each day of violation).

RIGHT TO HEARING

9. You may request a hearing. Any hearing request must be received by the Division of Water Rights at 901 P Street, Sacramento, CA 95814 or postmarked within 20 days of the date you receive this complaint. (Water Code Section 1055(b)).

If a hearing is requested, you, or your representative, will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of administrative civil liability by the SWRCB. Separate notice setting the time and place for the hearing will be mailed to you not less than 20 days before the hearing date.

10. At the hearing, the SWRCB will consider whether to affirm, reject or modify the proposed administrative civil liability. The SWRCB can take any appropriate action, supported by the evidence in the record including any evidence received at the hearing, authorized by Sections 100, 275, 1052 et seq., 1675, and 1825 et seq. of the Water Code.
11. The total fine of \$ 168,000 must be remitted to the SWRCB within 30 calendar days of the date of this complaint, unless a hearing is requested.

All payments should be sent to:

Mr. Edward C. Anton, Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

ORIGINAL SIGNED BY

Walt Pettit
Executive Director

Date: OCTOBER 20 1997