

State Water Resources Control Board

John P. Caffrey, Chairman



Peter M. Rooney
Secretary for
Environmental
Protection

Executive Office

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Pete Wilson
Governor

August 19, 1998

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. 262.5-6, 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 Order WR 95-10. Therefore, the SWRCB is issuing the enclosed administrative civil liability complaint. The enclosed complaint supersedes the administrative civil liability complaint issued on October 20, 1997. The complaint provides that the civil liability assessment of \$168,000 will not take effect if Cal-Am completes the items listed in paragraph 9 in a timely manner and complies with the reporting provisions contained in paragraph 12. Cal-Am has the right to request a hearing before the SWRCB in accordance with paragraphs 13 and 14 of the complaint.

Sincerely,

Walt Pettit
Executive Director

Enclosure

cc: Leonard G. Weiss, Esq.
Steefel, Levitt & Weiss
One Embarcadero Center, 30th Floor
San Francisco, CA 94111

State Water Resources
Control Board Members

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Diversion of Water)	
by: California-American Water)	
Company)	ADMINISTRATIVE CIVIL
)	LIABILITY COMPLAINT
from: Carmel River and Carmel River)	NO. 262.5-6
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

The following facts are the basis for the alleged violations:

3. On July 6, 1995, the SWRCB adopted Order 95-10 which finds that California -American Water Company (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 diversion.¹ 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 year:² 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 appropriate 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 Nos. 2 and 4, Robles No. 3, Panetta Nos. 1 and 2, Garzas No. 3, West Garzas No. 4, Los Laureles Nos. 5 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

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).

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; and June 3 to 30.

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.

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; and 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 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).
9. In lieu of paying a civil liability of \$168,000, Cal-Am has proposed that the monetary penalty be suspended pending completion of the following items:
 - a. Sell its Forest Lake Reservoir to the Pebble Beach Community Services District (PBCSD),
 - b. Invest the net proceeds after taxes (\$560,000) in domestic water system improvements that provide improved fire protection benefits which directly benefit PBCSD,

- c. Invest \$90,000 for other water system improvements with fire protection benefits to PBCSD, and
 - d. Invest \$168,000 in related fire protection improvements within PBCSD.
10. Completion of items a, b, c, and d in Paragraph 9 will increase the amount of potable water conserved within the PBCSD by approximately 400-500 af and will thereby help to reduce environmental damage to and to restore the public trust resources of the Carmel River.
 11. The proposal made by Cal-Am involves a supplemental expenditure, that would not be made except for the issuance of an administrative civil liability complaint by the SWRCB and which makes additional water available from sources other than the Carmel River. The proposal serves to deter further violations of SWRCB Order WR 95-10 and to help reduce Cal-Am's unauthorized diversions from the Carmel River. This complaint therefore incorporates Cal-Am's proposal, providing that no payment to the SWRCB will be due, so long as Cal-Am carries out its proposal in a timely basis. This monetary penalty is intended to help compensate for damage to public trust resources caused by Cal-Am's excessive pumping on the Carmel River.
 12. The civil liability proposed under this complaint is \$168,000, provided that the proposed civil liability is suspended pending completion of item a in Paragraph 9 by December 31, 1998, and items b, c, and d in Paragraph 9 by December 31, 2000. Cal-Am must submit monthly progress reports which show the progress made in completing items a, b, c, and d in Paragraph 9. The first progress report is due October 1, 1998. The monthly progress report shall include confirmation from PBCSD that the required expenditures have been made and show the benefit to PBCSD which includes the potable water conserved within the PBCSD as a result of the expenditures by Cal-Am. The progress reports shall be sent to:

Mr. Harry M. Schueller, Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

The Chief of the Division of Water Rights of the SWRCB (Division Chief) may extend the deadline for completion of any of the items specified in Paragraph 9 upon a showing of good cause by Cal-Am. Upon a determination by the Division Chief that any item is not completed by the deadline as established by this paragraph, including any extension that may be approved by the Division Chief, administrative civil liability shall become due and payable in the amount of \$168,000. Upon a determination

by the Division Chief that Cal-Am has successfully completed items a, b, c, and d in Paragraph 9, Cal-Am shall not be subject to any liability under this complaint.

RIGHT TO HEARING

13. You may request a hearing. If you do not request a hearing within 20 days, or if you notify the Division of Water Rights in writing that you waive your right to a hearing, the civil liability proposed in Paragraph 12 (including the suspension of liability proposed in Paragraph 12) will take effect. Any hearing request must be received by the Division of Water Rights at P.O. Box 2000, Sacramento, CA 95812-2000 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.

14. If you request a hearing, the SWRCB will consider at the hearing 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.



Walt Pettit
Executive Director

Date: 8/19/98



Cal/EPA

**State Water
Resources
Control Board**

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APRIL 28 1998

California-American Water Company
c/o Mr. Lenard G. Weiss
Steeffel, Levitt & Weiss
One Embarcadero Center, 30th Floor
San Francisco, CA 94111-3784

Dear Mr. Weiss:

**STATE WATER RESOURCES CONTROL BOARD (SWRCB) ADMINISTRATIVE
CIVIL LIABILITY COMPLAINT NO. 262-10-03**

On October 20, 1997, the SWRCB issued Administrative Civil Liability Complaint No. 262-10-03 in the amount of \$168,000 to the California-American Water Company (Cal-Am) for unlawful diversion from the Carmel River. By letter dated December 15, 1997, you provided Cal-Am's proposed settlement offer for the ACL. Cal-Am proposes to implement measures to modify the manner in which Cal-Am diverts water from the Carmel River in lieu of paying the \$168,000 civil liability. The objective of the change in operations is to maintain surface flow in the stream as far downstream from San Clemente Dam as possible. The measures that Cal-Am would implement are the measures identified in the study that Cal-Am conducted pursuant to Condition 6 of Order WR 95-10.

Litigation against the SWRCB challenged certain provisions of Order WR 95-10 and resulted in a stipulated judgment. The stipulation included amendments to Order WR 95-10. The SWRCB addressed the need to modify Order WR 95-10 and implemented the terms of the stipulated judgment in Order WR 98-04, which was adopted by the SWRCB on February 19, 1998.

Order WR 98-04 modifies Condition 6 of Order WR 95-10. Cal-Am is now required to not only study the feasibility, benefits and costs of modifying its Carmel River diversion works, but must also implement those measures deemed feasible by the Division of Water Rights (Division). Therefore, upon order of the Division Chief, Cal-Am is required to modify its method of diversion, including adoption of those measures set forth in the ACL settlement offer and any other measures deemed feasible by the Division Chief. Consequently, the SWRCB respectfully declines the offer of settlement of the ACL.

At this time, Cal-Am has two alternatives. It can either remit the \$168,000 within the next 15 days or the SWRCB will calendar the hearing requested on the ACL. Please be advised that the SWRCB intends to calendar the ACL hearing at the next available date should the \$168,000 not be received within 15 days from the date of this letter. If you elect not to pay the ACL within that time frame, you should be prepared to proceed with a hearing in the immediate future. A hearing notice would be issued shortly advising you of the date for the hearing.



Pete Wilson
Governor



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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.

California-American Water Company

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APRIL 28 1998

If you require further assistance, please contact Mr. Edward C. Anton, Chief of the Division of Water Rights at (916) 657-1359.

Sincerely,

ORIGINAL SIGNED BY:

Walt Pettit
Executive Director

bcc: BJL, BAK, JH, LLE

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