

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U210W) for a Certificate that the present and future public convenience and necessity requires applicant to construct and operate the 24,000 acre foot Carmel River Dam and Reservoir in its Monterey Division and to recover all present and future costs in connection therewith in rates.

Application 97-03-052

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U210W) for an order allowing immediate implementation of changes to Phase IV of mandatory water conservation plan and creation of related balancing account, and for order to expedite processing of all applications.

Application 98-05-008

In the Matter of Application of CALIFORNIA-AMERICAN WATER COMPANY (U210W) for an order authorizing it to increase its rates for water service in its Monterey Division.

Application 98-05-009

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U210W) for an order for authority to impose a moratorium on all new or expanded water service connections in its Monterey Division.

Application 98-05-010

In the Matter of the Application of CALIFORNIA-AMERICAN WATER COMPANY (U210W) for an order authorizing adoption of Rule No. 14.2 and Tariff Schedule Nos. MO-8A and MO-8B.

Application 98-05-011

**PREHEARING CONFERENCE STATEMENT OF STATE WATER RESOURCES
CONTROL BOARD**

TO: COMMISSIONER HENRY M. DUQUE AND ADMINISTRATIVE LAW JUDGE
STEVEN KOTZ:

The State Water Resources Control Board (SWRCB) files this prehearing conference statement in accordance with the Joint Ruling of May 22, 1998. The joint ruling invites input from the parties on the following matters: (1) issues pertaining to the May 6, 1998 applications of the California-American Water Company (Cal-Am) relating to Phase IV water conservation, Rule 14.2 water rationing, imposition of a water connection moratorium, and related rates and accounting processes; and (2) issues pertaining to the process of analyzing alternatives to the dam proposed by Cal-Am.

In its June 15, 1998 filing with the Public Utilities Commission (PUC), the Monterey Peninsula Water Management District (District) correctly states that Order WR 95-10 requires Cal-Am to implement water conservation measures with the goal of limiting annual diversions to 11,285 acre-feet per annum (afa). The SWRCB enforces California water law including the terms of its orders. Cal-Am has water rights for only a small fraction of the water it diverts each year. Diversion or use of water without a water right is a trespass against the State. The SWRCB has withheld enforcement action provided Cal-Am adhered to the terms of Order WR 95-10 and was diligently pursuing water rights for its diversions. As noted in the District's submittal, the SWRCB issued an Administrative Civil Liability to Cal-Am in the amount of \$168,000 for its illegal diversion of water during the 1997 water year. This action was taken in part because the 11,285 afa water conservation goal of Order WR 95-10 was not achieved that year and Cal-Am did not have in place a vigorous urban water conservation plan to effectively meet the goal.

One of the primary purposes of the water conservation goal is to provide a minimal quantity of water for public trust resources. The SWRCB has a duty under the public trust doctrine to: (1) balance public trust uses against the need to provide for conventional water uses under the constitutional rule of reasonableness; (2) to take into account the public trust in the state's waters when acting upon applications to appropriate water; and (3) to re-examine past allocation decisions if changed circumstances warrant. *National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 658, P2d 709, 189 Cal. Rptr. 346 (1983)

Order WR 95-10 finds that Cal-Am diversions are having an adverse effect on: the riparian corridor along the river below San Clemente Dam at river mile 18.5, wildlife which depend on instream flows and riparian habitat, and steelhead which spawn in the river. Interim measures mitigating the effects of Cal-Am diversions on public trust resources, including compliance with the water conservation goal, are necessary to mitigate the effect of Cal-Am diversions until such time as Cal-Am is able to obtain water from the Carmel River or other sources consistent with California water law.

Nonetheless, the District asserts that Cal-Am can divert 13,641 afa from the Carmel River pursuant to the order (District submittal, page 7). Furthermore, the District claims that Cal-Am must seek relief from the 11,285 afa conservation requirement before the Division of Water

Rights (Division) under paragraph 3 of Order WR 95-10 prior to seeking authorization from the PUC to impose water rationing and other measures that Cal-Am maintains are required to limit Carmel River diversions to 11,285 afa.

The SWRCB does not concur with this interpretation of Order WR 95-10. The interpretation of Order WR 95-10 rests with the SWRCB and, except for the following, there has been no substantial modification in the water conservation goal since issuance of the order in 1995.

The SWRCB has allowed the developers of the Pebble Beach Wastewater Reclamation Project to utilize 380 afa of Carmel River water made available as a result of developing the wastewater reclamation project. Since the Pebble Beach interests use treated wastewater in lieu of potable water from the Carmel River; the SWRCB found that the net diversion from the Carmel River to serve project lands will be less than the level that would have occurred if the wastewater reclamation project had not been developed. This determination modified the 11,285 afa water conservation goal by the amount of Carmel River water actually used for the Pebble Beach project on a yearly basis.

By letter dated April 16, 1998, the District requested that the Division grant relief from the water conservation goal of 11,285 afa and asked for authorization for Cal-Am to divert 13,641 afa. As explained in the enclosed June 5, 1998 letter of response to the District, the Chief of the Division of Water Rights could not grant the requested relief under the authority provided in Order WR 95-10. Thus, the 11,285 afa limit remains in place.

Also be advised that even if the conservation goal is achieved, Cal-Am continues to divert substantial amounts of water each year without sufficient water rights. The SWRCB supports efforts by Cal-Am to reduce illegal water use from the Carmel River and to find a solution to the water supply problems of the Monterey area.

Respectfully Submitted,

Date:

Walt Pettit
Executive Director

Enclosure

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KMrowka/egonzales 7/3/98
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