

1 LAURENS H. SILVER (SBN 55339)
2 CALIFORNIA ENVIRONMENTAL LAW PROJECT
3 P.O. Box 667
4 Mill Valley, California 94942
5 Telephone: (415) 383-5688
6 Facsimile: (415) 383-7995
7 Attorney for SIERRA CLUB

8 BEFORE THE CALIFORNIA
9 STATE WATER RESOURCES CONTROL BOARD

10
11 In the Matter of Draft Cease and Desist Order No.
12 2008-00XX-DWR Against California American
13 Water Company

**WRITTEN STATEMENT OF SIERRA CLUB
WITNESS JOHN G. WILLIAMS PLUS
ATTACHMENTS A, B & C**

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16 My name is John G. Williams. My qualifications are detailed in my curriculum vitae, appended
17 as Attachment C.

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19 My testimony for the Phase One hearing concerns whether Cal-Am is in compliance with Water
20 Code §1052 and whether it has complied with the requirements of Order WR 95-10, and amendments
21 thereto.

22 *Is Cal-Am in compliance with Water Code § 1052?*

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24 No. According to data reported by the Monterey Peninsula Water Management District
25 (MPWMD) [attachment A], Cal-Am diverted 10,947.7 acre feet (af) from wells along the Carmel River
26 in 2006, the most recent year for which data were given on the MPWMD website. However, based on
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1 Order WR 95-10, Cal-Am had rights to only 3,376 af, so it appears that in 2006 Cal-Am diverted
2 7,571.7 af from the subterranean flow of the Carmel River without benefit of permit.
3 A closer look indicates that Cal-Am has diverted a greater amount illegally. At pp. 14-15, Order WR
4 95-10 states that “Cal-Am has an appropriative water right to divert 3,030 afa of water to storage in Los
5 Padres Reservoir pursuant to the conditions imposed by License 11866.” However, footnote 15 of
6 Order WR 95-10 states that “The actual diversion is limited to 2,179 af due to siltation,” and footnote 16
7 states that Cal-Am’s water rights of 3,376 afa consist of “1,137 afa, pre-1914 appropriative + 60 afa,
8 riparian + 2,179 afa, license 11866 = 3,376.” In other words, Order WR 95-10 adjusted Cal-Am’s rights
9 under license 11866 to account for the accumulation of sediment in Las Padres reservoir.
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11 It is now 13 years since Order WR 95-10 issued, and it is reasonable to assume that sediment has
12 continued to accumulate in the Los Padres Reservoir. Based on information obtained from the
13 MPWMD (Attachment B), which includes data from Cal-Am regarding the storage capacity of the
14 reservoir in 1998, the average annual loss of storage capacity from 1947 to 1998 was 28.87 af.
15 Applying this average to the 13 years since 1995, it appears that Cal-Am’s rights under license 11866
16 should now be reduced by ~375 af, to 1,804 af.¹ In terms of Cal-Am’s diversions, returning now to
17 2006, accounting for siltation suggests that Cal-Am’s right was then only ~3,058.4 af, so its illegal
18 diversions were ~ 7,889.3 af, rather than 7,571.7.
19

20 *Has Cal-Am complied with the requirements of Order WR 95-10, and amendments thereto?*

21 We believe that Cal-Am has not so complied. Condition 2 orders Cal-Am to “diligently implement” one
22 or more of three actions to “terminate its unlawful diversions from the Carmel River.” Any claim by
23 Cal-Am that it has done so would bring to mind the claims of southern states that they were moving
24 “with all deliberate speed” to implement Brown v. Board of Education. One of these actions is to
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26 ¹ We note in passing that, according to the USGS capacity curve for 1978 given in Attachment A, it appears that WRO 95-10
27 was generous in finding that Cal-Am had a storage right of 2179 afa. We also note that license 11866 describes the place of
28 use for water stored in Los Padres Reservoir as “within California-American Water Company service area within Carmel
Valley, ...”

1 “obtain appropriative permits for water being unlawfully diverted from the Carmel River.” To the best
2 of our understanding, Cal-Am filed applications for such appropriative permits in 1992 and 1998 (#s A
3 30215 and A 30715), but has not provided the environmental documents for them that were requested by
4 SWRCB staff. As noted above, any efforts by Cal-Am to terminate its unlawful diversions seem to be
5 going backwards, not forwards. We are not aware of any impediments to Cal-Am going forward with
6 its applications for a permit to legalize its lawful diversions.

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8 Further, Condition of Order 95-10 requires Cal-Am to implement all measures of the “Mitigation
9 Program for the District’s Water Allocation Program Environmental Impact Report” that are not
10 implemented by the MPWMD after June 30, 1996. Among these measures, as outlined in section 6.2 of
11 Order WR 95-10, is “Identify feasible alternatives to maintain adequate lagoon volume.” We do not
12 believe that the MPWMD has implemented this measure, and, therefore, Condition 11 requires that Cal-
13 Am do so. That is, we interpret this measure as including identification of supplemental sources of
14 water for the lagoon during the summer, when Cal-Am’s unlawful diversions reduce the surface and
15 subsurface flow of water to the lagoon. This interpretation is based on Finding 158 of the Findings of
16 the Board of Directors of the MPWMD for Certification of the Final Water Allocation Program EIR
17 (1991) and for Adoption of the Water Allocation Program (MPWMD Exhibit 16 for the 1994 hearing, p.
18 27). However, I understand from MPWMD staff that in 1996 the District determined that finding
19 alternative sources of water for the lagoon was not feasible, and that it had no further obligation to look
20 for such alternative sources of supply. We will return to the need for finding alternative sources of
21 supply for the lagoon when we discuss proposed modifications of the draft CDO, because new
22 information on the use of lagoons by coastal steelhead underscores the importance of the matter.

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24 As context for consideration of Cal-Am’s compliance with Condition 2, it seems useful to
25 consider the history of its compliance with conditions 5 and 6, and earlier efforts by CDFG and the
26 MPWMD to effect the same change in the point of diversion from San Clemente Dam to wells farther
27 downstream, in order to reduce the effects of the diversions on public trust resources. This history of
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1 denial and stall is well documented in the SWRCB 1994 hearing record, but may be summarized as
2 follows: In 1983 or 1984 the MPWMD adopted “Ordinance 19,” which required Cal-Am to release
3 water from San Clemente during the summer for recapture with wells downstream from the Narrows.
4 Initially, Cal-Am took the position that this was simply impossible, and then it argued about the amount
5 that could be so released, which varied from year to year but gradually increased over time. Similarly,
6 Cal-Am argued that it was impossible to supply the upper valley with water from the lower valley, and
7 maintained this argument until the SWRCB ordered it to do so with Order WR 2002-02. Cal-Am did
8 conduct the studies called for by Condition 6, but the conclusions of these studies were shown to be
9 false by the relative ease with which Cal-Am complied with Order WR 2002-02.

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