

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of Applications 30215B, 30644 and 30715

**California-American Water Company**

**ORDER CANCELING APPLICATIONS**

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SOURCE: Carmel River and Carmel River Subterranean Stream

COUNTY: Monterey

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**WHEREAS:**

1. California-American Water Company (Cal-Am or Applicant) filed water right applications with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to divert water from the Carmel River and Carmel River subterranean stream as follows:
  - Application 30215B filed on January 26, 1993, requesting the right to divert 42.6 cubic feet per second (cfs);
  - Application 30644 filed on November 13, 1996, requesting the right to divert 21 cfs and collect 24,800 acre-feet per annum to storage; and
  - Application 30715 filed on February 3, 1998, requesting the right to divert 16.1 cfs.
2. The applications conflict with the Declaration of Fully Appropriated Streams (Declaration). In a December 17, 1999 letter, Applicant requested that the State Water Board lift the Declaration listing the Carmel River as fully appropriated throughout most of the year. Cal-Am asked that the State Water Board hold any action on the request to revise the Declaration in abeyance in case (a) the California Public Utilities Commission denies Cal-Am's pending request for authority to construct the Carmel River Dam Project or (b) the Monterey Peninsula Water Management District (District) takes action that either actually or effectively precludes Cal-Am from proceeding with the Carmel River Dam Project. If either of those events occur, Cal-Am maintains that the water appropriated to Permit 20808 of the District should be declared by the State Water Board to be available for appropriation by Cal-Am pursuant to its pending Applications 30215B, 30644 and 30715.
3. The Division's January 21, 2000 letter accepted Cal-Am's December 17 letter as a petition for modification of the Declaration and agreed to hold any action on this matter in abeyance. The Division advised Cal-Am that all petitions to modify the Declaration must be accompanied by the information specified in California Code of Regulations, title 23, section 871, subdivision (c)(1). The Division stated that Cal-Am would be expected to furnish information to address section 871 prior to activating its petition. The practical effect of this action is that Cal-Am was not required to amend its applications to conform them to the limited four-month season of availability listed in the Declaration at that time.

4. On March 24, 2000, the Division advised Cal-Am that the water rights process could take several years for highly contested projects. Therefore, it was imperative that the Division start processing the applications for projects that Cal-Am may eventually construct. Cal-Am was asked to identify the applications and specific project elements that it was ready to pursue and the Division would issue the public notice accordingly. A showing of due diligence was also requested in order to maintain the applications. Cal-Am did not submit a showing of due diligence.
5. Cal-Am's May 16, 2000 reply stated that Cal-Am was actively pursuing development of the Carmel River Dam and Reservoir Project. Cal-Am was seeking use of the District's existing permits for this project. The California Public Utilities Commission was developing an alternative water supply project(s) list, should the reservoir project not proceed. If it became clear that the reservoir project could not proceed, Cal-Am would renew its previous request that the State Water Board lift its declaration that the Carmel River is fully appropriated and proceed with a decision on that subject so that Cal-Am's various pending water right applications might be noticed, heard and resolved. In the meantime, Cal-Am informed the Division that it would continue to pursue the reservoir project.
6. On March 15, 2005, Cal-Am was requested to enter into a Memorandum of Understanding (MOU) for preparing a document to comply with the California Environmental Quality Act for the applications and provide the name of the consultant that would be preparing the water availability analysis for the filings.
7. On April 20, 2006, Cal-Am entered into an MOU for preparation of the required environmental document. HDR Surface Water Consultants (HDR) was the consultant selected to prepare the document.
8. On August 6, 2007, the Division requested the information required by California Code of Regulations, title 23, section 871, subdivision (c)(1), upon which to base a decision to revise or revoke the Declaration, or alternatively to revise the applications to conform to the Declaration. The information was requested pursuant to Water Code section 1275. Cal-Am was advised that failure to either show cause for revision of the Declaration or revise the applications to conform to the Declaration would result in cancellation of Applications 30215B, 30644 and 30715 without further notification.
9. In an undated letter received by the Division on September 11, 2007, Cal-Am contended that the State Water Board should act on the pending request for extension of time filed by the District for Permits 11674B and 20808 prior to requiring Cal-Am to take action relating to the petition or its applications. Cal-Am reiterated its request to have any action related to all pending Cal-Am applications held in abeyance until final action has been taken on the District's filings.
10. In 2007, Cal-Am and the Monterey Peninsula Water Management District (District) agreed to jointly develop the Seaside groundwater banking project under the District's water rights (see Permit 20808B (Application 27614B), for example).
11. On November 6, 2007, HDR informed the Division that it had requested a contractual authorization to proceed from Cal-Am to prepare the final work plan and schedule for developing the environmental document. HDR would contact the Division upon authorization to schedule a meeting. The letter stated that no additional progress had been made by HDR for Applications 30215B, 30644 and 30715.

12. To date, the Division has not received the required showing pursuant to California Code of Regulations, title 23, section 871. Cal-Am has not modified the applications to conform to the Declaration.
13. The applications have not been noticed due to the conflict with the Declaration.
14. Applicant, after due notice, has failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.)
15. The State Water Board has delegated the authority to cancel applications to the Deputy Director for Water Rights (Deputy Director) pursuant to Resolution No. 2007-0057. (Attachment to Resolution No. 2007-0057, section 4.5.2.) The Deputy Director has redelegated this authority to the Assistant Deputy Director for Water Rights in the absence of the Deputy Director, pursuant to redelegation order dated October 4, 2007.
16. On September 30, 2010, the Division issued an order cancelling Applications 30215B, 30644 and 30715. The post office returned the order as undeliverable. Consequently, the September 30, 2010 order should be rescinded and a new cancellation order issued.

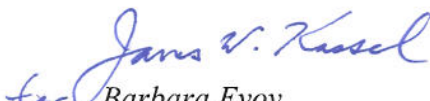
**THEREFORE, IT IS ORDERED THAT:**

1. The September 30, 2010 order cancelling Applications 31215B, 30644 and 30715 is rescinded.
2. Applications 30215B, 30644 and 30715 are hereby canceled.

It is the Applicant's responsibility to remove or modify any diversion works or impoundments to ensure that water is no longer diverted. The Applicant should consult with the Department of Fish and Game and the Regional Water Quality Control Board in order to ensure that removal of project facilities does not adversely affect a fishery or result in unregulated sediment discharge to a waterway. These agencies may require a permit or other approval prior to any construction activity.

Applicant is hereby put on notice that any diversion of water from the points of diversion proposed under these applications may be subject to administrative civil liability of up to \$500 per day without further notice, pursuant to Water Code section 1052. The State Water Board also may issue a cease and desist order in response to an unauthorized diversion or threatened unauthorized diversion pursuant to Water Code section 1831.

STATE WATER RESOURCES CONTROL BOARD

  
for *Barbara Evoy*  
Deputy Director for Water Rights

Dated: **DEC 30 2010**