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June 12, 2003

**VIA FACSIMILE AND**  
**U.S. MAIL**  
**(916) 341-5400**

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

Re: Comments on Draft Order Denying Petition to Revise the Declaration of Fully Appropriated Streams to Allow Processing of Applications to Appropriate Treated Groundwater Discharged into the Lower American River

Dear Mr. Anton:

California-American Water Company (Cal-Am) intends to provide comments at the July 1, 2003 workshop on the above-referenced Draft Order. Cal-Am would like the State Water Resources Control Board ("SWRCB") to consider the following:

1. As set forth in Cal-Am's Closing Statement, Cal-Am believes that the water being pumped, treated and released by Aerojet is groundwater and should be treated accordingly. Cal-Am is particularly concerned with Section 6.0 of the Draft Order. The discussion of the groundwater being pumped, treated and discharged by Aerojet as part of a required groundwater remediation project completely ignores the fact that we are faced with a collision between the ever-increasing problem of humanly caused groundwater contamination and traditional water rights law. It ignores the vested rights of water purveyors who rely on the relevant groundwater basin for their water supply. In each of the cases cited in Section 6.0 of the Draft Order, all of the parties who had developed foreign water did so voluntarily for their own benefit and had the right to do so. In contrast, Aerojet, which has no appropriative rights to the groundwater, is pumping the groundwater only because it has been ordered to remediate contamination caused by Aerojet.

Ideally, the contaminated groundwater would be treated and reinjected into the groundwater basin from which it is pumped. However, past experience with the Aerojet remediation has shown that reinjecting treated groundwater can cause unforeseen additional

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contamination. Due to this unfortunate circumstance, the Environmental Protection Agency ("EPA") and the Regional Water Quality Control Board ("RWQCB") have ordered Aerojet to discharge the treated groundwater into surface waters to take advantage of the dilution that this will provide.

The Draft Order ignores the fact that Aerojet has no right to appropriate the groundwater for transport in a surface stream. The EPA and RWQCB orders to remediate the groundwater do not confer the right to appropriate the groundwater on Aerojet. The Draft Order states, "A person or entity that by his or her own efforts makes such water available is entitled to use it, so long as the use does not infringe on the prior rights of others." Cal-Am and the other legal users of the groundwater basin do have prior rights that will be infringed upon if the water released by Aerojet is made available to any person or entity other than the current groundwater rights holders.

Aerojet cannot unilaterally "abandon" the water that it pumps and treats. The water is not Aerojet's to abandon. If the water were not contaminated, Aerojet would not be allowed to pump the water and abandon it. Aerojet should not benefit from the fact that it contaminated the groundwater in the first place.

2. The Draft Order states that any issues concerning alleged injury to groundwater rights occurring prior to the water "finding itself in a natural channel" are outside the scope of this proceeding. This leaves parties such as Cal-Am with no alternative but to file suit asking the court to either compel Aerojet to reinject the treated groundwater into the basin or to hold Aerojet liable for conversion of the groundwater. Prior to forcing the parties into litigation, it would seem prudent for the State Water Resources Control Board ("SWRCB") to at least attempt to reconcile the consequences of the Board exercising its duties under its two major responsibilities, protection of water quality and determination of water rights.

3. Cal-Am objects to the statement found in Section 1.0 of the Draft Order that "if SCWC amends the season of diversion in its application to exclude the period of July 1 through October 31, the SWRCB could accept SCWC's application for processing in accordance with the normally applicable procedures and requirements under the Water Code and applicable regulations." In fact, the water that Aerojet proposes to release belongs to those with legal rights to the groundwater in the basin and should not be subject to the normal rules regarding appropriation of surface water.

4. The Draft Order purports to grant the treated and released groundwater to others, including the Central Valley Project ("CVP") and State Water Project ("SWP") or others with "higher priorities." This would constitute an unconstitutional taking of property rights. All of

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the water at issue here is groundwater and it is inappropriate to treat any of this water as part of the flow of the American River.

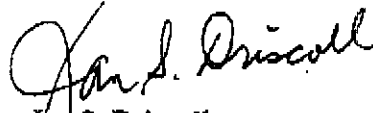
5. The Draft Order concludes that "new" water exists in the American River in measurable quantities. The SWRCB should allow any such water to be claimed or appropriated by those injured by the Aerojet contamination and pump, treat and discharge remediation. Allowing appropriation of the water released by Aerojet under the standard rules that give priority according to date of filing an application further injures purveyors, such as Cal-Am, who do not yet have the right to appropriate surface water. Precluding this water from being recovered by the injured water purveyors twice victimizes them and deprives them of needed water supplies which they have historically relied upon and to which they have vested rights.

6. Cal-Am incorporates fully by reference herein the discussion within its Closing Statement.

7. Cal-Am agrees with and adopts fully by reference herein paragraphs 10, 11 and 12 of the June 11, 2003 comment letter submitted on behalf of the County of Sacramento and Sacramento County Water Agency.

Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,



Jan S. Driscoll  
Attorney for California-American Water Company

JSD:cjg  
Attachment

cc: Mr. Paul Townsley  
Ms. Judith L. Almond  
Patricia Lyman, Esq.

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CERTIFICATE OF SERVICE

I am employed in the County of San Diego; my business address is 501 West Broadway, Ninth Floor, San Diego, California; I am over the age of 18 years and not a party to the foregoing action.

On June 12, 2003, I served the following document(s):

COMMENTS ON DRAFT ORDER DENYING PETITION TO REVISE THE DECLARATION OF FULLY APPROPRIATED STREAMS TO ALLOW PROCESSING OF APPLICATIONS TO APPROPRIATE TREATED GROUNDWATER DISCHARGED INTO THE LOWER AMERICAN RIVER

X (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure § 1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Allen Matkins Leck Gamble & Mallory, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of San Diego, California.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on June 12, 2003, at San Diego, California.

*Kimberley A. Pike*

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