

>>> Arthur G. Baggett, Jr. 8/29/2007 10:47 AM >>>
To:Monterey Peninsula Water Management District
California American Water
California Department of Fish and Game
National Marine Fisheries Service
Carmel River Steelhead Association

Subject:Carmel River Hearing

As Barbara Katz previously told you, the hearing set for September 24 and 25, 2007 will take place as scheduled and the deadline for submitting written testimony and exhibits is noon on Friday, September 7, 2007. I will not hold a workshop or a pre-hearing conference prior to the hearing.

I am aware that the Carmel River Steelhead Association has submitted an amended Notice of Intent to Appear (NOI) after the deadline of July 23, 2007. Since it is late, it is subject to objection. If any parties want to object, you may do so at the hearing and you will need to state the basis for the objection and how you may be prejudiced by the amended NOI. If any other parties want to file an amended NOI, you may do so subject to objection. I will rule on all such objections during the hearing.

As stated on page 4 in the Notice of Hearing, there is one issue. The issue is: Should the State Water Board approve MPWMDs Petitions for Change to Permits 7130B and 20808 and, if so, under what, if any conditions? Please focus on the benefits and harm that may result from the changes proposed in the petitions (the ASR project). All testimony must have a nexus to the proposed ASR project. The hearing is not the place to discuss other issues related to the Carmel River or to re-open the New Los Padres Project. Testimony that is not relevant is subject to objection and will not be allowed.

In order to approve a petition to amend an existing permit, the State Water Board must be able to find that the requested changes will not result in injury to any legal water user or in an unreasonable effect on fish and wildlife. This statutory requirement applies whether or not there are outstanding protests.

If the State Water Board approves a petition for change, the State Water Board may condition its approval in order to be able to make the required statutory findings. Typical permit conditions imposed by the State Water Board as a result of approving petitions for change include operating conditions and streamflow conditions. These are the same types of conditions that the parties have agreed to as a result of settlement discussions in this case. Although the State Water Board hopes that conditions reached by settlement will allow the State Water Board to make the required findings, they may or may not be adequate to do so. Evidence that supports the conditions should be provided so that the State Water Board can make the required findings.

If any of the conditions in the settlement agreement are supportable, adequate, appropriate, and necessary to the State Water Board's approval of the petition, they will be included as permit conditions. Any conditions imposed by the State Water Board must have a nexus to the project that is being approved, must be clear and unambiguous, and must be enforceable.

Very truly yours,

Arthur G. Baggett, Jr.
Hearing Officer