

State of California

STATE WATER RESOURCES  
CONTROL BOARD

Before the State Water Resources Control Board

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In the Matter of Hearing to Consider Monterey Peninsula Water Management District's  
Petitions to Change Permits 7130B and 20808

WATER RIGHTS  
SACRAMENTO

Testimony of Bob Baiocchi

My name is Robert J. Baiocchi (aka Bob Baiocchi). I live in Plumas County. My mailing address is P.O. Box 1790, Graeagle, California 96103. My e-mail address is: [rbaiocchi@gotsky.com](mailto:rbaiocchi@gotsky.com) My background is an attachment to my testimony.

I qualified as an expert witness in water rights matters before the State Water Resources Control Board in the early 1990s during the Bay Delta Hearings.

The petition filed by the Monterey Peninsula Water Management District (hereinafter known as MPWMD) seeks to further amend Water Right Permits 7130B and 20808, and allow the storage of 7,300 acre-feet of the people's Carmel River water into the out of basin Seaside Groundwater Basin.

The Original Permit 7130B was issued on May 2, 1984 by the Board, authorized the MPWMD to beneficially use and not exceed 15,970 acre-feet of water per annum be collected at the Los Padres Dam from October 1 of each year to May 31 of the succeeding year. The purposes of use are: Domestic, Industrial, and Municipal. The original permit did not have any specific written provisions that provided daily flows at all times in the Carmel River from the point of collection to the Carmel River Lagoon to protect Carmel River Steelhead species and their habitat. However, the permit did require a daily bypass flow of five (5) cfs to be released from the Los Padres Dam during the period when the water was stored under this permit. I reference Permit Requirement No. 12.

The provisions of the original Permit 7130B also allow for the MPWMD to modify the permit to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code.

As stated beforehand, the original 7130B Permit was amended by the Board on January 6, 1999 to include the New Los Padres Dam and Reservoir. However, the New Los Padres Dam and Reservoir was never constructed by MPWMD. Consequently, the Board should have revoked the amended Permit 7130B because the Los Padres Dam and Reservoir was never constructed.

The original Permit 20808, was issued on October 25, 1995, gave the MPWMD a right to store 24,000 acre-feet of water and a direct diversion of 42 cfs from November 1 of each year through June 30 of the succeeding year. The total amount of water to be taken from the Carmel River must not exceed 29,000 acre-feet of water. The purposes of use were for Municipal, Irrigation, and Fish and Wildlife. The permit did have provisions to protect Carmel River Steelhead species and their habitat, which included the Carmel River Lagoon. The original permit was for the construction of the New Los Padres Dam and Reservoir, with a construction work completion date of December 31, 2003.

The Board amended the original Permit 20808 on January 6, 1999, the same date Permit 7130B was amended by the Board. The amended Permit 20808 incorporated the New Los Padres Dam and Reservoir into Permit 20808 with additional terms and conditions, which are meaningless without construction of the dam and reservoir.

As stated beforehand, the Board amended the original 20808 Permit on January 6, 1999 to include the New Los Padres Dam and Reservoir. However, the New Los Padres Dam and Reservoir was never constructed by MPWMD. Consequently, the Board should have revoked the amended Permit 20808 because the Los Padres Dam and Reservoir was never constructed. Further, the terms and conditions of amended Permits 7130B and 20808 of January 6, 1999 that were required by the Board to protect Carmel River Steelhead species and their habitat in the Carmel River, did not apply because the New Los Padres Dam and Reservoir was never constructed. Consequently, there is presently no mandatory daily flow requirements in the Carmel River below all point of pumping to the Carmel River Lagoon that has been ordered by the Board in said amended permits to protect "threatened" and federally protected Carmel River Steelhead species and their habitat without construction of the New Los Padres Dam and Reservoir.

*Restoration of California's anadromous fish populations is mandated by The Salmon, Steelhead Trout, and Anadromous Fisheries Program Act of 1988 (SB 2261) which states that it is a policy of the State to significantly increase the natural production of salmon and steelhead by the end of the century. (My Emphasis)*

It has been 7 years since the end of the century and the Board and the Department of Fish and Game have not carried out the mandates of the Steelhead Restoration and Management Plan for California for the Carmel River and the threatened Carmel River Steelhead. The Board and not the the DFG has the authority to controls the flows and the steelhead habitat in the Carmel River and for that reasons the Board has the duty and responsibility to carry out the Steelhead Restoration and Management Plan for the threatened Carmel River Steelhead's natural habitat in the Carmel River.

Secondly, because there are no daily flow requirements below all points of pumping in the Carmel River to the Carmel River Lagoon, the Board should order mandatory daily flow requirements below all points of pumping and diversions in the Carmel River to the Carmel River Lagoon to protect "threatened" and federally protected Carmel River Steelhead species and their habitat.

In addition, the Board should deny the MPWMD Petition, and require that the MPWMD file a new water rights application to divert Carmel River water to the out of basin Seaside Groundwater Basin pursuant to the provision of the California Water Code and the California Code of Regulations.

Article X, Section 2 of the California Constitution prohibits the waste, unreasonable use, and unreasonable diversion and use of the state's water.

Section 1825 of the California Water Code states that it is intent of the California Legislature to enforce the terms and conditions of existing permits and licenses to appropriate water and to prevent the unlawful diversion of the state's water.

Section 1052 (a) of the California Water Code states as follows: "The diversion of water or use of water subject to the division other than authorized is a trespass. Section 1052 (b) provides for civil liability of \$500 per day.

The California - American Water Company is illegally (unauthorized) diverting about 10,730 acre-feet (more or less) of the Carmel River water. Illegal diversions by Cal-Am from the Carmel River is stated in the Original Permit 20808 under Condition No. 17. It is my understanding that Carmel River water has a value of \$1100 (more or less) for an acre-foot of water. Based on this value, the illegally diverted water from the Carmel River has a value of about 11 million dollars annually. It is also my understanding that the illegal diversion and use of Carmel River water may have been occurring for about 11 years.

Since July 6, 1995 forth (12 years), the Board and its staff have allowed Cal-Am to illegally divert about 11 million dollars of the people's water annually that has put the threatened Carmel River

Steelhead at serious risk of being extinguished and in doing so, the Board and its staff have undercut the provisions of the California Water Code, the mandates of the framers of the California Constitution, and the intent of the California Legislature to prevent the unlawful diversion and use of the people's water.

I have recently requested the attorneys of Cal-Am, in writing, representing the Carmel River Steelhead Association, to assist in reducing pumping in the Carmel River and providing surface flows into the Carmel River Lagoon to prevent harm and damage to the Carmel River Steelhead species. Cal-Am did not answer the plea to assist the Carmel River Steelhead species and their habitat.

That concludes my testimony.

Robert J. Baiocchi (aka Bob Baiocchi)

Attachment: Background of Bob Baiocchi

#### References

Original Permit 7130B of May 2, 1984  
Original Permit 20808 of October 25, 1995  
Amended Permit 7130B of January 6, 1999  
Amended Permit 20808 of January 6, 1999  
California Water Code  
California Constitution, Article X, Section 2  
Board Order 95-10 of July 6, 1995  
Steelhead Restoration and Management Plan for California; February 1996