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and California Sportfishing Protection Alliance**

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of:)
) **PRE-HEARING BRIEF**
Unauthorized Diversion of Water)
by the California American Water Company,)
d.b.a. California American Water;)
draft Cease and Desist Order WR 2008-00XX-)
DWR; Carmel River, Monterey County, California)
_____)
)

INTRODUCTION

This matter concerns a proposed action by the State Water Resources Control Board (SWRCB or Board) to issue a Cease and Desist Order (CDO) requiring the California American Water Company (CalAm) to make further reductions in its unauthorized diversions from the Carmel River, located in Monterey County, California, as required under prior Board Order WR95-10, as amended.

This brief is filed on behalf of the Carmel River Steelhead Association and the California Sportfishing Protection Alliance (hereinafter Steelhead Association). In accordance with

instruction from the Board at the pre-hearing conference, the Steelhead Association wishes to make the following points in regard to the three issues outlined in the hearing notice on the proposed Cease and Desist Order:

- (1.) We support the proposed Cease and Desist Order. More than enough time has been given to the California American Water Company (Cal-Am) to comply with the conditions of Board Order 95-10 and the Order's phased reduction reducing the illegal diversions by Cal-Am on the Carmel River is reasonable.
- (2.) The Board has ample authority under the California Water Code, Article 10, Section 2 of the California Constitution and under the California Public Trust Doctrine to order Cal-Am to cease or reduce its illegal diversions from the Carmel River.
- (3.) The board has the duty to protect the Carmel River and specifically the Carmel River population of steelhead, a Federally listed species, from the illegal diversions of Cal-Am.
- (4.) The board has the authority and the duty to reallocate the illegally diverted water to instream flow on a water release schedule that fully protects the Carmel River steelhead.
- (5.) The board should develop, in coordination with the National Marine Fisheries Service, the California Department of Fish and Game, and interested stakeholders a management plan for the Carmel River steelhead that uses the previously illegally diverted water to help recover the Carmel River steelhead.

CONCLUSION

For the foregoing reasons, the Steelhead Association requests that the Board adopt the proposed CDO, subject to incorporating information from the hearing described above to regulate the timing and extent of the reductions in CalAm's water diversions from the Carmel River during each year covered by the order.

Dated: April 9, 2008

Respectfully submitted,

s/ Michael B. Jackson

Michael B. Jackson