



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING, MEETING TO RECEIVE PUBLIC POLICY STATEMENTS and PRE-HEARING CONFERENCE

Carmel River in Monterey County

The State Water Resources Control Board will hold a Pre-Hearing Conference, a Meeting to Receive Public Policy Statements and Public Hearing to Determine whether to Adopt a Draft Cease and Desist Order against California American Water

The **Pre-Hearing Conference**
will commence on
Wednesday, March 19, 2008, at 9:00 a.m.

in
the Sierra Hearing Room
Joe Serna, Jr./Cal EPA Building
1001 I Street, Second Floor
Sacramento, CA

The **Meeting to Receive Public Policy Statements**
will commence immediately following a
meeting of the State Water Resources Control Board
on **Tuesday April 1, 2008, no earlier than 1:00 p.m.**

in
the De Anza I Room
Portola Hotel & Spa at Monterey Bay
Two Portola Plaza
Monterey, California

The **Hearing** will commence on
Thursday June 19, 2008, at 9:00 a.m.
and continue, if necessary,
on **Friday, June 20, 2008, at 9:00 a.m.**

in
the Coastal Hearing Room
Joe Serna, Jr./Cal EPA Building
1001 I Street, Second Floor
Sacramento, CA

California Environmental Protection Agency

PURPOSE OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to adopt, with or without revision, a draft Cease and Desist Order (CDO). The draft order was issued against California American Water (CAW) on January 15, 2008 by the Assistant Deputy Director for the Division of Water Rights (Division) for the unauthorized diversion of water from the Carmel River in Monterey County.

BACKGROUND

Water Code section 1831, subdivision (a), provides that when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The State Water Board may issue a CDO only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. Unless the State Water Board receives a timely written request for a hearing, the State Water Board may adopt a CDO without a hearing. In the case of the draft CDO to be considered in this hearing, CAW requested a hearing.

CAW owns and operates San Clemente Dam, Los Padres Dam and 21 downstream extraction wells on the Carmel River. Los Padres Dam is operated pursuant to License 11866 (Application 11674A), and authorizes a maximum withdrawal of 2,950 acre-feet of water per annum (afa). CAW also has water rights for 60 acres of riparian land adjacent to the Carmel River. Finally, CAW jointly holds water right Permit 20808A (Application 27614A) with Monterey Peninsula Water Management District, authorizing the appropriation of up to 2,426 afa of Carmel River water to be diverted to underground storage in the Seaside Groundwater Basin.

On July 6, 1995, the State Water Board adopted [Order WR 95-10](#) regarding four complaints filed against CAW. The order required CAW to terminate unlawful diversions from the Carmel River and to comply with specified conditions. The State Water Board found that CAW's rights to divert 3,376 afa from the Carmel River consist of 1,137 afa under pre-1914 appropriative rights, 60 afa under riparian rights, and 2,179 afa under License 11866 (Application 11674A). In Order WR 95-10, the State Water Board found that CAW's diversions were having an adverse effect on: (a) the riparian corridor of the river; (b) wildlife dependant upon instream flows and riparian habitat; and (c) steelhead which spawn in the river.

On January 15, 2008, the Division issued a draft CDO requiring CAW to cease and desist from diverting water from the Carmel River in excess of its legal rights by reducing its unlawful diversions pursuant to a schedule set forth in the CDO. The draft CDO alleges that since 2000, CAW has illegally diverted at least 7,164 afa from the Carmel River and that CAW's unauthorized diversions continue to have adverse effects on the public trust resources on the river.

A copy of the draft CDO is enclosed with this notice and can be found on the Division's website at <http://www.waterrights.ca.gov/Hearings/caw.html>

By letter dated February 4, 2008, CAW requested a hearing on the draft CDO.

KEY ISSUE

Should the State Water Board adopt the draft CDO? If the draft CDO should be adopted, should any modifications be made to the measures in the draft order? What is the basis for each modification?

HEARING OFFICER AND HEARING TEAM

State Water Board Members Arthur G. Baggett, Jr. and Gary Wolff will preside as hearing officers over this proceeding. Other members of the State Water Board may be present during the pre-hearing conference, the meeting to receive public policy statements, and the hearing. State Water Board staff hearing team members will include Staff Counsel Buck Taylor, Engineering Geologist Paul Murphey, Water Resource Control Engineer Ernest Mona and Environmental Scientist Jane Farwell. The hearing staff will assist the hearing officers and other members of the State Water Board throughout this proceeding.

A staff prosecutorial team will be a party in this hearing. State Water Board prosecutorial team members will include Yvonne West, Staff Counsel, and Reed Sato, Director of the Office of Enforcement. Other members of the prosecution team, from the Division of Water Rights, include Jim Kassel, Assistant Deputy Director for Water Rights, John O'Hagan, Supervising Water Resource Control Engineer, Mark Stretars, Senior Water Resource Control Engineer, and John Collins, Staff Environmental Scientist.

The prosecution team is separated from the hearing team, and is prohibited from having *ex parte* communications with the hearing officers, other members of the State Water Board and members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding.

PRE-HEARING CONFERENCE

The hearing officers will conduct a pre-hearing conference to discuss the scope of the hearing and any other procedural issues on **Wednesday, March 19, 2008 at 9:00 a.m.** The goal of the pre-hearing conference is to ensure that the hearing proceeds in an orderly and expeditious manner. The pre-hearing conference will not be used to hear arguments on, or determine the merits of, any hearing issues, other than procedural matters, unless the parties agree to resolve a hearing issue by stipulation. Following the pre-hearing conference, the State Water Board may, at its discretion, modify the hearing procedures or issues set forth in this notice in whole or in part. **All parties to the hearing must attend the pre-hearing conference.** Failure to attend the pre-hearing conference may result in exclusion from participation in the hearing.

MEETING TO RECEIVE PUBLIC POLICY STATEMENTS

A meeting for the receipt of public policy statements will be held on **Tuesday, April 1, 2008, at no earlier than 1:00 p.m.** in the De Anza I Room at the Portola Hotel & Spa in Monterey, California. The purpose of the meeting is to provide members of the public the opportunity to present non-evidentiary policy statements to the hearing officers and other members of the State Water Board concerning their views on the proposed enforcement action. Persons who wish to address the State Water Board during the public hearing need not file a Notice of Intent to Appear. Policy statements to the State Water Board will be limited to five minutes or such other time as may be established by the hearing officer. Written submissions of oral statements are encouraged. This meeting is **not** the time and place to present evidence for or against the proposed enforcement action. Persons who wish to offer evidence regarding this matter may file a Notice of Intent to Appear for the evidentiary hearing in accordance with the instructions found in this notice. **This meeting will be the only opportunity to present oral public policy statements. Oral statements will not be accepted at the hearing on June 19, 2008. However, written policy statements will be accepted until the beginning of the hearing on June 19, 2008.**

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THE EVIDENTIARY HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, everyone wishing to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than the deadline listed below. Within one week after the deadline for Notices of Intent to Appear, the State Water Board will mail out a list of those who have indicated a desire to participate in the hearing and a copy of all Notices of Intent to Appear that were timely received by the State Water Board. The list is provided in order to facilitate exchange of written testimony, exhibits and witness qualifications in advance of the hearing. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. Copies of witnesses' proposed **testimony, exhibits, lists of exhibits, and qualifications** must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than the deadline listed below.

Noon, Friday, March 14, 2008

Deadline for receipt of Notice of Intent to Appear.

Noon, Friday, May 30, 2008

Deadline for receipt and service of witnesses' proposed testimony, exhibits, lists of exhibits, and qualifications.

IF YOU HAVE ANY QUESTIONS


During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants, including members of the prosecution team regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Staff Counsel Buck Taylor at (916) 341-5188 or by e-mail to BGTaylor@waterboards.ca.gov.

PARKING, ACCESSIBILITY AND SECURITY

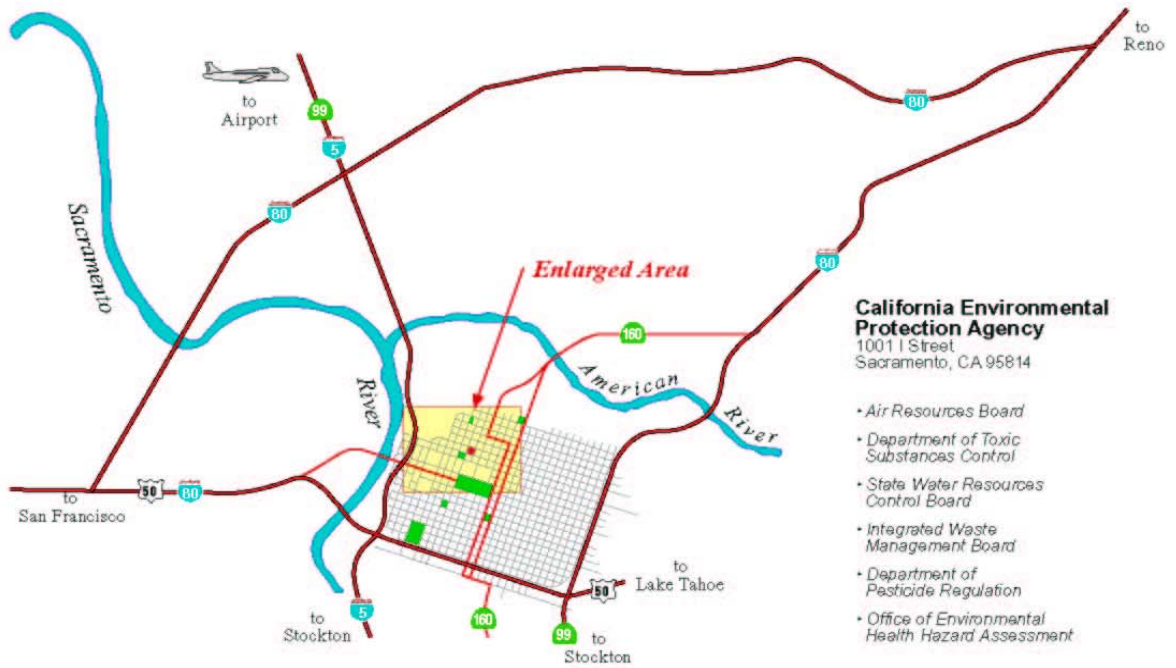
The enclosed maps show the locations and parking for the Portola Hotel in Monterey and the Joe Serna Jr./Cal-EPA Building in Sacramento. The Joe Serna Jr./Cal-EPA Building and the Portola Hotel are accessible to people with disabilities. Individuals who require special accommodations at the Joe Serna Jr./Cal-EPA Building or the Portola Hotel are requested to contact Catherine Foreman, Office of Employee Assistance, at (916) 341-5881.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to the hearing.

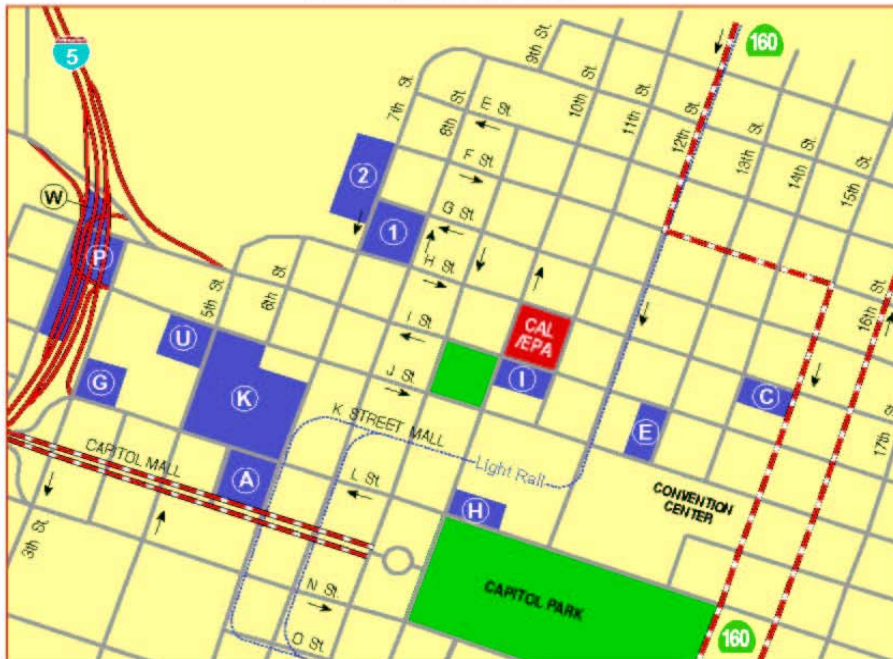
March 5, 2008
Date


Jeanine Townsend
Clerk to the Board

Enclosures



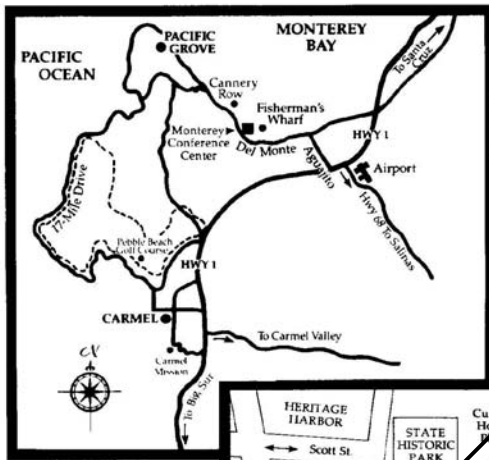
Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

The Portola Hotel & Spa is located adjacent to the Monterey Conference Center

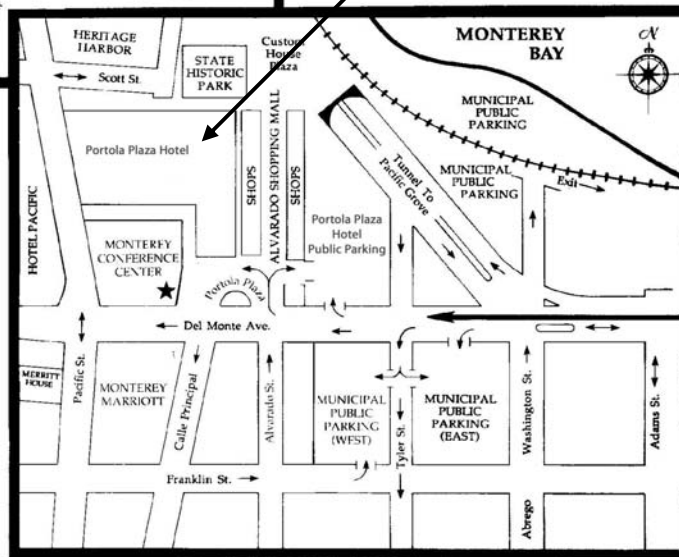


Portola Hotel
Two Portola Plaza

PARKING FEES:

East Garage –
\$5 All Day.
Coins or dollar
bills accepted
or MC/VISA

West Garage –
First hour free.
\$1 per hour –
maximum \$8 per day.



★ Load in entrance

FROM THE NORTH ON HIGHWAY ONE— Take the Del Monte, Pacific Grove exit. Continue straight for seven stoplights. At the seventh stoplight, get in the left turn lane to continue straight on Del Monte to the Conference Center.

FROM THE AIRPORT/HIGHWAY 68 FROM SALINAS— Take the Monterey Fisherman's Wharf exit. At the first stoplight make a right hand turn onto Aguajito. Continue on Aguajito until it ends at Del Monte. From Aguajito make a left onto Del Monte and continue straight for three stoplights. At the third stoplight get in the left turn lane to continue straight on Del Monte to the Conference Center.

FROM THE SOUTH/CARMEL ON HIGHWAY ONE— Take the Aguajito exit. Turn left at the first stoplight (going under the freeway). Continue on Aguajito until it ends at Del Monte. From Aguajito make a left onto Del Monte and continue straight for three stoplights. At the third stoplight get into the left turn lane to continue straight on Del Monte to the Conference Center.

Monterey Conference Center, One Portola Plaza, Monterey, CA 93940, (831) 646-3770

Location and Parking

Monterey Conference Center

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced:

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/water_laws/index.html.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing with the State Water Board and served on the parties. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are California American Water and the prosecution team for the State Water Board. Other persons or entities may participate as authorized by the hearing officer. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence.

A person or entity that appears and presents only a policy statement will not be allowed to make objections, offer evidence, conduct cross-examination, make legal argument or otherwise participate in the evidentiary hearing. The rules for policy statements are discussed below.

3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **the deadline prescribed in the Hearing Notice**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant; (2) the name of each witness who will testify on the participant's behalf; (3) a brief description of each witness' proposed testimony; and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of their testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case-in-chief but wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and an Exhibit Identification Index to the State Water Board in written form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each person who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive copies of written testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: seven paper copies of each of its exhibits; or five paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board and served on the other participants no later than the deadline prescribed in the Hearing Notice.

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officers have discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2003 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
 - e. Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements; written policy statements; written testimony; exhibits; and Exhibit Identification Indexes. In addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officers specify otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel or Word. Electronic submittals to the State Water Board of documents less than 15 megabytes (incoming mail server attachment limitation) in total size may be sent via electronic mail to: wrhearing@waterboards.ca.gov with a subject of "California American Water Cease and Desist Order Hearing." Electronic submittals to the State Water Board of documents greater than 15 megabytes in total size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at: http://www.waterrights.ca.gov/HTML/CAW_CDO.html

6. **ORDER OF PROCEEDING:** The State Water Board member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events:
 - a. **Policy Statements Within the Evidentiary Hearing:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of non-evidentiary policy statements or comments by interested persons who are not hearing participants. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants.² Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the pre-hearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.³
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officers.
 - b. **Presentation of Cases-In-Chief:** Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
 - i. **Opening Statements:** At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.

² The only opportunity to present non-evidentiary policy statements will occur on April 1, 2008 at the public meeting in Monterey, California; however, written statements will be accepted until the beginning of the June 19, 2008 evidentiary hearing.

³ Persons who wish to make policy statements or otherwise address the State Water Board during the public meeting on April 1, 2008 in Monterey, California are not required to file a Notice of Intent to Appear.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.⁴ Each participant will be allowed up to two hours total to present all of its direct testimony.⁵
- iii. **Cross-Examination:** Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b)) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.
- c. **Rebuttal:** After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, five copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

⁴ The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

⁵ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

7. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants, including the members of the prosecution team, regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b)) A document regarding *ex parte* communications entitled, "Ex Parte Questions and Answers" is available upon request or from our website at: <http://www.waterboards.ca.gov/docs/exparte.pdf>.
8. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE STATE WATER BOARD:** Notices of Intent to Appear, written testimony and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
Attention Paul Murphey
P.O. Box 2000
Sacramento, CA 95812-2000

Phone: (916) 341-5435
Fax: (916) 341-5400

Email: wrhearing@waterboards.ca.gov

With Subject of "California American Water Cease and Desist Order Hearing"

STAFF EXHIBITS TO BE OFFERED INTO EVIDENCE

The following items will be offered, by reference, as staff exhibits at the California American Water Cease and Desist Order Hearing:

1. All water right files related to:
 - a. Application 11674
 - b. Application 11674A
 - c. Application 11674B
 - d. Application 27614
 - e. Application 27614A
 - f. Application 27614B
2. Order WR 95-10, Order on Four Complaints Filed Against the California American Water Company, Carmel River (available at <http://www.waterboards.ca.gov/hearings/WaterRightOrders/WRO95-10.pdf>)
3. The consolidated hearing record for the hearing held on Application 27614, Petitions for Change and Time Extension for Permit 7130B (Application 11674B) and complaints filed against the CAW. The hearing held on August 24, 25, 26, 31, and September 1, 8 and 9, and October 19 and 21, 1992 and November 7, 8 and 22, 1994.
4. Order WR 1998-04 – Order Amending Decision 1623 and Order 95-10 Pursuant to Settlement of Litigation (available at <http://www.waterrights.ca.gov/hearings/WaterRightOrders/WRO98-04.pdf>)
5. Order WR 2002-02 – Order Reconsidering WR Order 2001-04-DWR and Implementing Condition 6 of Order WR 95-10 as Modified by Order WR 98-04 (available at <http://www.waterrights.ca.gov/hearings/WaterRightOrders/WRO2002-02.pdf>)
6. State Water Board Decision 1632, In the matter of amended Application 27614; petition for time extension for Application 16674B of Monterey Peninsula Water District to appropriate water from the Carmel River in Monterey County (available at <http://www.waterrights.ca.gov/hearings/decisions/WRD1632.PDF>)
7. January 15, 2008 Draft Cease and Desist Order – In the matter of unauthorized diversion of water by the California American Water Company, Carmel River in Monterey County

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding:
(name of party or participant)

**Cease and Desist Order Hearing for
California American Water
Carmel River in Monterey County**

scheduled for
**Thursday, June 19, 2008, and continuing,
if necessary, on Friday, June 20, 2008**

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing
Address: _____

Phone Number: (____) _____ Fax Number: (____) _____

E-mail Address: _____

**Cease and Desist Order Hearing for
California American Water
Carmel River in Monterey County**

Exhibit Identification Index

Participant _____

Exhibit No.	Description	Status as Evidence	
		Introduced	Accepted



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger
Governor

JAN 15 2008

In Reply Refer to:
JWC:A011674A

CERTIFIED MAIL

B. Kent Turner, President
California American Water
P. O. Box 951
Monterey, CA 93940

Dear Mr. Turner:

NOTICE OF DRAFT CEASE AND DESIST ORDER REGARDING THE CONTINUED UNAUTHORIZED DIVERSION OF WATER FROM THE CARMEL RIVER IN MONTEREY COUNTY

Enclosed is a draft Cease and Desist Order (CDO). This letter serves as notice to California American Water (Cal-Am) of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with this enforcement action. Therefore, this matter requires your immediate attention.

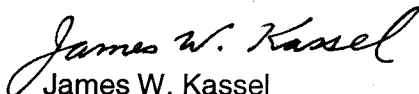
Division staff determined that in the twelve years since Order 95-10 was adopted, Cal-Am has not complied with Condition 2 of that Order. Condition 2 requires Cal-Am to terminate its unauthorized diversions from the Carmel River. Since 1995, Cal-Am has annually diverted approximately 7,150 acre-feet from the Carmel River in excess of the legitimate water right amount recognized by the State Water Board in Order 95-10. This continued unauthorized diversion of water in excess of existing water rights is a trespass under Water Code section 1052. Additionally, Cal-Am's continued illegal diversions are causing continued harm to public resources of the Carmel River.

Based on these findings, I approved the issuance of the enclosed draft CDO that requires Cal-Am to cease and desist from diverting and using water in excess of its legal rights, or comply with the constraints of the enclosed CDO within the specified time schedules. If Cal-Am disagrees with the facts or time schedules for the corrective actions set forth in the enclosed draft CDO, Cal-Am may request a hearing before the State Water Board no later than 20 days from the date of receipt of this notice.

Unless a written request for a hearing regarding the CDO signed by or on behalf of Cal-Am is delivered to or received by mail by the State Water Board within 20 days after the receipt of this letter, the State Water Board may adopt the CDO, based on the facts and information set forth in the enclosed draft CDO, without a hearing (Water Code, § 1834).

If there are any questions concerning this matter, please contact Ms. Yvonne West, Staff Counsel, Office of Enforcement, at (916) 341-5445.

Sincerely,



James W. Kassel
Assistant Deputy Director for Water Rights

Enclosure: Draft Cease and Desist Order

cc: See next page.

California Environmental Protection Agency

B. Kent Turner, President
California American Water

2

JAN 15 2008

cc: David A. Berger, General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93940

Thomas Howard, Chief Deputy Director
State Water Resources Control Board

Victoria A. Whitney, Deputy Director for Water Rights
State Water Resources Control Board

Andy Sawyer, Assistant Chief Counsel
State Water Resources Control Board

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

DIVISION OF WATER RIGHTS

In the Matter of Unauthorized Diversion of Water by the
California American Water Company DBA California American Water
Cease and Desist Order WR 2008-00XX-DWR

SOURCE: Carmel River tributary to the Pacific Ocean

COUNTY: Monterey County

YOU ARE HEREBY GIVEN NOTICE THAT:

The State Water Resources Control Board (State Water Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring California American Water (Cal-Am) to make further reductions in its unauthorized diversions from the Carmel River. The State Water Board issued Order WR 95-10 (Order 95-10) in 1995, determining that a substantial portion of the diversions made from the Carmel River by Cal-Am is unauthorized. At that time, the State Water Board deferred enforcement action and instead established water conservation goals and other actions Cal-Am could take to reduce the effects of its diversions as it sought to obtain an adequate legal water supply. In the twelve years since Order 95-10 was adopted, Cal-Am has not terminated its unlawful diversions from the Carmel River. Therefore, the State Water Board is authorized to issue a CDO in accordance with Water Code section 1831(d) which states:

The State Water Board may issue a CDO in response to a violation or threatened violation of any of the following:

- (1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to Division 2 (commencing with section 1000) of the Water Code.
- (2) Any term or condition of a permit, license, certification, or registration issued under Division 2 of the Water Code.
- (3) Any decision or order of the State Water Board issued under Part 2 (commencing with section 1200) of Division 2 of the Water Code, section 275, or Article 7 (commencing with section 13550) of Chapter 7 of Division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {ADD DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the proposed CDO against Cal-Am for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. The Carmel River is a central coast California stream that drains a watershed area of 255 square miles and flows into the Monterey Bay. Cal-Am owns and operates the San Clemente Dam and the Los Padres Dam and 21 downstream extraction wells on the Carmel River.
2. San Clemente Dam had an original storage capacity of 2,140 acre-feet (af). Water is stored in this facility under pre-1914 appropriative water rights. Los Padres Dam is operated pursuant to License 11866 (Application 11674A), and authorizes a maximum withdrawal of 2,950 acre-feet per annum (afa). Historically, stored water has been released from Los Padres Dam to the river and re-diverted for use at San Clemente Dam. Cal-Am also has legal rights for 60 acres of riparian land adjacent to the Carmel River.
3. Due to extensive sedimentation in San Clemente and Los Padres reservoirs, the primary source of water supply for Cal-Am's customers is the 21 wells situated downstream of San Clemente Dam on the lower Carmel River. The wells pump subterranean water from the Carmel River for customer use. The wells supply about eighty-nine percent of water needs for Cal-Am customers. The balance of water is supplied by pumps drawing water from the Seaside Groundwater Aquifer.
4. On July 6, 1995, the State Water Board adopted Decision 1632 (D-1632) that approved Monterey Peninsula Water Management District's (MPWMD) Application 27614. Decision 1632 approved water rights for development of the proposed 24,000 af New Los Padres Dam Project.
5. On July 6, 1995, the State Water Board also adopted Order WR 95-10 regarding four complaints filed against Cal-Am. The Order required Cal-Am to terminate unlawful diversions from the Carmel River and to comply with specified conditions. The State Water Board found that Cal-Am has legal rights to divert 3,376 afa of water from the Carmel River, after taking into consideration the reduced capacity of Los Padres Reservoir due to sedimentation. (Order 95-10, p. 25.) Cal-Am's rights to divert 3,376 afa from the Carmel River consist of 1,137 afa of pre-1914 appropriative + 60 afa of riparian + 2,179 afa under License 11866 (Application 11674A).
6. Order 95-10 and D-1632 were both later amended by Orders 98-04 and 2002-02 to allow: 1) direct diversion and diversion to storage throughout the year from the Carmel River at times when flows were physically available over and above fish flow requirements; 2) that the total quantity of water originating in the Carmel River diverted to beneficial use by Cal-Am and MPWMD could not exceed 16,000 af; and 3) that Cal-Am would cease withdrawals of water from the San Clemente Dam and reduce diversions from production well facilities located in Subunit 2 of the Carmel River during low flow periods of the year, except during an emergency. The 16,000 af identified by Order 98-04 includes rights established by License 11866, Permit 7130B, Application 27614, Application 30215, pre-1914 appropriative and riparian rights.
7. In 1995, Cal-Am was diverting about 14,106 afa of water from the Carmel River to supply water to approximately 100,000 people in the greater Monterey Peninsula area. (Order 95-10, p. 1)
8. In Order WR 95-10, the State Water Board found that Cal-Am's diversions were having an adverse effect on: (a) the riparian corridor downstream of river mile 18.5; (b) wildlife dependent upon the corridor; and (c) steelhead and other fish that inhabited the river. (Order WR 95-10, pp. 25-8, 33-34.) There continues to be an annual drawdown or drying of the Carmel River in the area upstream of the Highway 1 bridge. Because Cal-Am is the largest diverter of water on the river, this drawdown of the river is attributable, at least in part, to Cal-Am's illegal diversions from the Carmel River. Cal-Am's pumping from the subterranean stream contributes to the reduction of surface flow. This reduction of flows creates segregated small pools of water that trap and strand steelhead and other fish which inhabit the river. The potential for substantially higher steelhead mortality is mitigated by volunteers from the local community who make two sweeps of the river annually to rescue stranded steelhead. Nevertheless, there are adverse effects on steelhead and other fish caused by the river drawdown.

9. Order 95-10 imposed several conditions on Cal-Am's continued unauthorized diversion from the Carmel River. (Order 95-10, p. 40) Condition number 2 of Order 95-10 states:

*Cal-Am shall diligently implement one or more of the following actions to **terminate** its unlawful diversions from the Carmel River: (1) obtain appropriate permits for water being unlawfully diverted from the Carmel River; (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of the Order which was to maximize production from the Seaside wells to honor servicing the existing connections and honoring existing commitments and to reduce diversions from the Carmel River. (Emphasis added)*

10. Since before 1996 Cal-Am and MPWMD have been attempting to develop other projects to obtain additional water to serve Cal-Am's customers. These projects have consisted of:

- Development and construction of a new Los Padres Dam (1995-1997). The New Los Padres Dam Project was presented to voters in the area in 1997. The project was not approved because of apparent growth inducing concerns in Carmel and the Carmel Valley area of Monterey County.
- Development of the Aquifer Storage and Recovery (ASR) project (2002 to present). Flows of the Carmel River in excess of the National Marine Fisheries Service fishery bypass requirements are proposed to be diverted from the river to underground storage in the Seaside Groundwater Aquifer. The State Water Board, in issuing water right Permit 20808A (Application 27614A) for the ASR project, allows the diversion of up to 2,426 afa of water from the Carmel River when flows exceed the bypass flows necessary for protection of endangered steelhead. Water is to be injected and stored underground in the Seaside Groundwater Aquifer before withdrawn for use.
- Development of the Coastal Water Project (2005-2013). This project proposes a 10,370 afa desalination plant. Three locations are currently being considered for development of the facility.

11. Condition 3(b) imposed by Order 95-10 states:

Urban and irrigation conservation measures shall remain in effect until Cal-Am ceases unlawful diversions from the Carmel River. Conservation measures required by the District shall have the goal of achieving 15 percent conservation in the 1996 water year and 20 percent conservation in each subsequent year. To the extent that the requirement conflicts with prior commitments (allocations) by the District, the Chief, Division of Water Rights shall have the authority to modify the conservation requirement. The base for measuring conservation savings shall be 14,106 afa. Water conservation measures required by this Order shall not supersede any more stringent water conservation requirements imposed by other agencies.

12. In 1996-1997, Cal-Am failed to meet the reduction in diversions from the Carmel River required by Order 95-10 and an Administrative Civil Liability complaint (ACL) was issued. Cal-AM entered into a settlement agreement with the Division in response to that ACL complaint in which Cal-Am agreed to implement additional water conservation measures. In 1998, Cal-Am reduced its diversion of water from the Carmel River from 14,106 afa to 11,285 afa. Since 1998 Cal-Am has submitted quarterly monitoring reports of its monthly water use showing diversions between 9,538 af and 11,178 af of water annually from the Carmel River. During the same period, MPWMD reports Cal-Am's production from the Carmel River between 10,133 afa and 11,179 afa. (MPWMD's Technical Memorandum 2006-02, Table 1) Both of these reported amounts exclude the water diverted from the Carmel River to the Seaside Groundwater Aquifer.

13. MPWMD's Regulation 15, adopted in 1999 and amended in 2005, calls for conservation and rationing of water within the MPWMD/Cal-Am service area in drier years. Since Regulation 15 was adopted, Cal-Am has been operating under Stage 1 Water Conservation guidelines. Regulation 15, as shown below, identifies a plan that can be implemented to reduce water diversion and consumption.
 - Stage 1 Water Conservation guidelines call for Cal-Am to maintain its annual production of water from the Carmel River to less than 11,285 afa.
 - Stage 2 Water Conservation guidelines call for Cal-Am to maintain water use under regulatory constraints by implementing Landscape Water Budgets for large irrigators of three acres or more. This conservation level is triggered if Cal-Am fails to meet the end of month target amounts.
 - Stage 3 Water Conservation guidelines call for an immediate additional 7% reduction in water use if Cal-Am's current year to date end of month production amount exceeds the historical average year to date end of month production amount: 1) twice during the November to March period of each year; or 2) once during the April to September period of each year.
 - Stage 4 Water Rationing guidelines call for an additional 15% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 27,807 af but not less than 21,802 af.
 - Stage 5 Water Rationing guidelines call for an additional 20% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 21,802 af but not less than 15,615 af. If total usable storage is equal to or greater than 27,807 af on May 1, no water rationing is imposed.
 - Stage 6 Water Rationing guidelines call for an additional 35% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 15,615 af but not less than 9,610 af. If total usable storage is equal to or greater than 27,807 af on May 1, no rationing shall be imposed.
 - Stage 7 Water Rationing guidelines call for an additional 50% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 9,610 af. If total usable storage is equal to or greater than 27,807 af on May 1, no water rationing shall be imposed.
14. Since 1995, the population of the Monterey Peninsula area has increased from 100,000 to the current population figure of 112,000. In water year 2006 Cal-Am reportedly diverted 10,540 af from the Carmel River for consumptive use. The record of water diverted from the Carmel River during water year 2007 is incomplete because, as of the date of this action, Cal-Am has failed to file the 2007 fourth quarter report as required by condition 13a of Order 95-10.
15. On May 18, 2007, MPWMD met to discuss the future water needs for the Monterey Peninsula area including Carmel, Monterey and Seaside, The Presidio (Department of Army), Del Rey Oaks, Pacific Grove, Sand City, and the Monterey Peninsula Airport District. Based on the general plans provided by each entity within the service area, MPWMD estimates the total amount of water needed for future development to be an additional 4,545 afa.
16. On November 30, 2007, the State Water Board amended Permit 20808 (Application 27614) with the issuance of Permit 20808A that allows for the diversion of up to 2,426 af of water from the Carmel River for injection into wells located in the Seaside Aquifer as part of the ASR project. Permit 20808A requires that for the protection of the steelhead fishery in the Carmel River, minimum instream bypass flow requirements must be met before diversions from the Carmel River may occur.

17. Order 95-10 condition 2 intended that Cal-Am would make one-for-one reductions in the unlawful diversions from the Carmel River for water obtained from other sources, such as conservation. The current water management strategy used by Cal-Am/MPWMD, however, has not resulted in any significant reduction of unlawful diversions from the Carmel River since 1998. Instead, it appears that water savings resulting from conservation efforts have been redirected to support marginal increases in development.

THE STATE WATER BOARD FINDS:

1. Since 2000, Cal-Am has illegally diverted at least 7,164 afa from the Carmel River. Even with the approval of amended Permit 20808A, Cal-Am will still need to illegally divert between 4,738 afa and 7,164 afa (depending on the type of water year) to meet its current level of water use unless additional conservation measures are mandated and/or alternative sources are utilized. This continued diversion is considered a trespass under Water Code section 1052.
2. Cal-Am’s unauthorized diversions continue to have adverse effects on the public trust resources on the Carmel River and should be reduced.
3. In the 12 years since Order 95-10 was adopted, Cal-Am has not complied with condition 2 of that Order which requires Cal-Am to terminate its unlawful diversions from the Carmel River. In fact, Cal-Am received an ACL in 1996-1997 for failure to reduce diversion from the Carmel River and in subsequent years has not made any significant reductions in its diversions beyond the initial 20% reduction required by condition 3(b) of Order 95-10.
4. Cal-Am’s failure to reduce its unauthorized diversion along with the continued increase in demand for water within the Cal-Am/MPWMD service area, due to population growth and continued development, demonstrates a substantial risk that Cal-Am will continue its unauthorized diversions unless the State Water Board takes further action.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, Cal-Am shall cease and desist from diverting water from the Carmel River in excess of its legal rights in accordance with the following corrective actions:

1. Commencing on October 1 of the water year (October 1 through September 30) following the date of this Order, Cal-Am shall reduce its unauthorized diversions from the Carmel River in accordance with the following reduction schedule until all unlawful diversions of water from the Carmel River have been curtailed:

Water Year*	Percent Reduction**	Max. End of Year Diversion Amount
2008–09	15 percent	9,592 afa
2009–10	15 percent	9,592 afa
2010–11	20 percent	9,028 afa
2011–12	20 percent	9,028 afa
2012–13	35 percent	7,335 afa
2013–14	35 percent	7,335 afa
2014--	50 percent	5,642 afa

* A water year is defined as October 1 of each year to September 30 of the succeeding year.

**The base line for measuring the percent reduction shall be 11,285 afa.

Water diversion reduction measures required by this Order shall not supersede any more stringent water conservation requirements imposed by other agencies.

2. The State Water Board Deputy Director for Water Rights (Deputy Director) shall have the authority to modify the above reduction diversion schedule upon a showing by Cal-Am or MPWMD that such a reduction would have adverse impacts on public health and safety.
3. Within 90 days of the date of this Order, Cal-Am shall submit a work plan detailing how Cal-Am will comply with the above schedule for reducing water diversion from the Carmel River while developing alternative sources of supply to bring Cal-Am into compliance with its legal water right entitlements. The work plan shall consider all practical measures to reduce Carmel River demand or increase supplies and shall have a time line for achieving these measures. Cal-Am shall modify the plan in accordance with direction from the Deputy Director and shall implement the final work plan after its approval by the Deputy Director.

Upon the failure of any person or entity to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Water Code, § 1845, subd. (a).) Section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the [board], shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the [board] pursuant to section 1055.

STATE WATER RESOURCES CONTROL BOARD

James W. Kassel
Assistant Deputy Director for Water Rights

Dated: