

**California American Water Company Cease and Desist Order Hearing
Reply Brief
Of Planning and Conservation League,
Prepared by Jonas Minton, November 4, 2008**

Summary

1. Despite California America Water Company's mischaracterization of Condition 2 of Water Board Order 95-1, it is still violating that Order.
2. Readily available alternatives exist that would allow California American Water Company to fully comply with the draft Cease and Desist Order recommended by the Prosecution Team.
3. Adoption of the Cease and Desist Order recommended by the prosecution team is required to cause California American Water Company to cease diversions from the Carmel Rive in excess of its rights.
4. The evidence fully supports a finding that the remedy proposed by the Prosecution Team protects Public Trust resources

California American Swater Company is Still Violating Order 95-10

California American Water Company's closing brief in this matter mis-characterizes Condition 2 as follows,

"The Record and Prior Rulings by the Board Support An Interpretation of Condition 2, Which Requires CAW Maintain A Consistent Effort To Acquire Alternative Water Supplies" (from California American Water Company Closing Brief starting at page 11, line 18.)

That is a gross mischaracterization of condition 2 which states,

Cal-Am shall diligently implement one or more of the following actions to terminate its unlawful diversions from the Carmel River: (1) obtain appropriative 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 this Order not this condition, and/or (3) contract with another agency having appropriative rights to divert and use water from the Carmel River.

Condition 2 does not require CALAM to “maintain a consistent effort,” but rather to “diligently implement.” That is a significant difference. The action required is “implementation.” The word “diligent” is an adjective that modifies “implementation.”

The State Water Resources Control Board did not order California American Water Company to “diligently pursue” implementation. The wording is clear, “diligent implementation.”

The only question is whether there has been “diligent implementation.” The record is clear that implementation has not occurred. It is also clear that after 13 years there has not been “diligent” implementation.

Readily available alternatives exist that would allow California American Water Company to fully comply with the draft Cease and Desist Order recommended by the Prosecution Team.

Testimony by Mr. Kasower demonstrated that there are alternative water supplies available that would allow California American Water Company to eliminate its diversions from the Carmel River in excess of its water rights (PCL 2).

It is appropriate to note that these projects (brackish water desalination, water recycling, surface water diversions from the Salinas River, etc.) all use technologies that have been available at least since Water Board Order 95-10 was adopted. Mr. Kasower further testified that these projects will be included in the Environmental Impact Report being prepared by the California Public Utilities Commission.

The schedule set forth in the Prosecution Team’s draft Cease and Desist Order could be fully complied with if true diligence was applied.

Adoption of the Cease and Desist Order recommended by the prosecution team is required to cause California American Water Company to cease diversions from the Carmel River in excess of its rights.

As discussed in Planning and Conservation League's Closing Brief in this matter, implementation of several of the projects that would allow California American Water Company to eliminate its illegal diversions requires timely cooperation by other agencies in the Monterey area.

There was nothing submitted in the Closing Briefs of any of those agencies which indicated any particular sense of urgency for them to cooperate with California American Water company to expedite implementation of those projects.

Without adoption of a Cease and Desists Order as recommended by the Prosecution Team, the attitudes and actions by those agencies will remain unchanged.

The evidence fully supports a finding that the remedy proposed by the Prosecution Team protects Public Trust resources.

California American Water Company's Closing Brief maintains that,

"The evidence does not support a finding that the remedy proposed by the prosecution team protects public trust resources. (starting at page 17, line 26).

The brief goes on to state,

"The witnesses who testified do not have appropriate expertise." (page 17, lines 19 and 20.)

The hearing record plainly refutes these assertions. Joyce Ambrosius qualifications are as set forth in the record starting on page 20, line 11.

**11 MS. AMBROSIUS: I have a bachelor's degree in
12 fisheries from Humboldt State University. I've been
13 working as a fisheries biologist for 17 years.
14 For the last ten years, I've been working with
15 National Marine Fisheries Service specifically on the
16 central California coast and specifically in the Carmel
17 River.**

Her professional conclusions as to the adverse impacts of California American Water company's diversions on fish are set forth in the testimony starting at page 44, line 8,

**MR. SATO: I think where I was in questioning
9 to Ms. Ambrosius is: Is there an adverse impact to the
10 steelhead from Cal Am's diversions of water from the
11 Carmel River in excess of 3,376 acre feet per annum?
12 MS. AMBROSIUS: Yes, and I said there was.
13 There's a -- from the illegal diversions, it decreases
14 the amount of juvenile habitat for steelhead in the**

15 river. And it causes the fish rescues to occur every
16 year. And of those fish that don't get rescued, they
17 die in the river that dries up.
18 There's also an increase in predation. There
19 is an increase in competition for food in the area that
20 does stay wetted. And there's also impacts to the
21 lagoon.
22 MR. SATO: And is there an adverse impact to
23 the riparian corridor along the Carmel River from Cal
24 Am's diversions of water from the Carmel River in
25 excess of 3,376 acre feet per anum?

1 MS. AMBROSIUS: Yes, there is. Because of the
2 illegal diversions, the riparian vegetation has died
3 off, and this has caused bank erosion. And to fix the
4 bank erosion, the different landowners along the river
5 have hardened the banks with riprap and other material
6 that decreases the amount of riparian vegetation
7 allowed to grow on the bank.
8 The erosion also increases sedimentation into
9 the river which impacts the fish, and there is the
10 decrease in the availability of large woody debris to
11 the river.

Conclusion

Thirteen years after Water Board Order 95-10 was adopted, and after days of testimony in this matter, the record is clear. California American Water Company has continued to violate that order.

California American Water Company has asked to be allowed to keep the status quo with respect to implementation of that order. Maintenance of the status quo would do exactly that, maintain the status quo.

The only germane issue remaining is what is required to meet the objectives of that original order. It is appropriate for the State Water Resources Control Board to adopt a Cease and Desist Order as recommended by the Prosecution Team.