



July 11, 2016

Felicia Marcus, Board Chair
Tom Howard, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Matthew Quint
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Dear Ms. Marcus, Mr. Howard and Mr. Quint,

The Planning and Conservation League and the Sierra Club submit these comments on the Preliminary Staff Recommendation to Modify Cease and Desist Order WR 2009-0060 (“Preliminary Recommendation”), released by the SWRCB on June 17, 2016.

As you recall PCL initiated and was a party in the proceeding in 2008 that led to the Board’s issuance in 2009 of the CDO. The Sierra Club was also an active party in that proceeding. That was due to our concerns over the effects of the illegal diversions as well as the recognition that replacement water supplies were possible. We believe the CDO continues to be necessary in order of provide the incentive for the parties to fully cooperate on the implementation of those alternative water supplies.

After issuance of the CDO PCL and the Sierra Club have been working closely with CALAM and other parties to bring those alternative water supplies on line. We have been active parties at the California Public Utilities Commission proceedings for their approval of CALAM expenditures for those projects. We have been in countless hours of brainstorming, problem solving and settlement negotiations including discussions with your staff on a possible extension of the CDO (before the ex parte rule went into effect for this matter).

Despite all these efforts by many parties it is now clear that the alternative projects cannot be implemented in time for CALAM to replace the illegal diversions by December 31, 2016. After much negotiation with CALAM and other affected parties PCL and the Sierra Club agreed to support the Amended Application for Order Modifying the CDO submitted by CALAM to the Board on April 28, 2016. (See PCL and Sierra Club letter to Barbara Evoy, SWRCB April 28, 2016).

With that we offer these comments on the Preliminary Staff Recommendation:

1. We agree with staff's recommendation to add the new milestone; "CPUC approval of (1) the Water Purchase Agreement for Cal-Am's purchase of Pure Water Monterey water, and of (2) construction of the Cal-Am components of the Pure Water Monterey (sic) conveyance facilities, including the Monterey (sic) pump station and pipeline."

Based on a ruling from CPUC Administrative Law Judge Gary Weatherford issued July 6, 2016 it is clear they are working to have a Proposed Decision ready for full Commission action in September.

<https://mail.google.com/mail/u/0/#search/cdo/1559992e57f6286f?projector=1>

However it is possible that there could be some minor procedural delays that could push Commission action back a month or two. Therefore PCL recommends that the deadline for that milestone be December 31, 2016.

2. Similarly we agree with staff's recommendation to add the milestone, "Start of construction of the Cal-Am components of the Pure Water Monterey project, meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work." with a milestone deadline of September 30, 2017.

3. PCL continues to support an Effective Diversion Limit of 8,310 acre feet per year. As we went into our negotiation with CALAM we were at the number 8,000 acre feet. However CALAM in good faith agreed to contribute funding to the purchase of the Rancho Canada golf course with a condition that net diversions of about 300 acre feet per year for the golf course would be discontinued. From the perspective of the river and its water dependent environmental uses that means the net effect will be the same as if the EDL was 8,000 acre feet (virtually the same as the staff's recommended 7,990 acre feet).

In addition, staff of the new land owner, the Trust for Public Lands, have indicated that they intend to make a substantial portion of that 300 acre feet per year reduction permanent. What that means is that even after CALAM has fully eliminated its illegal diversions the River will see an additional 300 acre feet of flow.

In order to provide assurances attendant to that transaction PCL continues to support inclusion of paragraph (6) of CALAM's Amended Application into a modified CDO. "The Forbearance Agreement: Prior to the adoption of this Order, CAW executed a voluntary agreement with certain Carmel River water rights holders

for the temporary forbearance of lawful diversion of riparian water rights during calendar years 2016, 2017, 2018 and 2019, resulting in the dedication of substantial amounts of water to instream purposes. The State Water Board recognizes the diligent efforts of the parties to reach this forbearance agreement, and that the use of water under the agreement is a reasonable and beneficial use of water for instream purposes and is encouraged by and consistent with State policy and water rights law. The temporary dedication of water for such instream purposes pursuant to a forbearance agreement, in the circumstances of this particular transaction, will not prejudice the subject water rights that exist at the time the parties entered into the voluntary forbearance agreement.”

Sincerely yours,

A handwritten signature in black ink that reads "Jonas Minton". The signature is written in a cursive style with a large initial 'J'.

Jonas Minton
Senior Water Policy Advisor
Planning and Conservation League

A handwritten signature in blue ink that reads "Laurens Silver". The signature is written in a cursive style with a large initial 'L'.

Laurens Silver
Counsel to the Sierra Club