

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER RIGHTS
JULY 19, 2016**

ITEM 7

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION TO ADOPT AN ORDER REVISING THE COMPLIANCE SCHEDULE IN STATE WATER BOARD ORDER WR 2009-0060, A CEASE AND DESIST ORDER REGARDING CALIFORNIA-AMERICAN WATER COMPANY'S UNLAWFUL DIVERSIONS FROM THE CARMEL RIVER - MONTEREY COUNTY

DISCUSSION

On July 6, 1995, the State Water Resources Control Board (State Water Board) adopted State Water Board [Order 95-10](#), in response to four complaints filed regarding Carmel River diversions by the California-American Water Company (Cal-Am). Order 95-10 found that Cal-Am was unlawfully diverting approximately 10,730 acre-feet per annum (afa) from the Carmel River. Order 95-10 required Cal-Am to diligently pursue alternative water supplies, among other actions.

On October 20, 2009, the State Water Board adopted Order WR 2009-0060, a cease and desist order (CDO) regarding Cal-Am's unlawful diversions from the Carmel River. At that time, Cal-Am was diverting an average of 10,978 afa from the Carmel River, with an average of 7,602 afa being without a valid basis of right. [Order WR 2009-0060](#) requires Cal-Am to take various actions, and to terminate all unlawful diversions from the Carmel River by December 31, 2016. Since adoption of Order 95-10, several large-scale proposals to address unlawful diversions from the Carmel River by providing an alternative to supply the Monterey Peninsula communities have been proposed, vetted, and ultimately failed, including the proposed New Los Padres Dam, the proposed Carmel River Dam and Reservoir, the Coastal Water Project, and the Regional Desalination Project. At the time the Order was issued, Cal-Am, other parties to the hearing, and the State Water Board anticipated that the Coastal Water Supply Project, a proposed large-scale desalination project, would be developed and used as the primary water supply for the Monterey Peninsula communities. It was anticipated that the Coastal Project would be completed by December 31, 2016, and would allow Cal-Am to halt unlawful diversions. The Coastal Water Supply Project was never developed. Cal-Am's unlawful diversions from the Carmel River have decreased significantly since 2009, but remain substantial.

For approximately two years prior to November 20, 2015, State Water Board staff met with representatives of Cal-Am and other interested parties with the goal of seeing whether it was possible for Cal-Am to develop proposed modifications to State Water Board Order 2009-0060 that staff and other stakeholders could recommend to the State Water Board. These discussions were productive, and a broad framework emerged. Cal-Am would propose extending the CDO's compliance schedule until the end of December 31, 2020. The compliance schedule would require that Carmel River pumping be held at levels reflecting recent conservation and water supply measures, but without additional reductions so long as annual milestones reflecting progress in creating alternative, lawful supplies were met. Failure to meet a milestone would result in a 1,000 afa reduction in the compliance schedule's diversion

limits, such that diversions ultimately would be limited to lawful supplies regardless of whether the envisioned water supply projects were ever built. This broad framework forms the basis of the applications described below and of the staff recommendation to the State Water Board.

On November 20, 2015, Cal-Am, along with the Monterey Peninsula Regional Water Authority (MPRWA), Monterey Peninsula Water Management District (MPWMD), the Pebble Beach Company, and the City of Pacific Grove, filed an application under Water Code section 1832 to modify Order WR 2009-0060. The applicants request that the State Water Board issue a new, amended order that extends the deadline for Cal-Am to terminate all unlawful diversions from the Carmel River from December 31, 2016, to December 31, 2020, to allow additional time to develop replacement water supplies. On April 28, 2016, the same applicants filed an amended application requesting an extension of the compliance timeline until December 31, 2021, and other changes to the initial application.

The amended application requests an extension of the deadline for Cal-Am to eliminate unauthorized diversions from December 31, 2016 until December 31, 2021, with certain milestones to demonstrate progress and mandatory reductions of diversions if milestones are missed. It anticipates that two new water supply projects, the Monterey Peninsula Water Supply Project (MPWSP) and the Pure Water Monterey Project (Pure Water), will provide water to Monterey Peninsula communities. MPWSP is a proposed desalination project with a capacity of up to 9.6 million gallons per day. Pure Water would deliver purified recycled water for groundwater replenishment, domestic delivery to Monterey Peninsula urban water customers and treated water for Salinas Valley irrigation. MPRWA and MPWMD are jointly developing Pure Water. Additionally, applicants anticipate a second pipeline for an existing groundwater storage project, the Aquifer Storage and Recovery Project, will allow for additional lawful diversions from the Carmel River in wet years. Under the requested changes to Cal-Am's compliance schedule, Cal-Am would not be penalized for continued Carmel River diversions up to 8,310 afa, so long as permitting and construction milestones for the water supply and diversion projects are met.

The application proposes a "credit" system if Cal-Am surpasses the diversion limits in one year, if Cal-Am has pumped less than the diversion limit in previous years. Additionally, the application requests changes to the manner in which ASR pumping and agreements to reduce pumping of lawful diversions affect the diversion limits in the compliance schedule. Applicants also request other minor changes to Order 2009-0060.

State Water Board staff noticed the amended application on April 28, 2016 and circulated a listing of its proposed recommendations for modifications to Order WR 2009-0060 and a "Notice of Comment Deadline & Rationale Document for Preliminary Staff Recommendation" after an initial comment period. Staff recommends adopting the proposed framework for an extension of the CDO, and also recommends certain changes to the application. The primary changes from the application that staff recommends are: (1) adjusting the diversion limit to 7,990 afa based on an additional year of data and on adoption of the proposed accounting methodology for pumping under ASR permits; (2) clarifying that 7,990 would be a hard cap on diversions, absent adjustments to account for unanticipated aquifer protection actions or health and safety; (3) a limitation on reductions of the diversion limits to end at the level of lawful diversions; and (4) adjustments to the manner in which small water projects, instream flow agreements, and credits are accounted for.

POLICY ISSUE

Should the State Water Board adopt the proposed Resolution?

FISCAL IMPACT

This activity is budgeted within existing resources, and no additional fiscal demands will occur as a result of approving this item.

REGIONAL BOARD IMPACT

None

STAFF RECOMMENDATION

Staff recommends that the State Water Board adopt the proposed Resolution to adopt an order revising the compliance schedule in State Water Board Order WR 2009-0060.

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| <p>State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update, 2008-2012: to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.</p> |
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