

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



2016 MAY 23 PM 12:05

DIVISION OF WATER RIGHTS
SACRAMENTO

May 20, 2016

VIA FIRST CLASS MAIL

BRC/MJQ

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



OR WR 2009-0060

Re: Comments in Support of the April 28, 2016 Amended Application to Modify the State Water Resources Control Board's Order WR 2009-0060 to Extend the Deadline to Terminate All Unlawful Diversions from the Carmel River from December 31, 2016 to December 31, 2021

Dear Mr. Quint:

SUMMARY

The California Public Utilities Commission (Commission) at its May 12, 2016 Public Meeting unanimously approved Agenda Item #47 authorizing the filing of these comments with the State Water Resources Control Board (State Water Board) in support of the April 28, 2016 Amended Application to modify the State Water Board's Order WR 2009-0060 (Cease and Desist Order) to extend the deadline for California-American Water Company (Cal-Am) to terminate all unlawful diversions from the Carmel River from December 31, 2016 to December 31, 2021.¹ The Commission respectfully offers two compelling arguments for the State Water Board's consideration in support of extending the deadline for the Cease and Desist Order to December 31, 2021. First, sufficient progress has and continues to occur in reducing unlawful diversions from the Carmel River to support extending the deadline. Second, extending the deadline is reasonable and in the public interest as it avoids potential adverse health, safety, and economic impacts that would result from severe water rationing required to comply with Cal-Am terminating all unlawful diversions from the Carmel River by December 31, 2016.

Sufficient Progress has and continues to occur in reducing unlawful diversions from the Carmel River to justify extending the deadline until December 31, 2021.

¹ The Amended Application was jointly filed by Cal-Am along with the Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, the Pebble Beach Company, and the City of Pacific Grove (Jointly Petitioners).

The Petitioners in the Amended Application outline in Section IV the various efforts that have occurred that have significantly reduced water demand and thus reduced unlawful Carmel River diversions, including: (1) a moratorium on new construction and increased uses at existing connections; (2) a revised conservation and rationing; (3) water conservation programs, (4) infrastructure and operational improvements to reduce system losses and customer leaks and; (5) an April 25, 2016 forbearance agreement with The Trust for the Public Land to reduce pumping from the Carmel River and to retire irrigation of the two Rancho Canada golf courses using Carmel River water. The April 25, 2016 forbearance agreement is pending before the Commission, and the Assigned Commissioner and ALJ will develop a schedule to consider in 2016 the impact of this request on Cal-Am ratepayers. Efforts that have significantly reduced water demand have contributed to a nearly 50% reduction in water production from Cal-Am's Carmel Valley wells over the period 2009-2015.²

Petitioners have also developed and implemented various supplemental water supply projects to reduce unauthorized Carmel River diversions, including: (1) use of Table 13 water rights;³ (2) Pebble Beach wastewater reclamation project; (3) additional aquifer storage and recovery capacity; (4) temporary water use rights from Eastwood Trust; (5) Carmel River instream flow enhancement program; and (6) City of Pacific Grove recycled water project. Taken together, the demand and supply efforts undertaken by Cal-Am and the Petitioners have reduced the unlawful Carmel River diversions by over 65% during the period 2009-2015.⁴

In addition, Cal-Am and Petitioners have implemented and propose additional measures to enhance and improve conditions for fish and wildlife resources in the Carmel River watershed, including: (1) funding for Carmel River mitigation project; (2) Carmel River reroute and San Clemente Dam removal project, authorized by the Commission in 2012; (3) Los Padres Dam downstream fish passage facilities; (4) Los Padres Dam long-term planning study; and (5) commitment to fund and implement additional mitigation projects.

² Cal-Am Annual Reports, Monterey District, Schedule D-1.

³ Board Decision 1632, Condition 10, provides an opportunity for entities named in Table 13 of Decision 1632 to obtain a water right permit with a priority superior to the Monterey Peninsula Water Management District's Permit 20808. As a named entity in Table 13, Cal-Am pursued and satisfied requirements under Decision 1632 to obtain additional appropriative water rights under Board Permit 21330 from the Carmel River. In Water Year 2014-2015, Cal-Am was able to divert 42.2 acre-feet pursuant to Permit 21330, and reduce unauthorized diversions by an equal amount.

⁴ Cal-Am Annual Reports, Monterey District, Schedule D-1.

Finally, in an effort to bring forward significant supplemental water supplies, a Commission Ruling was issued on April 25, 2016. The Ruling provides for a Commission decision scheduled in August 2016 that will address the water supply agreement between Cal-Am and the developers of the Pure Water Monterey Groundwater Replenishment Project (GWR) that is necessary to obtain project financing. With project financing, the GWR project will be able to be developed and to provide supplemental water supplies of up to 3,500 acre-feet per year by early 2018. The Commission decision will also address the construction, financing, and ratemaking for the conveyance pipeline (Monterey pipeline) to supply GWR supplemental water supplies to Cal-Am's customers. Taken together, addressing these issues will make supplemental water supplies available to significantly reduce Cal-Am's unlawful diversions from the Carmel River in the near future. Based on the recent four-year average of Cal-Am's water production from its Carmel Valley wells, the GWR project's supplemental supplies will reduce unlawful diversions by approximately 82%.

Finally, the Commission continues to move forward expeditiously in reviewing the Monterey Peninsula Water Supply Project (MPWSP) in Application (A.) 12-04-009. Under the current preferred option submitted by Cal-Am in March 2016, the MPWSP would provide 6.4 million gallons per day of desalinated water. In April 2015, the Commission published an earlier Draft Environmental Impact Report (EIR) on the MPWSP for comment. In September 2015, the Commission notified parties to A.12-04-019 that based on comments it decided to revise and recirculate the Draft EIR as a joint EIR/Environmental Impact Statement (EIS) in coordination with the Monterey Bay National Marine Sanctuary (the federal lead agency) to satisfy both CEQA and NEPA requirements. In March 2016, the Commission announced an updated schedule for the CEQA/NEPA portion of A.12-04-019. The schedule includes a draft EIR/EIS by December 2016, a final EIR/EIS by September 2017, and a proposed decision on the EIR/CPCN in November 2017. The MPWSP in conjunction with the GWR project will allow Cal-Am to terminate all unlawful diversions from the Carmel River

It is reasonable and in the public interest to extend the deadline for Cal-Am to terminate all unlawful diversions from the Carmel River as it avoids potential adverse health, safety, and economic impacts on the Monterey Peninsula that would result from severe water rationing necessary to comply with the current December 31, 2016 deadline.

If the Board were not to extend the December 31, 2016 effective date for the Cease and Desist Order, severe water rationing on the Monterey Peninsula will be required. Cal Am's demand for Carmel River water has averaged 7,656 acre-feet per year over the last four years. Given Cal-Am's legally permitted Carmel River diversions of 3,376 acre-feet per year, the current effective date for the Cease and Desist Order will require severe rationing to achieve a further 4,280 acre-feet per year of supply reductions

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beginning January 2017. This would represent a 43% reduction in demand for an area with some of the lowest per capita water use in California. The level of reduced water demand needed to meet the December 2016 deadline will have direct public health and safety implications for the Monterey Peninsula. A 43% reduction in water demand will also have an adverse economic impact, whether directly through customer monetary fines/penalties to enforce mandatory water rationing or indirectly through a downturn in economic activity because of a lack of adequate water supplies.

CONCLUSION

The Commission respectfully urges the State Water Board's consideration of the significant progress that has occurred to date and that which is scheduled in the future to achieve the objective of terminating all of Cal-Am's unlawful diversions from the Carmel River. Through efforts to develop replacement supplies and decrease water demands on the Monterey Peninsula, significant progress has occurred that has reduced Cal-Am's unlawful diversions from the Carmel River by over 65% for the period 2009-2015. In addition, through the CPUC's Decisions and orders, Cal-Am's ratepayers have funded continuing efforts to enhance and improve conditions for fish and wildlife resources in the Carmel River watershed in order to ameliorate the adverse impacts associated with ongoing unlawful diversions.

Though these efforts have been significant, the adverse public health, safety, and economic impacts on the communities on the Monterey Peninsula through compliance with the existing deadline for the Cease and Desist Order would be substantial. Taken together, both the significant progress in reducing Cal-Am's unlawful diversions and in remediating the Carmel River watershed along with the adverse impacts of implementing the current Cease and Desist Order's deadline, argues that an extension of the deadline until December 31, 2021 is in the public interest.

Sincerely,



Timothy J. Sullivan
Executive Director

