

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

DIVISION OF WATER RIGHTS

ORDER WR 2007-0042-DWR

In the Matter of Amended Permit 20808 (Application 27614)

Monterey Peninsula Water Management District

**ORDER APPROVING, IN PART, PETITION FOR CHANGE OF POINTS
OF DIVERSION, POINTS OF REDIVERSION AND PLACE OF
STORAGE, AND ISSUING SEPARATE AMENDED PERMITS**

SOURCES: Carmel River and Carmel River Subterranean Stream tributary to Pacific Ocean

COUNTY: Monterey County

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Amended Permit 20808 to Monterey Peninsula Water Management District (MPWMD) on January 6, 1999, pursuant to Application 27614.
2. The water which the MPWMD is currently authorized to appropriate under Amended Permit 20808 is limited to the quantity which can be beneficially used and shall not exceed 42 cubic feet per second (cfs) by direct diversion and 24,000 acre-feet per annum (afa) by storage from November 1 of each year through June 30 of the succeeding year. Under Amended Permit 20808, the MPWMD is currently authorized to divert Carmel River water at the New Los Padres Dam (Point of Diversion) and at 32 extraction wells in the Carmel Valley Aquifer (Points of Diversion), and redivert stored water at the San Clemente Dam (Point of Rediversion) and at 32 extraction wells in the Carmel Valley Aquifer (Points of Rediversion), for irrigation, municipal and fish and wildlife uses within the MPWMD's boundaries.
3. On September 12, 2003, the MPWMD filed a petition to change Amended Permit 20808. This petition was submitted to facilitate development of a full-scale groundwater injection and recovery project in the Seaside Groundwater Basin. The MPWMD's petition seeks State Water Board authorization for the diversion of up to 7,300 afa of water from the Carmel River for the MPWMD Aquifer Storage and Recovery Project (ASR Project) in the Seaside Groundwater Basin. For purposes of operating this project, the petitioner seeks to change Amended Permit 20808's: (1) Season of Diversion, (2) Place of Storage, (3) Points of Diversion and (4) various permit terms that are related to the New Los Padres Dam project or are otherwise no longer applicable.
4. The MPWMD is proposing to construct and operate an ASR Project that allows diversion of a limited amount of surplus Carmel River flow for storage in, and later recovery from, the Seaside Groundwater Basin. The objective of the proposed ASR Project is to allow for changes in water supply operations in the Carmel River and Seaside Groundwater Basin that will benefit the natural resources of the Carmel River and the groundwater resources of the Seaside

Groundwater Basin, and improve the short-term reliability of the domestic water supply system in the Seaside area. The proposed operation of the ASR Project would result in reduced pumping of the Carmel River in the summer and fall and increased storage in the Seaside Groundwater Basin. The project concept promotes the conjunctive use of the area's water resources, and has the potential to significantly reduce impacts associated with low-flow season pumping from California American Water's (CAW) Carmel River Basin sources.

5. CAW owns 19 wells in the Carmel Valley Aquifer that the MPWMD will use to extract the water, and additional diversion facilities that the MPWMD proposes to use for this proposed ASR Project. The MPWMD's petition seeks to change Amended Permit 20808 to describe the 19 wells and 7 additional future well sites as Points of Diversion to offstream storage in the Seaside Groundwater Basin.
6. CAW owns the San Clemente Dam that the MPWMD will use to divert water from the Carmel River. The MPWMD's petition seeks to change Amended Permit 20808 to describe the San Clemente Dam as a Point of Diversion to offstream storage in the Seaside Groundwater Basin
7. The MPWMD proposes that the diversion of water to offstream storage in the Seaside Groundwater Basin would occur in three phases: (1) Phase 1 - the MPWMD proposes to divert up to 2,426 afa of water, (2) Phase 2 - the MPWMD proposes to divert up to a total of 3,234 afa of water, and (3) Phase 3 - the MPWMD proposes to divert up to the total of 7,300 afa of water as requested in the petition. The proposed diversion of water from the Carmel River will occur from December 1 to May 31 of the following year.
8. The MPWMD is lead agency under CEQA and the National Environmental Policy Act (NEPA). On August 21, 2006, the MPWMD Board of Directors adopted Resolution 2006-04 to certify the Environmental Impact Report/Environmental Assessment (EIR/EA) and approve the Phase 1 ASR Project. The MPWMD filed its Notice of Determination (NOD) on August 23, 2006. Analysis under CEQA of future phases of the ASR has not been completed.
9. The MPWMD has completed construction of Phase 1 ASR Project facilities. The Phase 1 ASR Project consists of two injection/recovery wells and associated pipelines, electrical, backflushing and water treatment facilities.
10. The MPWMD prepared a water availability analysis in support of the petition to determine whether water is available for appropriation in accordance with water code section 1375d. The MPWMD analysis determined that an average of 7,185 afa of water is available each year during the proposed ASR Project diversion season of December 1 – May 31, for diversion from the lower reaches of the Carmel River subterranean stream in excess of fishery resources agencies' minimum bypass flow recommendations. The MPWMD's analysis concludes that there is sufficient water available in the lower reaches of the Carmel River subterranean stream for diversion to underground storage for the ASR project. This supports moving the location where water is diverted to storage downstream from the proposed New Los Padres Dam site. The Division finds that there is water available to supply this project.
11. In 2006, CAW and the MPWMD entered into the Aquifer Storage Recovery Management and Operations Agreement. By this Agreement, CAW and the MPWMD clarified their respective roles with regard to the operation and ownership of existing facilities for the Phase 1 ASR Project. CAW and the MPWMD agreed to cooperate in the acquisition of all permits or approvals required for implementation of the Phase 1 ASR Project and to support each other's efforts relating to the

development of future ASR projects. As a result of this agreement, CAW and the MPWMD will hold joint ownership of the water rights that are the subject of the MPWMD's petition, as directed in this order.

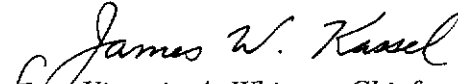
12. On April 15, 2005, the State Water Board issued a Notice of Petition for the MPWMD's petition. In response to the notice, the State Water Board accepted protests from the California Department of Fish and Game (DFG) and the National Marine Fisheries Service (NMFS). The protests submitted by the DFG and the NMFS were based on environmental issues, specifically that the project had the potential to adversely affect resources in the Carmel River, including species listed under the federal Endangered Species Act.
13. Based on protest settlement discussions between representatives of MPWMD, CAW, DFG and NMFS regarding terms for protest resolution, the parties reached agreement resulting in the withdrawal of DFG's and NMFS' protests, as represented by letters dated September 14, 2007 and September 17, 2007, on file with the State Water Board. All protest settlement discussions were limited to addressing the changes in beneficial use and water rights as described in the MPWMD's California Environmental Quality Act (CEQA) document, which analyzed impacts for the Phase 1 ASR Project. The parties have agreed that any permit issued pursuant to the MPWMD's petition should include all enforceable terms, which include the NMFS recommended bypass flows as stated in the document entitled, "Proposed Changes to Current Permit Conditions" which was attached to the September 14 and 17, 2007 letters.
14. The State Water Board acknowledges the intent, as represented by letter dated September 17, 2007, of the MPWMD and CAW to sign a Memorandum of Understanding (MOU) among the MPWMD, CAW, California Department of Fish and Game, and National Marine Fisheries Service regarding water management of the Phase 1 Seaside Basin Aquifer Storage and Recovery Project, by establishing protocols for the recovery of water from groundwater storage. The State Water Board will make no findings as to the intended content of the MOU and, therefore, will not enforce the conditions of any MOU as a condition of any permit issued pursuant to this order.
15. In accordance with CEQA requirements, project-level CEQA review is required before State Water Board approval can be issued for the full amount requested under the MPWMD petition. As a responsible agency under CEQA, the State Water Board has considered the environmental effects of the Phase 1 ASR Project as determined by the MPWMD's FEIR/FEA before reaching its own conclusions regarding the petition. (Cal. Code Regs., tit. 14, § 15096(f).) The information in the record and the findings in this order establish that approving, in part, the requested changes sought by the MPWMD, as directed in this order, will not result in a significant impact to the environment.
16. The State Water Board has delegated the authority to act on requests for change to the Chief of the Division pursuant to Resolution No. 2007-0057. The Division Chief has redelegated this authority to the Assistant Division Chief, and the Chief of the Permitting Section, and the Chief of the Hearings and Special Projects Section. (Redelegation memo from Victoria A. Whitney dated October 4, 2007.)
17. Pursuant to Resolution No. 2007-0057, the State Water Board has delegated authority to the Chief of the Division to administer the duties required under CEQA. The Division Chief has redelegated this authority to the Assistant Chief, the Chief of the Permitting Section, and the Chief of the Hearings and Special Projects Section. (Redelegation memo from Victoria A. Whitney dated October 4, 2007.)

18. The Division finds that the changes requested will not cause the projects authorized under the amended permits to operate to the injury of any legal user of the water involved.
19. Order WR 98-04, amending Decision 1632, was issued on February 19, 1998. Order WR 98-04 states that direct diversions and diversion to storage for the New Los Padres Project, pursuant to Application 27614, shall be allowed year-round subject to certain conditions.

THEREFORE, IT IS ORDERED:

1. Amended Permit 20808 is superseded by Amended Permit 20808A, issued to Monterey Peninsula Water Management District and California American Water, and Amended Permit 20808B, issued to Monterey Peninsula Water Management District.
2. Amended Permit 20808A is issued to authorize the ASR project with municipal use defined as purpose of use. The amount of water authorized to be diverted to underground storage in the Seaside Groundwater Basin is 2,426 afa. The points of diversion to offstream storage in the Seaside Groundwater Basin shall be limited to the San Clemente Dam, CAW's 19 wells and seven future well sites located in the Carmel River Aquifer.
3. Amended Permit 20808B is issued to maintain the portion of Amended Permit 20808 not utilized for the ASR project. The amount of storage authorized for diversion is reduced to 21,574 afa, and the maximum authorized amount of water to be taken from the source is reduced to 26,574 afa. Permit term 5 is rewritten to clarify the diversion season authorized in accordance with Order WR 98-04. Standard permit term 14, related to the taking of threatened or endangered species, and standard term 15, related to record keeping, are added to Amended Permit 20808B. No other terms or conditions of Amended Permit 20808 to be included in Amended Permit 20808B shall be changed by this order.
4. No further action will be taken by the Division under the Petition for Change to Amended Permit 20808 filed September 12, 2003. Any further changes to existing water rights in order to authorize future phases of the ASR project must be proposed under a new petition.

STATE WATER RESOURCES CONTROL BOARD


for Victoria A. Whitney, Chief
Division of Water Rights

Dated: **NOV 30 2007**