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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

### ADOPTING AN ORDER MODIFYING AND AMENDING CEASE AND DESIST ORDER WR 2009-0060, AND SUPERCEDING ORDER WR 2009-0060 ISSUED TO CALIFORNIA-AMERICAN WATER COMPANY

#### WHEREAS:

1. The State Water Resources Control Board adopted Cease and Desist Order [WR 2009-0060](#) (Order WR 2009-0060 or CDO) on October 20, 2009 regarding California-American Water Company's (Cal-Am) unauthorized diversions from the Carmel River. Cal-Am lawfully diverts 3,376 acre-feet per annum (afa) but was annually diverting, on average, a total of 10,978 afa. Thus, an average of 7,602 afa was being diverted without a basis of right. Order WR 2009-0060 requires Cal-Am to take appropriate actions to terminate all unlawful diversions from the Carmel River by December 31, 2016.
2. Cal-Am has carried out measures to comply with the requirements of Order WR 2009-0060, such as obtaining water right permits for a winter diversion/aquifer storage and recovery project; pursuing other replacement water supply projects; reducing the amount of water diverted from an average of 10,978 at the time of adoption to 7,228 af in 2015; and timely submitting quarterly status reports. Cal-Am has not missed the CDO diversion reduction limits in any year. Despite these efforts, Cal-Am has not yet been successful in implementing replacement water supply project(s) which eliminate all unauthorized diversions from the Carmel River.

Cal-Am has attempted to obtain: (a) regulatory permits from respective agencies for a subsurface seawater intake for a proposed desalination plant, and (b) easements for alternative water supply projects such as slant wells. However, development of these sources -will not be completed by the December 31, 2016 deadline.

3. The project delays led to concerns that Cal-Am would not find sufficient lawful water supplies prior to the end of 2016, when Order WR 2009-0060 requires Cal-Am to end all unlawful diversions from the Carmel River. Cal-Am, Board staff and other stakeholders met over a two-year period and eventually reached an agreement on a broad framework for a proposal to bring to the State Water Resources Control Board to amend the CDO compliance schedule. Even though some of the specifics remained contested, there were broad areas of agreement regarding maintaining a diversion limit significantly lower than that required for WY 2015-2016 in the current CDO as long as milestones based on securing alternative water supplies are met. Failure to meet the milestones would result in significant reductions of the diversion limits under the compliance schedule, such that Cal-Am's diversions from the Carmel River would be limited to lawful diversion limits prior to the end of the compliance period.
4. Water Code section 1832 states that the State Water Board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to Chapter 12, Part 2, Division 2, Article 10 of the California Water Code.

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5. In anticipation of not meeting the December 31, 2016 deadline, on November 20, 2015, Cal-Am filed an application under Water Code section 1832, requesting to modify and amend Order WR 2009-0060. Cal-Am was joined in this filing by the Monterey Peninsula Regional Water Authority (MPRWA), Monterey Peninsula Water Management District (MPWMD), the Pebble Beach Company, and the City of Pacific Grove. The amendment would, among other actions, extend the deadline for Cal-Am to cease all unlawful diversions from the Carmel River from December 31, 2016, to December 31, 2020.
6. On April 28, 2016, Cal-Am filed a revised application to the initial November 20, 2015 application. Cal-Am was joined in this action by the parties noted above. The application requests an additional one-year extension of the compliance timeline until December 31, 2021, along with other changes to the initial application.
7. Cal-Am is requesting an extension of the Order WR 2009-0060 schedule until December 31, 2021, to allow adequate time to develop the Monterey Peninsula Water Supply Project, a large-scale desalination project which can produce from 6,250 to 9,752 afa for the Monterey Peninsula communities. Cal-Am will also participate in the Pure Water Monterey Project (Pure Water), a project utilizing recycling technology to recycle wastewater, storm water, food industry processing water, and impaired surface water with treated water serving to replenish the groundwater supply for use by Cal-Am and others. Pure Water can produce up to 3,500 afa which will be stored in the Seaside Groundwater Basin for subsequent withdrawal for use. Pure Water is being developed by the Monterey Regional Water Pollution Control Agency. Timely approval of Pure Water by that project's approving agencies could result in a down-sized desalination plant.
8. To insure that the alternative water supply projects are diligently pursued, various milestones have been incorporated into the amended order which trigger a reduction in the following year's diversion limit should a milestone not be met. Milestones consist of obtaining regulatory approvals for the proposed alternative water supply projects and actual construction targets for each water year beginning with the 2016-2017 period. The milestones are designed as an incentive since the effective diversion limit is constant provided alternative water supply project milestones are met each year. In the event milestones are missed, the reductions in the diversion limit provide a foreseeable, stair-step reduction that results in an end to unlawful diversions from the Carmel River by the end of 2021.
9. Currently, Cal-Am is making significant progress towards the milestone goals of securing an alternative water supply. For example, CEMEX, Inc. has agreed to provide a temporary easement to construct and maintain a test slant well on a piece of land near the City of Marina. The parcel will serve as the desalination plant site. CEMEX, Inc. has also agreed to provide an option for Cal-Am to purchase a permanent easement for purposes of constructing a seawater intake system. Once all necessary permits are obtained, Cal-Am has contracts in place to construct the desalination plant. In addition, Cal-Am is obtaining procurements to construct improvements within the distribution system and construct the source water wells. These actions will expedite the construction of the desalination plant as well as Pure Water once Cal-Am obtains all necessary regulatory agency approvals.

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10. The Cal-Am application addresses fishery concerns related to ongoing diversions. During the extension period, Cal-Am will provide funding in an amount up to \$175,000 per year for the preparation of an annual report that evaluates the status of the threatened South-Central California Coast Steelhead Distinct Population Segment in the Carmel River. The report may recommend adaptive management measures. In addition, Cal-Am has stated that it will implement an additional \$2.5 million of projects to improve fish passage and habitat during the four years following adoption of this Order.

Further, Cal-Am may enter into forbearance agreements with existing diverters to provide more water in the Carmel River. To provide incentive for entering into such agreements, the proposed Order provides carryover credits at a rate of 50 percent of the amount that the forbearance agreements have increased Carmel River flows without being diverted by other downstream users.

11. On May 6, 2016, Board staff provided notice of the Cal-Am application, with opportunity to comment. On June 17, 2016, Board staff provided its Preliminary Recommendation and a Rationale Document for the Preliminary Staff Recommendation approximately one month prior to the comment deadline for this action. The Board's Order contains modifications to the Preliminary Recommendation based on the comment letters.

THEREFORE BE IT RESOLVED THAT:

The State Water Board hereby adopts the attached order modifying the compliance schedule and terms in State Water Board Order WR 2009-0060, as described.

### **CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 19, 2016.

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Jeanine Townsend  
Clerk to the Board