

State of California

Before the State Water Resources Control Board

In the Matter of Hearing to Consider Monterey Peninsula Water Management District's
Petitions to Change Permits 7130B and 20808

STATE WATER RESOURCES
CONTROL BOARD

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SACRAMENTO

Testimony of Dr. Roy Thomas

I started my undergraduate work as chemistry major at the University of California Santa Barbara as a sophomore. I changed majors to Zoology. I graduated with B.A in Zoology and later earned a B.S. and a D.D.S.

I have a life long interest in fish. I am a member of the American Fisheries Society and have contributed an essay that was published in the society journal. My essay was on Carmel River Steelheads very successful wild captive brood stock project on the Carmel River. I have conducted scientific research both as an undergraduate and graduate student.

The Carmel River Steelhead Association was formed in 1973 with the intent of saving the river and its fish. The association is made up of conversationalists, sportsman and interested parties. The majority of members interested do not fish in the Carmel River. In the beginning the associates conducted river clean up and fish rescue events. I joined in 1974 and helped with a gabion project and fish rescues. We worked closely with the DFG and biologist Randy Bentine in the early years. We worked with the department to reduce the impact of illegal practices on the Carmel River such as poaching, snagging, dumping, 5937, violations, and trespasses on the waters of the people of California.

In the early 1980's we at CSRA started a pond-rearing project using rescue fish and private ponds. I ran these projects for 8 years with much success. The supervising DFG biologists said the fish we raised were the best looking smolts they had seen including those in the state hatcheries.

In 1987 I helped with the filing of a formal complaint against Cal Am water for taking the Carmel River underflow without benefit of water right. I was an expert witness concerning the Carmel River steelhead at the 2-week hearing that ended in order 95-10.

I was involved with the creation of the "Interim Relief Plan" for the Carmel River from 1987-1995 in which the MPWMD first full time fisheries biologist was hired and fish rescue equipment was selected.

I commented on the entire Carmel River dam EIR's as to fish passages and other fisheries issues. I commented on fishery issues in the 1990 water allocation plan and it's mitigation programs. With the rest of the Steelhead Association we lobbied the MPWMD board to implement the mitigation plans in a timelier manner and to actually build the fish rearing facility at San Clemente's Sleepy Hollow.

I have attended numerous proceedings of the California Salmon Steelhead and Trout Restoration Federation. I was a presenter at the 1999 Salmonid Restoration Federation Conference.

I have served on the Carmel River Advisory Committee of the MPWMD board. I am presently serving on the Citizens Advisory Committee counseling ASR and Desal options.

My history on the Carmel River and its Steelhead is long. I have hiked its total length twice. For 30 years rescuing stranded adults, smolts and young steelhead were part of my volunteer work. I managed the rearing of rescued fish as well as some hatchery hatched Carmel River fish for 8 years. I created and managed the wild smolts to adult brood stock for the four years of drought thus preserving the Carmel Rivers gene pool.

Few if any, have the experience, dedication, or knowledge of the Carmel River and its Steelhead, as do I.

The ASR Project is directly connected to MPWMD's Water Right Permits 7130B and 20808. The ASR Project is directly connected to the Carmel River. The ASR Project will divert the spring and fall winter flows in the Carmel River. The ASR Project is directly connected to the pumping in the Carmel River during the summer periods and it is claimed it will reduce pumping. The ASR Project is directly connected to the illegal diversion of the people's water by the California American Water Company in the Carmel River. It is my understanding that about 11,000 acre-feet of water is illegally diverted by Cal-Am. It is my further understanding that the value of the people's water in the Carmel River is about \$1100 per acre-foot. Consequently the value of the water being illegally diverted has a value of about eleven (11) million dollars annually. In addition the MPWMD petition for the ASR Project is for 7,300 acre-feet of water, with a value of about eight (8) plus million dollars annually.

Consequently, the State Water Resources Control Board must amend Water Right Permits 7130B and 20808 and order mandatory daily surface flow requirements at all times below all points of diversion and pumping in the Carmel River to the Carmel River Lagoon to protect and improve all life stages of Carmel River Steelhead and their habitat in the Carmel River and avoid cumulative impacts.

As the President of the Carmel River Steelhead Association, in July of this year, I wrote and requested NOAA Fisheries to allow the CRSA to rescue Carmel River Steelhead from the Carmel River Lagoon because of the danger and harm to the steelhead from the river being dewatered. The rescue request was denied by both NOAA and D.F.G.

The Carmel River Steelhead Association requested a local water treatment facility to release treated water into the Carmel River Lagoon to prevent harm and damage to the Carmel River Steelhead in the Carmel River Lagoon. This request was denied because of the CEQA regulatory process and worry over metals.

The Carmel River Steelhead Association also requested the Regional Water Quality Control Board to allow for the treated water from a local treatment plant to be diverted to the Carmel River Lagoon to prevent the Carmel River Steelhead from being harmed and damaged. The request was denied with a letter being forwarded to the State Water Resources Control Board.

Recently, the Carmel River Steelhead Association request the California American Water Company to reduce pumping and provide surface flows into the river for the Carmel River Lagoon to prevent harm and damage to Carmel River Steelhead. Cal-Am did not respond to the CRSA request.

Also quite recently, Cal-Am, NOAA, and MPWMD did not respond to the the Carmel River Steelhead Association's request to the Monterey Peninsula Water Management District to reduce pumping and provide surface flows into the river for the Carmel River Lagoon to prevent further harm and damage to Carmel River Steelhead Redds.

In drought years, as we are experiencing now, many spawning fish were forced to dig nests in the lower river. These nests can, and sadly were dewatered with all young fish killed by early spring over extraction. ASR, as designed, can create this tragedy.

Based on my experience, I believe the state and federal regulatory agencies have not protected the Carmel River Steelhead species and their habitat in the Carmel River and the Carmel River Lagoon and the ASR project presently designed with the deep wells as a supply will not capture excess flood flows and will frequently reduce the production and fail the restoration of the threatened Carmel River Steelhead.

One of the flaws in ASR is the reliance on a system of deep production wells that cannot harvest the truly "surplus" storm flows, which have very short peaks in most years. Any water right given needs to rely on very high volume subsurface extractors; not deep, delayed, percolation affected production wells.

No "surplus" water should be considered available in the fall until enough water has reached the sea to inspire a safe and healthy up and down stream migration. This last year, water was diverted according to the flawed NOAA guidelines that delayed migration for many weeks, thus stranding spawners in the lower river.

As the stakeholder of record, our group suggests the district needs to make significant improvements to this plan so it would be plausible that steelhead recovery is not further jeopardized by the MPWMD water right petition and permits and any additional diversions. Furthermore, this NOAA document does not analyze Take of Species Protected under the ESA. Associated with ASR or authorize any take associated with the additional diversions proposed by MPWMD. The original permit application, 20808, under which MPWMD is applying for water rights required a Biological Opinion be completed in the event of Endangered Species Listing of Carmel River Steelhead. Subsequent to that original petition Carmel River Steelhead have been listed as Threatened under the ESA. Therefore such must be done before SWRCB could approve this petition. The minimum flow guidelines being used are based on outdated and incomplete studies, which were done by the MPWMD and no longer reflect current conditions that fluctuate with annual changes in critical riffles and other geomorphic changes.

One of the major problems with the ASR project as far as the threatened Steelhead are concerned are the NOAA "surplus" water "available" for the extraction guidelines. These guidelines appear to assume that the lower river is only a migration zone. It also assumes that all the fish have to do is to get into the upper watershed and all will be fine. The truth is, the obsolete San Clemente Dam is a serious obstruction with a poorly designed old ladder and a dangerous sediment filled inundation zone. Five miles upstream there is Los Padres Dam, gateway to the Ventana wilderness. It is a death trap for Steelhead. Inadequate and poorly functioning trap and truck facilities, and unscreened outlet works are serious problems. If an adult is lucky enough to be safely transported over Los Padres Dam, it and its progeny have a poor to no chance of safely returning to the sea. The spillway's inadequate notch for attraction and the unscreened outlet works kill or trap the majority of smolts and kelts.

The spawning gravel trapping effect of the dams adds to the failure of Steelhead recovery by forcing adults to spawn on top of each other on the small patches of gravel left downstream of the dams.

The removal of ASR water before the 200 CFS attraction event can help cause serious harm to threatened Steelhead. A large component of smolt sized Steelhead try to migrate to the lagoon with the first rains. Not only does ASR removal reduce their chances of safely making it to the lagoon but the delay of adequate fresh water into the lagoon can cause the normal wave over-topping to kill fish already in the lagoon as well as the new

migrants. Also, with the much expanded lagoon volume, provided by lagoon restoration, ASR extraction could totally break the lifecycle of the Steelhead.

During the last drought, before the extra extractions of ASR, the wild ocean population of Steelhead went extinct! The river did not have enough water to reach the ocean for more than three years. Thanks to the 4-year effort of CRSA and help from MPWMD and DFG. The gene pool was saved. This can happen again and this water right and ASR will make it more likely.

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Carmel River Steelhead Association