

1 and 3) instream flows. Water will be used for municipal purposes within District boundaries and
2 may be used outside of the District boundaries, within water systems with emergency interties to
3 the Cal-Am water system. Water will also be used for irrigation and fish and wildlife enhancement
4 purposes.

5 3. The Carmel River drains a 255 square-mile watershed tributary to the Pacific
6 Ocean. Its headwaters originate in the Santa Lucia Mountains at 4,500- 5,000-foot elevations,
7 descend and merge and discharge into the Carmel Bay at a location that is about 5 miles south of
8 the City of Monterey. Precipitation, which occurs primarily between November and April,
9 generates perennial surface streamflow in the upper watershed. Runoff in the lower reaches, in
10 recent years, is typically present only from December to July.

11 About 80 percent of annual precipitation occurs from January through April. Mean annual
12 precipitation over the drainage basin ranges from 14 to 40 inches per year and averages about 17
13 inches per year at Carmel Valley. Drainage basin runoff occurs via the Carmel River. Carmel
14 River flows are in a well-defined channel that ranges from 20 to 150 feet in the lower 15 miles of
15 the river. As flows decline each year, a natural sandbar forms at the mouth of the river, creating a
16 lagoon which has no access to the ocean until fall and winter rains produce flows sufficient to
17 remove the bar. At times, however, the sandbar is breached by mechanical means.

18 Upstream, dense riparian vegetation provides shade for temperature regulation and stream
19 pools are abundant along a bedrock canyon floor that has localized accumulations of boulders,
20 cobbles and gravel. The alluvial deposits downstream comprise a groundwater basin which
21 underlies the river flows in the Carmel Valley portion of the watershed. Local groundwater levels
22 within the aquifer are influenced by pumping or production at supply wells, evapotranspiration by
23 riparian vegetation, seasonal river flow infiltration and subsurface inflow and outflow. During the
24 dry season, pumping of wells has caused significant declines in the groundwater levels. Carmel
25 River surface flow decreases due to pumpage-induced infiltration recharges to the seasonally -
26 depleted groundwater basin. During normal water years, surface flow in the lower Carmel Valley
27

1 becomes discontinuous or non-existent. Downstream from River Mile 3.2, there was no river
2 runoff between April 1987 and March 1991.

3 4. The primary source of water supply for Cal-Am customers is 21 wells situated on
4 the lower Carmel River. These wells supply about 69 percent of the water needs of Cal-Am
5 customers. The balance of the water delivered to Cal-Am customers is supplied from : 1) San
6 Clemente and Los Padres reservoirs in the upper reaches of the Carmel River; and 2) pumped
7 groundwater in the City of Seaside.

8 5. Cal-Am's diversions have had substantial adverse effects on the instream beneficial
9 uses of the Carmel River. Such effects include the loss of riparian habitat in the lower river and the
10 near extinction of the Carmel River steelhead run.

11 6. The Carmel River supports populations of at least ten resident freshwater and
12 anadromous fish species. Of these fishes, the steelhead (*Onchyrhynchus mykiss*) has been
13 considered the most important. Adult steelhead live in the ocean and migrate into the upper reaches
14 of the Carmel River to spawn. Migration may begin in the fall after the first major storms have
15 ruptured the sandbar in the lagoon and established sufficient flow in the lower river to allow
16 upstream passage. Typically, in early January the adults spawn and some migrate back to the
17 ocean. After approximately three to eight weeks of incubation, depending on water temperature,
18 the eggs hatch and fry soon emerge from the gravels. These fry continue development in the river
19 until the fall. By fall, some fry will have developed into juveniles and will begin to move
20 downstream. They remain in the lower reaches of the river and the lagoon, adapting to brackish
21 water until late spring. In late spring, as high river flows are receding, they migrate out into the
22 Pacific Ocean. Most juveniles remain in the river systems for one or two additional years before
23 migrating to the ocean, hence juvenile fish may be found in the river throughout the entire year.

24 The critical dry years of 1976-1977, the 1987-1992 drought, and diversions by Cal-Am
25 from its wells have combined to reduce water available to steelhead and have also reduced the
26 steelhead population to remnant levels. Only one fish was recorded in 1991, and 15 fish in 1992.
27 Past reviews of Carmel River environmental problems have identified flow reduction and habitat

1 alteration as major factors associated with steelhead decline. The Carmel River steelhead run may
2 have been, prior to heavy fishing in the last half of the 19 century, 12,000 fish annually.
3
4

5 PARTIES

6 7. The Sierra Club is a non-profit corporation doing business in and organized under
7 the laws of California. Its principal purpose is to promote environmental awareness and to protect
8 wild and scenic areas. Its Ventana Chapter has hundreds of members in Monterey County, as well
9 as members throughout California who have used the Carmel River and its environs for a variety
10 of recreational, educational, and conservation purposes and who would be injured in these interests
11 if instream uses in the River are not adequately protected.

12 8. The Carmel River Steelhead Association ("CRSA") is a California non-profit
13 corporation, with a principal purpose of protecting the steelhead run in the Carmel River and
14 promoting the preservation and protection of instream uses in the River. Its members use the
15 Carmel River and its environs for recreational, educational, and conservation purposes and will be
16 injured in their interests if the instream uses in the River are not adequately protected.

17 9. The California Sportfishing Protection Alliance ("Cal-Spa") is a non-profit
18 corporation, organized and existing under the laws of California, with its principal place of
19 business in Sacramento and Plumas Counties. Cal-Spa's members consist of members of the
20 public who, in addition to being licensed sportfishing anglers, promote the preservation and
21 enhancement of California's public trust fishery resources. Cal-Spa's members reside in the
22 vicinity of the Carmel River. The quality of the Carmel River directly affects the health, economic,
23 recreational, esthetic, scientific, and conservation interests of its members. Respondents' failure to
24 enforce the laws that protect instream beneficial uses in the river adversely affect these interests and
25 the procedural interests of Cal-Spa's members of having state agencies adhere to the requirements
26 of all applicable laws that protect instream uses.
27

1 10. Respondent State of California Water Resources Control Board ("Board") is
2 responsible for administration of the water resources of the state. These responsibilities include the
3 combined water rights, water pollution, and water quality functions of the state government.
4 Water Code §174. Specific responsibilities include the issuance of permits for the diversion and
5 storage of water. The Board is located in Sacramento, California.

6 11. The Monterey Peninsula Water Management District ("District") was formed by
7 legislative enactment in 1978. The District is responsible for regional water supply planning within
8 a 170 square-mile area consisting primarily of the Monterey Peninsula and the Carmel Valley. The
9 District does not currently operate any water supply facilities. Instead, it relies upon local water
10 supply utilities or private parties to operate the reservoirs, surface diversion works and wells
11 presently used to supply water within its boundaries.

12 12. Cal-Am is an investor-owned public utility which produces approximately 82
13 percent of the total water supply used within the District's boundaries. Cal-Am obtains its water by
14 storage in San Clemente and Los Padres Reservoirs on the Carmel River, by diversion from wells
15 located in the Carmel River alluvium, and also from wells located in the Seaside groundwater
16 aquifer.

17 12a. Does 1 through 300 are protestants and other participants in the application hearing
18 and in the order proceedings whose identities at this time are not completely known to petitioners,
19 but who will be notified of the pendency of this action after the filing of the Petition.

20 13. On July 27, 1987, petitioner CRSA filed a complaint alleging that inter alia, Cal-
21 Am's diversions of water from the underflow of the Carmel River are unauthorized and are
22 destroying the public trust resources of the river, including steelhead. As a possible solution,
23 CRSA recommended; rescue and rearing in ponds of the fish stranded by the unauthorized
24 diversions, irrigation of riparian vegetation affected by the unauthorized diversions, and release of
25 more water from San Clemente Dam for re-diversion through wells downstream.

26 14. On March 5, 1991, the Sierra Club filed a complaint alleging, inter alia, that 1) Cal-
27 Am's diversions of water from the subsurface flow of the Carmel River are unauthorized; and, 2)

1 Cal-Am's diversion from San Clemente Reservoir during low-flow periods is an unreasonable
2 method of diversion. The Sierra Club's proposed solution included the following: 1) Cal-Am
3 should apply for appropriative water rights from the Board; 2) Cal-Am should be required to pay
4 for development and implementation of a program to restore public trust resources affected by their
5 diversions; and, 3) Cal-Am should be required to cease all diversions at San Clemente Reservoir
6 during periods of low flow and allow the water to flow downstream, in the Carmel River for the
7 collection at downstream wells, instead of diverting water from the river at San Clemente Dam.

8 15. Petitioners each filed protests to Application 27614 (47 cfs by direct diversion;
9 24,000 afa by storage in New Los Padres Reservoir; applicant, Monterey Peninsula Water
10 Management District). Petitioners' protests objected to the application on a variety of grounds,
11 including, failure to protect public trust resources if the application were granted without
12 enforceable, substantial instream flow requirements below the dam under all conditions, including
13 dry-years.

14 16. On July 6, 1995, the Board issued Decision No. 1632, granting the District's
15 application for diversion and storage of water. The Board granted rights to divert and store 24,000
16 afa, not to exceed a combined total of 29,000 afa, subject to certain conditions, which included
17 minimum instream flow requirements varying according to hydrologic year-type, season and
18 reservoir storage conditions. These flow requirements are found at Tables A and B, pp. 105-107
19 of Decision 1632.

20 17. On July 6, 1995, the Board issued Order No. WR 95-10, which determined, inter
21 alia, that Cal-Am is diverting 10,730 afa from the Carmel River in its underflow without any valid
22 basis. The Board also determined that Cal-Am diversions are having an adverse effect on the
23 riparian corridor along the river below San Clemente Dam, wildlife which depend on instream
24 flows and riparian habitat, and steelhead which spawn in the river. The Board ordered Cal-Am to
25 cease and desist from diverting any water in excess of 14, 106 afa, until unlawful diversions are
26 ended. The Board also ordered Cal-Am to adopt conservation measures that would have the "goal"
27 of achieving 15% conservation in the 1996 water year and 20% conservation in other years. The

1 Board, however, allowed Cal-Am to produce water from the Seaside aquifer wells for future
2 growth and did not require Seaside aquifer water to be used solely to reduce existing demands on
3 the Carmel River. Sierra Club and the CRSA were complainants in this proceeding.

4 18. Petitioners filed Petitions for Reconsideration of Decision No. 1632 and of Order
5 WR 95-10 within the applicable time frame.

6 19. The Board took no actions on the Petitions for Reconsideration within the 90 day
7 period allowed under Water Code Section 1397. The Petitions for Reconsideration were therefore
8 considered denied by operation of law on or about October 6, 1995.

9 20. Petitioners are beneficially interested in the subject matter of this action and will be
10 adversely affected by the failure of the Board to impose enforceable, adequate instream flow
11 requirements below the New Los Padres Dam sufficient to insure protection of instream uses and
12 trust resources belonging to the people to California. Petitioners are also bringing this action as
13 private attorney generals to protect public trust uses and to enforce the laws of California enacted to
14 preserve, enhance, and protect instream uses.

15 21. Petitioners have exhausted applicable administrative remedies.

16 22. Petitioners have served the Attorney-General with a copy of this petition by sending
17 him a copy this 3rd day of November, 1995 by certified first class mail. Petitioners, by letter dated
18 November 16, 1995, have requested the Board to prepare the administrative record.

19 **FIRST CAUSE OF ACTION**
20 **(Order No. WR 95-10, Condition 6)**

21 23. Petitioners Sierra Club and CRSA hereby incorporate by reference Paragraphs 1
22 through 22 of this Petition.

23 24. In its complaint the Sierra Club alleged that the Carmel Valley Village area could be
24 supplied with water from Cal-Am wells downstream from the Narrows and requested the Board to
25 order Cal-Am to show cause why diversions from San Clemente Dam during periods of low flow
26 should not be enjoined.

1 25. Condition 6 of the Order requires Cal-Am to study the feasibility benefits and costs
2 of supplying water to Carmel Valley Village Filter Plant from "its nearby wells downstream of the
3 plant."

4 26. Cal-Am's continued diversions allowed under the order constitute an unreasonable
5 method of diversion and prevent waters of the state from being put to beneficial use to the fullest
6 extent of which they are capable in violation of Article 10, Section 2 of the Constitution.

7 27. The Board breached its duty under the Public Trust and under Article 10, Section 2
8 of the Constitution, as well as Water Code §§ 12143, 1243.5, 1255, 1257, and 1258, in failing,
9 once it had made a determination that Cal-Am had been illegally diverting water from the Carmel
10 River and that Cal-Am's diversions were harming the public trust resources and instream uses, in
11 failing to require, as a condition of continued diversion, a full investigation as to whether Cal-Am
12 can supply water to its customers in a manner that will maximize beneficial uses, through keeping
13 as much water as possible in the River, as far downstream as possible, for fishery and riparian
14 uses.

15 28. The Board abused its discretion when it failed to require study of how the water of
16 the River could be used in a manner that will avoid or minimize harm to other beneficial uses.

17 29. The Board lacked substantial evidence in support of its decision to require only a
18 study of wells near the filter plant in anticipation of its consideration of maximizing beneficial use
19 of the River's waters.

20 **SECOND CAUSE OF ACTION**
21 **(Order No. WR 95-10, Condition 4)**

22 30. Petitioners Sierra Club and CRSA hereby incorporate by reference Paragraphs 1
23 through 22 of this Petition.

24 31. Condition 4 of the Order allows Cal-Am to use yield from its Seaside aquifer to
25 service new development in addition to existing connections.

26 32. In allowing yield from the Seaside aquifer to be used for future development, the
27 Board breached its duty under the Public Trust and under Article 10, Section 2 of the Constitution,

1 as well as Water Code §§ 1243, 1243.5, 1255, 1257, and 1258 in that allowing such yield to be
2 used for future development does not ease the burden on the River from Cal-Am diversion,
3 breaches the public trust, and fails to maximize the beneficial uses of water.

4 33. The Board abuse its discretion when it authorized use of the Seaside aquifer for
5 future development.

6 34. The Board's decision to allow use of the Seaside aquifer for future uses is not
7 supported by substantial evidence.

8 **THIRD CAUSE OF ACTION**
9 **(Order No. WR 95-10, Condition 3)**

10 35. Petitioners Sierra Club and CRSA hereby incorporate by reference Paragraphs 1
11 through 22 of this Petition.

12 36. Condition 3 of the Order imposes a conservation program on the water purveyor
13 that is unenforceable. The Condition establishes a "goal" of conservation, not a requirement.

14 37. In allowing Cal-Am to continue its diversions without requiring a meaningful,
15 enforceable, binding water conservation commitment, the Board breached its duty under the Public
16 Trust, Article 10, Section 2 of the Constitution, as well as Water Code §§ 1243, 1243.5, 1255,
17 1257, 1258.

18 38. The Board abused its discretion when it required a conservation program that does
19 not require a certain quantifiable reduction in consumptive use.

20 39. The Board's decision to allow Cal-Am to continue diverting without an enforceable,
21 binding conservation program lacks support by substantial evidence in the record.

22 **FOURTH CAUSE OF ACTION**
23 **(Decision No. 1632, Condition 28)**

24 40. Petitioners hereby incorporate by reference Paragraphs 1 through 22 of this
25 Petition.

26 41. Condition 28 of Decision 1632 imposes minimum flow requirements that in dry
27 years will fail to keep fish in satisfactory condition downstream in violation of the Public Trust,

1 Fish and Game Code § 5937, Article 10, Section 2 of the Constitution, as well as Water Code §§
2 1243, 1243.5, 1255, 1257, and 1258.

3 42. There is no substantial evidence in the record in support of the instream flows
4 mandated by the Board.

5 43. The flows required to be kept in the River will be recaptured and diverted by
6 existing downstream appropriators to the detriment of the River's fishery resources, in violation of
7 the Public Trust, Fish and Game Code § 5937, Article 10, Section 2 of the Constitution, as well as
8 Water Code §§ 1243, 1243.5, 1255, 1257, and 1258.

9 44. Because the operations modeling is flawed, the Board's decision will, during
10 extremely dry period, result in less than 5 CFS flows in the river, in violation of the Public Trust,
11 Fish and Game Code § 5937, Article 10, Section 2 of the Constitution, as well as Water Code §§
12 1243, 1243.5, 1255, 1257, and 1258.

13 45. In determining the minimum flow requirement, the Board did not determine the
14 amount of water necessary to satisfy public trust uses in a manner that ensured that public trust
15 uses would be protected. Public trust uses were considered only after it was determined that there
16 was unappropriated water in the system and treated in the framework of mitigation requirements.
17 The manner in which the Board determined the amount of water to be kept in the stream for
18 downstream uses violated the Public Trust, Article 10, Section 2 of the Constitution, as well as
19 Water Code §§ 1243, 1243.5, 1255, 1257, and 1258.

20 **FIFTH CAUSE OF ACTION**
21 **(Decision No. 1632)**

22 46. Petitioners hereby incorporate by reference Paragraphs 1 through 22 of this
23 Petition.

24 47. The Board failed to require the District, as a condition of its permit, to enforce
25 mandatory reductions in consumptive use when flows meeting the requirements of Fish & Game
26 Code § 5937 are not provided.
27

1 Petitioners Sierra Club, CRSA and Cal-Spa request the following relief with respect to
2 Decision No. 1632:

3 4. That the Board, upon remand, should reconsider Condition 28 in light of the
4 requirements of applicable law and reformulate a minimum flow requirement consistent with the
5 preservation and enhancement of instream uses, especially fishery resources.

6 5. That the Board, upon remand, shall be ordered to impose, as a condition of the
7 permit, a requirement for mandatory rationing or reduction in consumptive use when flows
8 meeting the standards of Fish & Game Code §5937 are not provided.

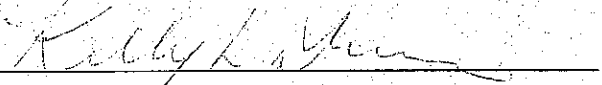
9 6. That this Court should set aside the Board's determination that there was
10 unappropriated water available for appropriation by the District and remand for further proceedings
11 consistent with the setting aside of that determination.

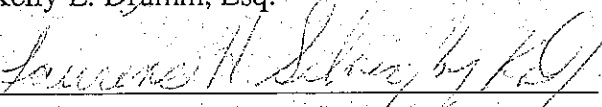
12 7. For such other relief as may be just and appropriate, including attorneys' fees.

13
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15 Dated: February 6, 1996

Respectfully submitted,

CALIFORNIA ENVIRONMENTAL LAW PROJECT

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17
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