



State Water Resources Control Board

Division of Water Rights

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Gray Davis
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CAW-035

MEMORADUM

TO: 1. Walt Pettit
2. Board Members

(6/19/08)
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ORIGINAL SIGNED BY:

FROM: Harry M. Schueller, Chief
DIVISION OF WATER RIGHTS

DATE: OCT 29 1999

SUBJECT: INTERPRETATION OF CONDITION 2 OF ORDER WR 95-10 IN THE CALIFORNIA-AMERICAN WATER COMPANY (CAL-AM) SERVICE AREA

In Order WR 95-10, the State Water Resources Control Board (SWRCB) found that Cal-Am lacks a legal water supply for much of the water that it is presently using. In order to ensure that any water supply project developed by Cal-Am was utilized to reduce unauthorized Carmel River diversions, condition 2 was included in the order. Pursuant to the condition, if Cal-Am obtains other sources of supply, it must make one-for-one reductions in unlawful diversions from the Carmel River. The order also requires Cal-Am to cease and desist from diverting more than 14,106 acre-feet per annum (afa) from the Carmel River until unlawful diversions have ended. An additional limitation in the order (Condition 3) requires Cal-Am to implement water conservation measures with the goal of conserving 20 percent of the 14,106 afa. In other words, to achieve the water conservation goal, Cal-Am must limit its diversions to 11,285 afa.

By memorandum dated December 4, 1998 (copy attached), I provided information on alternative interpretations of Condition 2 of Order WR 95-10 and recommended that we pursue alternative 2 from that memorandum. This alternative can be summarized as follows.

Any water that enters the Cal-Am distribution system from a new source should result in one-to-one reductions in diversions from the Carmel River. A new water project could be developed by an existing Cal-Am customer to support new development, but the project could not use the existing water distribution system. The new project would have to purchase the existing distribution system or construct a new distribution system to support the new development. Cal-Am would gain the quantity of water formerly needed to serve its customer, and this would be deemed new water. Each year Cal-Am would report the quantity of new water added to the system and this quantity would be subtracted from the existing cap on diversions from the Carmel River and the new cap would apply to the diversions for the next water year. Water conservation by Cal-Am customers would not be counted as new water to the system, and therefore, conserved water could be used to support new development and could be traded within the Cal-Am service area. Water conservation efforts by Cal-Am, such as rebates for installation of low-flow toilets, would be subject to the order.

Example – Robles Del Rio Lodge

The Robles Del Rio Lodge, located in the Carmel River basin, historically received water from Cal-Am. The lodge drilled its own well and disconnected from the Cal-Am system on May 22, 1998. The lodge did not install any water conservation equipment; instead, it disconnected from the Cal-Am system as a means of obtaining a marketable water credit. The marketable water credit consist of 85 percent of the previous water use. Fifteen percent of the previous water use would be considered as conservation and not be diverted from the Carmel River. The lodge maintains a Cal-Am water service connection for fire protection.

On June 22, 1998, the Monterey Peninsula Water Management District (District) issued a letter, in accordance with District Rule 25.5, stating that it has verified a water credit of 7.83 acre-feet per annum for the permanent disconnection of the lodge from the Cal-Am system. On August 13, 1999, the Division of Water Rights (Division) commented on a Notice of Completion/Initial Study issued by Monterey County (County) for the water marketing proposal developed by the lodge to sell the water to a person waiting on the development list. Upon purchase of the water credit, the buyer would build its project and become a new Cal-Am customer. In our comment letter, we stated that the order does not specifically address new water supplies developed by Cal-Am's customers. However, such new water supplies may be viewed by the State Water Resources Control Board as being subject to Condition 2. If such a determination was made, Cal-Am's overall diversions would need to be reduced by the amount of the new water supply and the County's proposed water credit program would be inappropriate. In any event, the water credit program proposed by the County undermines the spirit of Order WR 95-10.

Under the water marketing proposal, Cal-Am would divert water to serve the new customer from its Carmel River wells identified in Order WR 95-10 as lacking adequate legal rights. The water would be conveyed to a new customer through the Cal-Am pipeline system. Arguably, there would be no net increase in Carmel River diversions due to substituting a new Cal-Am customer for an existing customer. This presumption is valid when the new source, such as a groundwater well, does not draw water from the Carmel River subterranean stream or utilize water that would otherwise have contributed flow to the Carmel River or its subterranean stream. For those sources that are interconnected with the Carmel River, it is apparent that total water use would increase due to diversion by both the existing Cal-Am customer and the proposed new customer.

Division staff met with representatives of the lodge to discuss this matter on September 8, 1999. At that time, we advised the lodge that their water marketing proposal is not independent of Cal-Am inasmuch as it utilizes the Cal-Am distribution facilities to effect the transfer of water. It also appears that the groundwater well could reduce outflow from the basin to the Carmel River due to its proximity to the river. Accordingly, total diversion from the Carmel River could increase under the proposal.

Notification of Potential Compliance Issue

One issue is whether the agencies involved in the water marketing proposals had advance notification of our position. By letter dated November 26, 1997 (copy attached), the Division advised the District, the Monterey County Board of Supervisors, and Cal-Am that utilization of retrofit credits issued through its water credit program reduces the opportunity for demand reduction. Foregoing this opportunity for conservation could be considered a violation of Condition 3 and the spirit of the order. Accordingly, we requested that these agencies tailor all approvals of new development in a manner that is consistent with all of the provisions and the spirit of Order WR 95-10. The letter included a request for a coordinated response describing the roles of the various agencies in this program and describing the consistency of the retrofit water credit program with the conditions of Order WR 95-10. No response was received.

Recommendation

The water credit program utilized by the District is not consistent with the intent of Order WR 95-10. It appears that total water use in the basin could increase as a result of the proposal. A response to the September 29, 1999 letter (copy attached) should be sent.

The District issued the water credit to the lodge in 1998, after receiving our advisory letter regarding the impact of its water credit program on compliance with Order WR 95-10. It is apparent that the District has disregarded our advice on this matter. It will become increasingly difficult to distinguish the merits of various development proposals that are tailored to evade the requirements of the order unless we establish a clear standard for evaluation of such proposals. The standard should be no net increase in Carmel River diversions and independence from the Cal-Am water distribution system.

Accordingly, I recommend that we advise the lodge and the local regulatory agencies of this requirement and the fact that any water credit issued under this program shall be subtracted from the 11,285 afa Cal-Am allotment.

Attachment

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