

State Water Resources Control Board

John P. Caffrey, Chairman



John M. Rooney
Secretary for
Environmental
Protection

Division of Water Rights

901 P Street • Sacramento, California 95814 • (916) 657-1359 FAX (916) 657-1485
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000



Pete Wilson
Governor

JUN 05 1998

Mr. Darby Fuerst

Monterey Peninsula Water Management District

P.O. Box 85

Monterey, CA 93942-0085

Dear Mr. Fuerst:

REQUEST FOR MODIFICATION TO STATE WATER CONTROL BOARD ORDER (SWRCB) WR 95-10 – CARMEL RIVER IN MONTEREY COUNTY

By letter dated April 16, 1998, the Monterey Peninsula Water Management District (District) requested relief from the water conservation goal of 11,285 acre-feet per annum (afa) for diversion from the Carmel River system as established by the SWRCB in Order WR 95-10. The District seeks authorization for the California-American Water Company (Cal-Am) to increase its diversions from the Carmel River to 13,641 afa. The request for relief is based upon the following language from Order WR 95-10:

“To the extent that this requirement conflicts with prior commitments (allocations) by the District, the Chief, Division of Water Rights shall have the authority to modify the conservation requirement.”

As explained below, I cannot grant the requested relief under this authority. The District states that it has made prior commitments to existing Cal-Am customers to allow an annual allocation of 17,641 af. Of this total, 13,641 afa must come from the Carmel River. Accordingly, the District asks that the Division of Water Right (Division) use its authority to modify the conservation requirement and enable Cal-Am to utilize additional water. In the event that the Division does not exercise its discretion to accommodate this increase in diversion in all future years, the District nonetheless requests that the delegated authority be utilized to authorize an increase in diversion for the 1998 water year.

Apparently, the District is concerned that the Public Utilities Commission may act upon Cal-Am's request to institute mandatory rationing in order to limit total diversions to the 11,285-afa specified in the Order if the Division fails to modify this requirement. Such an action will impact local water users without, per the District, a commensurate benefit to the environment. Furthermore, the District maintains that the SWRCB's water conservation goal is inconsistent with water use planning undertaken by the District.

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By letter dated April 29, 1998, I requested additional information from the District to support the request for relaxation of the provision. The May 15, 1998 response from the District lists the quantities of water that the District has allocated from the Seaside groundwater basin, documents the quantity of water that the District has authorized for use on an annual basis from 1995 through 1998, and provides information on the retrofit credit program.

The information regarding the Paralta well allocations documents that the District allocated 192.3 afa from the Seaside groundwater basin in July 1995. Order WR 95-10, page 33, states that the Cal-Am Seaside basin production was approximately 2,700 afa. Adding the 192.3 afa to this quantity, the total 1995 commitment (based on allocations and existing diversions only) was 2,892.3 afa. This is significantly less than the Cal-Am 1997 water year production of 4,025 af from the Seaside groundwater basin, as documented in the May 15 letter.

The delegation of authority in Order WR 95-10 only pertains to commitments (allocations). There is no delegation of authority to address the pre-Paralta credits, retrofit credits or entitlement issues. Nonetheless, it appears that water use by the last three parties listed in the entitlement column of item (2) in your May 15 letter, Macomber Estates, Griffin Trust and Pebble Beach Company, has been addressed by the SWRCB. Please refer to the discussion of the Pebble Beach Wastewater Reclamation Project at the end of this letter.

Order WR 95-10 requires Cal-Am to maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest practicable extent. (Order WR 95-10, condition 4) After that resource is fully utilized, the Division is delegated authority to increase the 11,285 afa water conservation goal as stated above. The delegation of authority only pertains to those District commitments in place prior to the July 6, 1995 adoption of Order WR 95-10. The information we have received does not support modification to the 11,285 afa water conservation goal because the quantity made available by development of the Paralta well in the Seaside aquifer (4,025 afa) far exceeded the 2,892.3 afa quantity committed (allocated) by the District prior to July 6, 1995. Thus, there is no basis for adjusting the Carmel River water conservation goal.

Furthermore, the purpose for including the provision about existing commitments in the Order was to ensure that a partially completed hotel project under construction at the time of adoption would have a water supply available to it. During the May 20, 1998 Water Awareness Forum of the Monterey Commercial Property Owners Association, I learned that the hospitality industry utilizes approximately the same quantity of water today as it did in 1995. Thus, despite any changes in visitor days that may have occurred between 1995 and the present, water use by this industry does not appear to have affected the ability of Cal-Am to comply with Order WR 95-10.

Most importantly, I believe that the delegation to the Division only extends to providing relief if the total water available from the Carmel River plus the water available from the Seaside aquifer is not sufficient to meet a demand equal to water use in water year 1995 plus the water use by

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facilities: (1) under construction at the time of adoption; or (2) constructed subsequent to adoption of Order WR 95-10 which had received a water allocation from the District prior to adoption of Order WR 95-10. As noted in your May 15 letter, total water use in the 1995 water year was 13,830 af. Under the provisions of Order WR 95-10, Cal-Am could utilize 11,285 af from the Carmel River plus 4,000 af from the Seaside aquifer for a total of 15,285 af. Thus, in the 1995 water year Cal-Am could have utilized 1,455 af more than it did, which is significantly more than the District's 1995 allocation of 192.3 afa from the Seaside groundwater basin.

The SWRCB has already acted favorably on one issue identified in your April 16 letter. The developers of the Pebble Beach Wastewater Reclamation Project sought SWRCB approval to utilize 380 afa of Carmel River water made available as a result of developing the wastewater reclamation project. Since the Pebble Beach interests use treated wastewater in lieu of potable water from the Carmel River; the SWRCB found that the net diversion from the Carmel River to serve project lands will be less than the level that would have occurred if the wastewater reclamation project had not been developed. On March 27, 1998, the SWRCB determined that Order WR 95-10 provided for development of this project.

Finally, the District asserts that the water conservation goal is inconsistent with water use planning efforts of the District. The SWRCB is the State agency responsible for administering the appropriate water right system. The SWRCB order is only an interim measure to provide some relief during development of a water supply project, and does not provide a basis of right for continued diversion of water. Failure to quickly address the water supply situation could result in the need for further action by the SWRCB. Thus, the District should tailor its water use planning efforts to ensure consistency with the provisions of Order WR 95-10.

If you require further assistance, I can be contacted at (916) 657-1359. Katherine Mrowka is the staff person presently assigned to this matter, and she can be contacted at (916) 657-1951.

Sincerely,
ORIGINAL SIGNED BY

Edward C. Anton, Chief
Division of Water Rights

cc: California-American Water Company
Mr. Larry Foy
50 Ragsdale Drive, Suite 100
Monterey, CA 93940

Ms. Linda Horning
Office of Senator Bruce McPherson
7 John Street
Salinas, CA 93901

bc: Walt Pettit
SWRCB Board Members