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Secretary for
Environmental
Protection

State Water Resources Control Board

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Governor

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NOTICE OF PUBLIC HEARING

**The State Water Resources Control Board will hold a
Hearing on Petitions for Reconsideration of Order 2001-04-DWR**

**Regarding California-American Water Company
Water Diversion Pattern Pursuant to Condition 6
Of Order WR 95-10
As Modified by Order WR 98-04**

Carmel River in Monterey County

**Commencing at 10:00 a.m. on Monday, September 17, 2001
and continuing at 9:00 a.m. on Tuesday, September 18, 2001, if necessary**

**Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor Coastal Hearing Room
Sacramento, CA**

SUBJECT OF HEARING

This hearing is scheduled to receive evidence on whether WR Order 2001-04-DWR should be modified to accomplish the objective stated in Condition 6 of Order WR 95-10 (as modified by Order WR 98-04), and, if so, how the Order should be modified. This hearing is being conducted in response to petitions for reconsideration of WR Order 2001-04-DWR.

BACKGROUND

On July 6, 1995, the State Water Resources Control Board (SWRCB) adopted Order WR 95-10 regarding complaints filed against the California-American Water Company (Cal-Am) concerning Cal-Am's operations on the Carmel River in Monterey County. As part of the settlement of litigation, on February 19, 1998, the SWRCB adopted Order WR 98-04, which amended Order WR 95-10. Condition 6 of Order WR 95-10, as modified by Order WR 98-04, (Condition 6) requires Cal-Am to evaluate whether its existing diversions to the Carmel Valley Filter Plant (CVFP) can be changed in order to maintain more surface flow in the Carmel River.

Condition 6 states:

“Cal-Am shall conduct a study of the feasibility, benefits and estimated costs of supplying water to the areas now served by the CVFP from its more nearby wells downstream of the plant and shall also conduct a similar study of utilizing the existing or expanded Begonia Treatment Plant or other facilities located further downstream in lieu of the Carmel Valley Filter Plant. This latter study shall be completed within 1 year of the date of entry of this Order. Petitioners shall have an opportunity to comment on the scope of the study. The study shall be under the direction of the Division of Water Rights, and will be conducted by a consultant approved by the Division. If the Chief, Division of Water Rights finds that the measures identified in the studies are feasible, Cal-Am must implement supplying water from the facilities identified by the Division according to a schedule approved by the Division of Water Rights.

The objective of supplying water from the wells is to maintain surface flow in the stream as far downstream as possible by releasing water from San Clemente Dam for maintenance of fish habitat. The results of the study and recommendations shall be provided to the District and DFG for comment.”

Cal-Am completed two studies pursuant to Condition 6. The petitioners and others were given an opportunity to comment on the scope of the studies, were provided copies of the studies upon request, and were given an opportunity to comment on the completed studies. On April 18, 2001, in WR Order 2001-DWR, the Chief, Division of Water Rights, ordered a modification of the operations of Cal-Am in accordance with Condition 6.

Petitions for reconsideration of the Order were received from Cal-Am, the Monterey Peninsula Water Management District (District), the Carmel River Steelhead Association (CRSA) and the Ventana Chapter of the Sierra Club (Sierra Club), and the National Marine Fisheries Service (NMFS).

WR ORDER 2001-04-DWR

WR Order 2001-04-DWR requires Cal-Am to comply with Condition 6 of Order WR 95-10, as modified by Order 98-04, as follows.

1. “Unless Cal-Am notifies the Chief of the Division of Water Rights as required by Paragraph 2, below, Cal-Am shall within 40 days of issuance of this order divert the water presently diverted at San Clemente Dam from the Carmel River subterranean stream between river miles 9.0 and 17.2. Cal-Am shall satisfy the water demands of its customers by extracting water from its most downstream wells between river miles 9.0 and 17.2 to the maximum practicable extent, except that Cal-Am may divert up to 1.25 cubic feet per second (cfs) to serve the Carmel Valley Village using the wells in AQ1.”
2. “Within 30 days of the date of this order, Cal-Am shall conduct a hydrologic study for the limited purpose of determining whether the conditions specified in Paragraph 1, above, cause localized hydrologic impacts in the Carmel River in the vicinity of the wells

used to divert the water which is presently diverted at San Clemente Dam. Cal-Am shall notify the Chief of the Division of Water Rights within 10 days of completing the study if adverse hydrologic impacts are expected to occur.”

3. “Paragraph 1 may be modified by the Chief of the Division of Water Rights if new information becomes available which shows that further expansion of downstream pumping is feasible and beneficial for maintenance of fish habitat in the lower Carmel River. Any changes to Paragraph 1 shall occur after notice and an opportunity to comment on the proposed change.”

Orders 95-10 and Order 98-04 are final. No changes to those orders will be considered during this hearing.

KEY ISSUES

1. Do the studies submitted by Cal-Am comply with Condition 6 of Order WR 95-10, as modified by Order 98-04?
2. Should Order WR 2001-04-DWR (order) be modified to accomplish the objectives stated in Condition 6? If so, how?
 - a. Should the order be modified to allow direct diversion at San Clemente Dam? If so, how much water should Cal-Am directly divert and during what time of year or under what stream flow conditions should such diversions be allowed? If direct diversion is allowed under specified stream flow conditions, where should the compliance points for measuring the stream flows be located?
 - b. Should the order be modified to require Cal-Am to forego use of all of its wells in AQ1 and AQ2 during periods of “low flow”, and divert the water presently diverted at San Clemente Dam from its wells in AQ3? What is the instream flow associated with “low flow” conditions? Where should the compliance point be for measuring the specified stream flow?
 - c. Should the order be modified to require diversion from new wells in subaquifer AQ4? What environmental gains are anticipated, and what is the associated cost for modifying Cal-Am’s operations?
 - d. How does reducing surface diversions at San Clemente Dam, and allowing the water to remain instream for subsequent diversion from Cal-Am’s wells between river miles 9.0 and 17.2 affect steelhead?
 - e. Does increased use of wells to compensate for reduction in surface diversions at San Clemente Dam cause localized hydrologic and/or water quality impacts in the Carmel River? Should a study be conducted to address this issue? What should the study evaluate? What is an appropriate timeline for preparing the study? Who should be responsible for conducting the study?

HEARING PARTICIPATION

All persons who plan to participate in this hearing should carefully read the enclosure entitled "Information Concerning Participation in Hearing on Water Rights." As stated in that enclosure, parties intending to present evidence at the hearing must submit a "Notice of Intent to Appear" which must be **RECEIVED** by the Board on or before **4:00 P.M. on August 15, 2001**.

Questions concerning this notice may be directed to Katherine Mrowka at (916) 341-5363 or Barbara Katz at (916) 341-5192. FAX #(916) 341-5400.

PARKING AND ACCESSIBILITY

The enclosed map shows the location of the Joe Serna, Jr./California Environmental Protection Agency (Cal-EPA) Building in Sacramento. Public parking is available in metered spaces on area streets, and in the public garages shown on the attached map.

The Cal-EPA Building second-floor hearing room is accessible to persons with disabilities. Individuals who require special accommodations are requested to contact Adrian Perez at (916) 341-5880 at least five working days prior to the meeting date. TTY users may contact the California Relay service at 1-800-735-2929 or voice line at 1-800-735-2922.

Signed by: _

Maureen Marché
Clerk to the Board

Enclosures

Date: July 12, 2001

Staff Exhibits by Reference

1. File 262.0 (27-01) Complaints and Investigations – Condition 6 Submittals Correspondence Folder
2. File 262.0 (27-01) Complaints and Investigations – Reports: “Reconnaissance-Level Hydrogeologic Study, Alternative Sources of Water Supply to Carmel Valley Filter Plant,” Fugro West, Inc., September 1996
3. File 262.0 (27-01) Complaints and Investigations – Reports: “Reconnaissance-Level Feasibility Study for the Operational Reconfiguration of Lower Carmel Valley Wells,” Denise Duffy & Associates, Inc., June 1999
4. SWRCB Order WR 95-10
5. SWRCB Order WR 98-04
6. WR Order 2001-04 – DWR
7. Analysis of the Carmel Valley Alluvial Groundwater Basin, Monterey County, California,” U.S. Geological Survey Water Resources Investigation Report 83-4280. Document is SWRCB Exhibit 19, located in SWRCB file titled “Application 27614 – 1992 Hearing Transcripts and Exhibits (Including 1995 Hearing Continuation Submittals).”

Enclosure 1

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-649.6 and 760, as they currently exist or may be amended. A copy of the current regulations is available upon request or may be viewed at the Division of Water Rights' web site: <http://www.waterrights.ca.gov/Title23Regs.htm>.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross examination. The hearing officer may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officer will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are Cal-Am, the District, CRSA and Sierra Club, NMFS and any other interested persons or entities authorized by the hearing office to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officer will be allowed to present evidence. A person or entity who appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file a Notice of Intent to Appear and **five** copies thereof which must be received by the SWRCB no later than **4:00 p.m. on August 15, 2001**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the SWRCB as intent not to appear.

The Notice of Intent to Appear must state the name and address of the participant; the name of each witness who will testify on the participant's behalf; a brief description of the proposed testimony; and an estimate of the time, not to exceed 20 minutes, that the witness will take to present a brief oral summary of the witness's testimony. The witness's testimony must be submitted in writing as described in section 4 below. Participants who do not intend to present a case in chief but who may wish to cross examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case in chief after having submitted a Notice of Intent to Appear should notify the SWRCB and the other participants as soon as possible.

Following receipt of the Notices of Intent to Appear, the SWRCB will mail to each participant who has submitted a notice a service list of participants. No later than **August 24, 2001**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list along with a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities who have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit **five** copies of each of its exhibits to the SWRCB and serve a copy of each exhibit and index on every participant on the service list. With its exhibits, each participant must submit to the SWRCB and serve on the other participants a completed Exhibit Identification Index. A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the SWRCB by **4:00 p.m. on August 24, 2001** and served on the other participants on or before that date.

If possible, each participant should submit to the SWRCB an electronic copy, as well as a hard copy, of the Exhibit Identification Index. The electronic copy should be submitted on a disk or as an attachment to electronic mail sent to [Wr_Hearing Unit@waterrights.swrcb.ca.gov](mailto:Wr_Hearing_Unit@waterrights.swrcb.ca.gov), with the subject heading of "Carmel River Hearing On Petitions for Reconsideration of Order 2001-04 DWR." The electronic copy must be in a version supported by Microsoft Excel 97 (preferred) or Word 97. An electronic copy of a blank exhibit list can be obtained on the hearings unit home page listed above. The SWRCB will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
- b. The hearing officer has discretion to receive in evidence by reference relevant, otherwise admissible, public records of the SWRCB and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the SWRCB before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

exhibit by reference shall advise the other participants and the SWRCB of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the SWRCB's files where the document may be found.

- c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the SWRCB in electronic form, using a file format readable by Microsoft Office 97 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ORDER OF PROCEEDING:** The SWRCB member serving as hearing officer will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events.
- a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the SWRCB will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after the hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The SWRCB requests that policy statements be provided in writing before they are presented. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officer.
 - b. **Presentation Of Cases In Chief:** Each participant may present a case in chief addressing the key issues identified in the hearing notice. The case in chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case in chief has been completed.
 - i. **Opening Statements:** At the beginning of a case in chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case in chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Any policy-oriented statements by a participant should be included in the participant's opening statement.

- ii. **Oral Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
- iii. **Cross Examination:** Cross examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, the hearing officer will decide whether the participant's witnesses will be cross examined as a panel. Cross examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officer has discretion to allow additional time for cross examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by the hearing officer will be limited to the scope of the cross examination and the redirect examination, respectively. Witnesses may be cross examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but the hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. SWRCB members and the SWRCB's counsel may ask questions at any time, and the SWRCB members and staff may cross examine any witness.
- c. **Rebuttal:** After all participants have presented their cases in chief and their witnesses have been cross-examined, the hearing officer will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case in chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case in chief, and it does not include evidence that should have been presented during the presenter's case in chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
- d. **Closing Statements and Legal Arguments:** At the close of the hearing or at other times if appropriate, the hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If the hearing officer authorizes the participants to file briefs, **five** copies of each brief shall be submitted to the SWRCB, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.

² The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

³ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case in chief.

- e. **Large Format Exhibits:** Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
6. **EX PARTE CONTACTS:** During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte* communications between SWRCB members or SWRCB staff and any of the participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding noncontroversial procedural matters are permissible, but ordinarily should be directed to SWRCB staff, not SWRCB members. (Gov. Code, § 11430.20, subd. (b).)
7. **RULES OF EVIDENCE:** Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
8. **SUBMITTALS TO THE SWRCB:** Materials submitted to the SWRCB should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Attn: Katherine Mrowka
Phone: (916) 341-5363
Fax: (916) 341-5400

Email: to Wr_Hearing_Unit@waterrights.swrcb.ca.gov

**With Subject of “Carmel River Hearing On Petitions for Reconsideration of
Order 2001-04 DWR”**

Couriers delivering comments must check in with lobby security to have them contact Division of Water Rights mailroom, second floor. Mailroom staff will receive and date stamp comments. Any faxed comments must be followed by mailed or delivered hard copies.

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding:
(name of party or participant)

**CARMEL RIVER HEARING ON PETITIONS FOR RECONSIDERATION
OF ORDER 2001-04 DWR**

Scheduled for
September 17 and 18 (if necessary), 2001

___ I/we intend to present a policy statement only:

___ I/we plan to call the following witnesses to testify at the hearing:

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing
Address: _____

Phone Number: (____) _____ Fax Number: (____) _____

E-mail Address: _____

Exhibit Identification Index

Participant _____

Exhibit No.	Description	Status as Evidence		
		Introduced	Accepted	By Official Notice