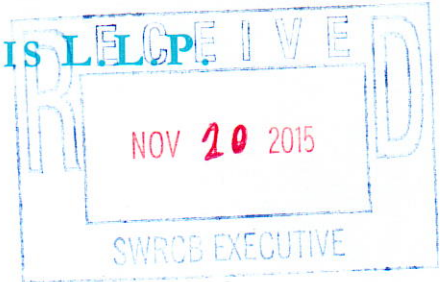


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November 20, 2015

OCC

cy: DWR
Bd

Tom Howard
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: **Application For Order Modifying State Water Board Order
WRO 2009-0060 (Cease and Desist Order)**

Dear Mr. Howard:

On behalf of the petitioners and other stakeholders, California-American Water Company hereby submits the enclosed ***Application For Order Modifying State Water Board Order WRO 2009-0060***. Petitioners and Stakeholders appreciate the time and efforts of State Water Board staff in the development of the Application and Proposed Order, and we look forward to working with the State Water Board on approval and implementation of the Proposed Order.

Sincerely,

Robert E. Donlan
Robert E. Donlan

Enc.

cc: Barbara Evoy
John O'Hagan
Mariana Aue
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DIV OF WATER RIGHTS
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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Unauthorized Diversion and Use
of Water by the California American Water
Company; Cease and Desist Order WR 2009-0060

APPLICATION FOR ORDER
MODIFYING STATE WATER
BOARD ORDER WRO 2009-0060
(CEASE AND DESIST ORDER)

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WATER RIGHTS
SACRAMENTO

I. Introduction

Pursuant to Water Code section 1832, California-American Water Company ("CAW"), Monterey Peninsula Regional Water Authority ("MPRWA") and Monterey Peninsula Water Management District ("MPWMD"), the Pebble Beach Company ("PBC"), and the City of Pacific Grove¹ (collectively and/or individually, "Petitioners") hereby apply to the State Water Resources Control Board ("SWRCB") for an order modifying certain of the ordering provisions of Order WRO 2009-0060 (referred to herein as "Order" or "CDO").² In Orders WRO 2009-0060 as amended by WR 2010-0001, the SWRCB required CAW to comply with Condition 2 of SWRCB Order WR 95-10. CAW has complied with these Orders by diligently implementing various actions in collaboration with the MPRWA, MPWMD and other community interests, including termination of unlawful diversions from the Carmel River in accordance with the schedule and conditions set forth in the CDO. Petitioners have diligently implemented measures to comply with the CDO, and CAW is currently meeting or has met all of the conditions of the CDO. Despite the best efforts of these parties as described below, factors beyond Petitioners' control prevent CAW and Petitioners from implementing a replacement water supply to eliminate all unauthorized diversions from the Carmel River before December 31, 2016 as required in the CDO. Accordingly, Petitioners hereby request that the SWRCB issue a new order modifying and restating certain of the ordering provisions of the CDO as specifically proposed in Attachment 1 ("Proposed Order").³

¹ Although it is a member of the MPRWA, the City of Pacific Grove joins as an individual Petitioner due to its specific interest in the "City of Pacific Grove Recycled Water Project" described in Section III.A.3.f., below.

² Petitioners understand that, as of its effective date, the requested Order would supersede the ordering provisions of State Water Board WRO 2009-0060. All other provisions of State Water Board WRO 2009-0060 and all other State Water Board orders concerning CAW's diversions from the Carmel River would remain in effect until terminated by law or action of the State Water Board.

³ The Proposed Order is the result of nearly two years of analysis and negotiations by Petitioners, stakeholders, resources agencies, and SWRCB staff. The Proposed Order includes significant commitments to measures to protect and enhance aquatic resources in the Carmel River through the extension period of the Proposed Order, and reflects an effort to maintain unequaled water conservation and use standards on the Monterey Peninsula without causing further damage to the economy of the Peninsula. The diversion reductions proposed in the Proposed Order will severely stretch the communities' water conservation capabilities, and therefore this Application is made with the understanding and on the condition that the SWRCB adopt an order amending the CDO that is materially the same as the terms and conditions in the Proposed Order in Attachment 1. Petitioners reserve all rights and remedies to protect the water supply necessary to maintain health and safety of the Monterey Peninsula, and do not intend with this Application to waive any rights or remedies necessary to protect an adequate water supply for the public welfare of the Monterey Peninsula.

In summary, the Proposed Order would extend the deadline for CAW to terminate all unlawful diversions from the Carmel River until December 31, 2020 to allow additional time to complete development of a replacement water supply. The moratorium on new connections and increased uses at existing connections that is described in more detail below would be maintained during the extension period. The Proposed Order would require CAW to make an immediate reduction of 1,000 afa from the existing diversion limit that is in place under Order WRO 2009-0060 for Water Year 2015-16, resulting in a diversion limit for that year of 8,671. In Water Year 2016-2017, the diversion limit would automatically be decreased again to 8,310 afa, which is derived by using a five year average of CAW's actual Carmel River production for the period ending with Water Year 2014-15. If Petitioners meet annual milestones that are directly tied to demonstrable progress on completing a new water supply during the extension period, then this diversion limit (8,310 afa) would be maintained for the entire extension period. If Petitioners fail to meet a milestone and the SWRCB does not grant an exception, then the diversion limit for the subsequent Water Year would be reduced by 1,000 afa and such reduction would remain in force until after the milestone was met. The Proposed Order includes provisions describing the possibility of carrying over limited volumes of water from one Water Year to another where CAW produces less than the diversion limit in place for a given Water Year. It also includes modifications to how water that is diverted to Aquifer Storage and Recovery ("ASR") is treated with respect to the diversion limit, which modifications are aimed at promoting maximum utilization of ASR to offset CAW's unlawful diversions. The Proposed Order also establishes a reporting structure through which Petitioners and other stakeholders would provide annual updates to the SWRCB on progress towards developing a new water supply and the status of the Carmel River fishery and habitat.

Petitioners also request cooperation and assistance from the SWRCB regarding certain applications, permits, loans and grant funds to implement projects that will reduce unauthorized diversion from, and increase the water in, the Carmel River, particularly during drier months of the year. With the SWRCB's support for those projects and modification of Order WRO 2009-

0060, Petitioners can commit to carry out the actions, plans and projects described in Sections III.A and III.C, which include:

- Continued development and implementation of efficiency and conservation measures;
- Continued development and implementation of projects to develop alternative and supplemental water supplies; and
- Continued development and implementation of fish and wildlife protection and enhancement measures.

While not signatories to this Application, many other stakeholders participated extensively in the development of this Application. Petitioners thank each of these groups and request that the Board recognize them for their efforts to collaborate with Petitioners. Without them, this Application would not be as robust and well-reasoned as it is today. These groups include the Sierra Club, the Carmel River Steelhead Association, the Planning and Conservation League Foundation, Quail Lodge, Bernardus Lodge, and the Carmel Valley Ranch, among others. Included in Attachment 2 are letters of support from several stakeholder entities, each of whom participated in the development of this Application.

Petitioners would also like to acknowledge the significant efforts and collaboration by Staff of the SWRCB in the development of this Application. In the face of the worst drought in California's history, SWRCB Staff professionally and cooperatively worked with Petitioners over a two year period to provide feedback, to help drive consensus among stakeholders and to assist in the development of this Application and the Proposed Order. The Board should recognize the efforts and professionalism of its Staff members and their contributions to this Application.

II. The SWRCB has Authority to Modify the CDO

The SWRCB has broad discretion to modify a CDO and to revise a schedule of compliance contained in a CDO. *See* Order WR 2010-0002. Petitioners make this Application pursuant to Water Code section 1832, which states, in relevant part: "The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to this chapter." For the reasons set forth below, including the fishery protection and enhancement measures that will be implemented by Petitioners, Petitioners submit there is good

cause for the SWRCB to modify the schedule and conditions in Order WRO 2009-0060.

III. It is Reasonable and in the Public Interest to Modify the CDO as Requested

A. CAW and Petitioners have Diligently and Aggressively Implemented Measures to Comply with the CDO.

1. Efficiency and Conservation Measures

Prior to and since the issuance of the CDO, Petitioners have dedicated tremendous resources to implement efficiency and conservation measures to control and reduce customer demand and system losses within CAW's Monterey district, such that the community is currently outperforming the Carmel River diversion reduction targets set forth in the CDO. These include the following specific measures:

a. Moratorium on New Connections and Increased Uses at Existing Connections

CAW has implemented and diligently enforced a moratorium on new service connections within its Monterey district. CAW applied for, and the California Public Utilities Commission ("CPUC") approved on March 24, 2011, a moratorium on new service connections and an increased use at existing connections caused by a change in use.⁴ See CPUC Decision D.11-03-048. The moratorium has remained in effect since it was approved, and would be maintained during the requested extension period under the Proposed Order.

b. Revised Conservation and Rationing Plan

On July 14, 2015 CAW submitted an application to the CPUC to modify revised Rule No. 14.1.1 in CAW's CPUC tariff, Water Conservation and Rationing Plan for the Monterey District. CAW filed this application, with support and cooperation from MPWMD, in recognition that Rule 14.1.1, which is based upon the MPWMD Regulation XV, Expanded Water Conservation and Standby Rationing Plan, is outdated since it was last reviewed by the CPUC in a 2007 proceeding. A prehearing conference was held by the CPUC Administrative Law Judge on September 8, 2015 to discuss the parties' proposed schedule and scope of the

⁴ Prior CPUC decisions require CAW to seek CPUC authorization prior to denying service to any customer within its service area.

proceeding. On November 4, 2015, the CPUC filed a scoping memo that sets the schedule for a decision on CAW's application by approximately October 2016.

c. Water Conservation Programs

CAW and MPWMD have implemented a variety of customer water conservation and efficiency programs, including programs targeting large commercial customers such as laundries, hotels, and car washes. CAW's efficiency standards have placed it in the lowest residential per-capita usage tier under the SWRCB's recently adopted emergency urban water conservation regulations. CAW and MPWMD have also implemented programs targeting reductions in outdoor irrigation, including replacement of irrigated turf with drought tolerant landscaping or artificial turf, incentives for installation of weather-based irrigation controllers, mandatory installation of rain sensors on irrigation systems, and mandatory water efficiency requirements for all non-residential customers and certain residential customers. *See* MPWMD Regulation XIV. In February 2010, CAW implemented, with CPUC approval, a new tiered conservation rate structure with increases directed at the top tier users to promote conservation practices and reduce overall water usage. Compared to the five year historical tier 4 and 5 usage, tier 4 and 5 usage was down approximately 71% in Water Year 2014-2015. *See* Table Nine in CAW's 4th Quarterly Report for the 2014-2015 Water Year to SWRCB pursuant to Order WRO 2009-0060.

d. Infrastructure and Operational Improvements to Reduce System Losses and Customer Leaks

CAW has implemented and continues to implement programs to detect and reduce non-revenue system losses, including: replacement of older water mains and service lines in areas shown to be more leak prone; water meter replacement; active leak detection; technological solutions to manage lost water; and operational fixes such as pressure reduction. In addition, CAW is currently conducting a pilot test with a group of Monterey customers using remote technology that enables participants to receive real time water consumption data for their residential water account on their smart phone. The technology can be used to set up an alert if consumption is indicative of a water leak or if use increases. This allows customers the ability to

detect water leaks as they occur and to monitor their water use closely, further encouraging water conservation.

2. CAW is Diligently Pursuing Development of a Primary Alternative
Water Supply

As directed by Order 95-10 and the Order, Petitioners have diligently pursued the Monterey Peninsula Water Supply Project ("MPWSP"), which will produce the replacement water supply necessary to eliminate unauthorized diversions from the Carmel River.

a. Application for Approval of MPWSP and Permitting Activity

On April 23, 2012, CAW filed an application to the CPUC for approval of the MPWSP. The MPWSP includes the following components: (1) a desalination plant and associated source-water slant wells and conveyance system, which can produce up to 9,752 afa for system demand; (2) an ASR project to store water lawfully diverted from the Carmel River in the Seaside Groundwater Basin for subsequent recovery, with an expected long term average yield of 1,300 acre-feet annually; and possibly (3) a Groundwater Replenishment ("GWR") project that could treat recycled water and replenish up to 3,500 afa in the Seaside Basin. The GWR project is being developed by the MPWMD and Monterey Regional Water Pollution Control Agency ("MRWPCA") and, if timely approved, could result in a down-sized desalination plant. The Certificate of Public Convenience and Necessity ("CPCN"), approving the MPWSP, is anticipated from the CPUC before the end of 2016.

Significant progress has been made on the MPWSP. CAW has undertaken – and continues to advance – as many aspects of the project as can be done without regulatory permits. In that regard, CAW acquired a 45-acre parcel of land near the City of Marina to serve as the desalination plant site. CAW reached an agreement with CEMEX, Inc. that provides a temporary easement to construct and operate a test slant well as well as an option to purchase a permanent easement for purposes of constructing and operating a full scale subsurface seawater intake system. CAW has awarded a design-build contract to CDM Smith to construct the desalination plant once all necessary permits have been obtained. CAW is also in the process of

conducting separate procurements to construct distribution system improvements and construct the source water wells. These actions will expedite the construction of the MPWSP once all regulatory agencies have issued their respective permits.

On April 30, 2015, the CPUC released its Draft Environmental Impact Report ("DEIR") for the MPWSP pursuant to the California Environmental Quality Act ("CEQA"). The release of the DEIR began a 60-day public comment period, which was subsequently extended through September 30, 2015. On September 8, 2015, the CPUC issued a statement that it will revise and recirculate the MPWSP DEIR as a joint DEIR/Draft Environmental Impact Statement ("DEIS"). The joint DEIR/DEIS will meet the requirements of the National Environmental Policy Act ("NEPA"), and will be coordinated with the Monterey Bay National Marine Sanctuary ("MBNMS") as the federal lead agency. MBNMS's parent agency the National Oceanic and Atmospheric Administration ("NOAA") published a *Notice of Intent to Prepare Environmental Impact Statement* on August 26, 2015 under NEPA for the MPWSP and held a related scoping meeting on September 10, 2015.

Substantial progress is also being made on the GWR component of the MPWSP. On April 23, 2015, MPWMD and MRWPCA released a DEIR for a 45-day public comment period that closed on June 5, 2015. On October 8, 2015 MRWPCA certified its final EIR for the GWR project.

b. Senate Bill 936 for Partial Public Financing

In September 2014, Governor Jerry Brown signed Senate Bill (SB) 936, authored by Senators Bill Monning and Anthony Cannella and Assemblymen Mark Stone and Luis Alejo. This legislation allows the MPWSP to utilize partial public financing if it is available at a lower rate than conventional, private project financing.

c. Test Slant Well Project

In addition, a new test slant well located on the CEMEX property in Marina, California was completed in March 2015. The test well was put into long term operation on April 22, 2015. Data from the test well and an associated network of monitoring wells is posted weekly on

CAW's MPWSP website (<http://www.watersupplyproject.org/>). Preliminary test well results have been promising and indicate that the test well is operating as designed. CAW and the California Coastal Commission also successfully defended the Coastal Development Permits underlying the test well in two separate lawsuits challenging their validity.

3. Petitioners Have Implemented Other Projects to Replace and Authorize Carmel River Diversions

Petitioners have developed, permitted and implemented supplemental water supply projects to reduce unauthorized Carmel River diversions. Petitioners have also facilitated or supported efforts by other entities to complete multiple projects and water right transactions that will permit beneficial uses within CAW's service area.

a. Table 13 Water Rights

CAW pursued and satisfied the requirements under SWRCB Decision 1632 to obtain additional appropriative water rights under SWRCB Permit 21330 to lawfully divert up to 1,488 afa from the Carmel River; subject to the same by-pass flow requirements as ASR water. In Water Year 2014-2015, CAW was able to divert 42.2 AF under the Permit, and reduce unauthorized diversions by an equal amount.⁵

b. Pebble Beach Wastewater Reclamation Project

CAW has been a participant with PBC, the Carmel Area Wastewater District ("CAWD"), the Pebble Beach Community Services District ("PBCSD"), and MPWMD in accomplishing perhaps the most renowned golf course recycled water irrigation project in the country. The CAWD-PBCSD Wastewater Reclamation Project (as it is known) treats wastewater at the CAWD plant to a tertiary level, with advanced level micro-filtration which is then distributed by PBCSD and MPWMD as recycled water to irrigate all of the Del Monte Forest golf courses. This project is presently supplying an average of 1,000 afa of recycled water to the golf courses, conserving that amount of diversions from the Carmel River. In addition to MPWMD's

⁵ Decision 1632 Condition 10 provides an opportunity for the persons named in Table 13 of Decision 1632 to obtain a water right permit with a priority superior to the MPWMD's Permit 20808. Decision 1632 delegates authority to the Chief of the Division of Water Rights to modify the quantities identified in Table 13.

conservation programs, this project is one of the largest water saving projects operating on the Monterey Peninsula. In return for its financial commitment (of which PBC has funded over \$22 million in operating shortfalls and debt service) which made the project possible, PBC (with other Del Monte Forest landowners) received the Pebble Beach Water Entitlement, which was fully recognized in SWRCB Order WRO 2009-0060, as modified by Order WR 2010-0001.

c. Additional Aquifer Storage and Recovery Capacity

As required by the Order, CAW and the MPWMD expanded the Carmel River ASR Project to fulfill the Small Project requirement in Ordering Paragraph 3.a.(5). CAW and MPWMD jointly hold water right Permit 20808C that allows for up to 2,900 afa to be diverted from the Carmel River during periods of excess flow and then injected into the Seaside Basin as part of the ASR program.⁶ CAW and MPWMD have completed two new wells (ASR Wells #3 and #4) at the Seaside Middle School since the CDO was issued. The addition of ASR Well #3 gives CAW and MPWMD the ability to store and recover an expected long term average of more than 500 afa, and was completed to satisfy Condition 5 of the CDO. The addition of ASR Well #4 provides the opportunity for CAW and MPWMD to realize an estimated additional 500 afa available for diversion under the associated Permit.

d. Carmel River Floodplain Restoration and Environmental Enhancement Project and Interim Water Use Agreement

CAW supported and facilitated a water right change petition submitted by the Clint Eastwood and Margaret Eastwood Trust ("Eastwood Trust") and approved by the SWRCB on July 3, 2015 in Division Decision 2015-0001. This project includes a significant donation of land by the Eastwood Trust to the Big Sur Land Trust as an important component of the Carmel River Floodplain Restoration and Environmental Enhancement Project. The Carmel River Floodplain Restoration and Environmental Enhancement Project will, among other potential things, restore the historic floodplain and wetlands and improve flood protection in the lower Carmel River and increase riparian habitat.

⁶ The "face" amount of Permit 20808C presumes Carmel River flows meet or exceed minimum instream flow requirements each day of the 183-day diversion season and that diversions occur each day at the maximum instantaneous rate allowed under the Permit.

The Eastwood Trust agreed to permanently dedicate 46 afa of its existing water right to instream flows, and to grant temporary use of up to 85 afa to assist CAW to reduce its unauthorized diversions from the Carmel River. CAW and the Eastwood Trust expended significant time and effort to complete this transaction and expect to begin replacing CAW diversions with water available through the associated water right (License 13868A) in the immediate near term. Based upon an agreement with the Eastwood Trust, the SWRCB has ordered that all municipal water pumped under License 13868A during 2015 will be used to offset CAW's Carmel River Diversions, and that at least 50 af and 25 af will be used to assist CAW to reduce its unauthorized diversions from the Carmel River in 2016 and 2017, respectively. Until the MPWSP is brought online and unauthorized diversions from the Carmel River eliminated, the agreement with the Eastwood Trust authorizes CAW to use all water under License 13868A that is not used by Eastwood pursuant to the License amendment.

e. Carmel River Instream Flow Enhancement Program

CAW has proposed to the SWRCB the Carmel River Instream Flow Enhancement Program, whereby CAW will compensate Carmel River water rights holders to implement conservation measures to reduce water diversions from the river in order to increase instream flows for the benefit of fish and wildlife in the Carmel River. On September 8, 2015, CAW submitted a Notice of Intent to Implement the Carmel River Flow Enhancement Program to the SWRCB describing the proposed program which would temporarily modify the water users' water rights to allow for the instream use of water in the Carmel River.

f. City of Pacific Grove Recycled Water Project

The City of Pacific Grove certified an EIR for its Local Water Project to reduce irrigation on the City's municipal golf course and El Carmelo Cemetery. MPWMD provided a feasibility funding grant to assist planning this effort. Clean Water State Revolving Fund ("SRF") financing for this effort was approved by the SWRCB on November 17, 2015. The City expects to begin construction during or before January 2016. CAW also has actively supported this project throughout the proposal and approval process.

4. CAW and Petitioners have Implemented and Propose Additional Measures to Enhance and Improve Conditions for Fish and Wildlife Resources

Petitioners have permitted and implemented significant measures to enhance and improve conditions for fish and wildlife resources in the Carmel River watershed, and to minimize and avoid potential impacts to fish and wildlife during the extension period for the CDO sought through this Application.

a. Funding for Carmel River Mitigation Projects

Pursuant to a 2009 agreement (amended in 2014) between CAW, the National Oceanic and Atmospheric Administration (NOAA), and the California Department of Fish and Wildlife ("CDFW"), CAW made a one-time payment of \$3.5 million in 2009, annual payments of \$1.1 million per year for 2010 through 2015, and has committed to make annual payments of \$1.1 million per year through 2016 to the State Coastal Conservancy ("SCC") for environmental protection and enhancement projects in the Carmel River watershed.

CAW's payments, which total \$10.1 million to date, are being used to fund the following significant projects, which are designed to mitigate the impacts of CAW's unauthorized diversions and are identified by the SCC through ongoing consultations with the NMFS, CDFW, and Carmel River stakeholders primarily through the Carmel River Task Force:

- Removal of Old Carmel River Dam to facilitate fish passage;
- Removal of Sleepy Hollow Ford to facilitate fish passage;
- Restoration of Carmel River upstream of San Clemente Dam;
- Sleepy Hollow Fish Rearing Facility Intake Improvements;
- Carmel River Lagoon Large Wood Augmentation;
- Carmel Lagoon Water Augmentation;
- Carmel Lagoon Ecological Barrier;
- Additional Fish Passage Barrier Removal;
- Off-stream Storage of Excess Flows in Exchange for Forbearance of Summer Pumping;

Provided that NOAA and CAW mutually agree to terms for extending the 2009 agreement described above, CAW will make additional annual payments of \$1.1 million (pro-rated for any partial years) until unpermitted diversions of water from the Carmel River are replaced by legal sources of water for use on projects during the requested extension period for the CDO. Use of these funds and administrative efforts will focus, with support of CAW and other Parties, on projects that can be implemented during the extension period to mitigate potential effects of the extension. MPWMD will use its best efforts and cooperate with NOAA, CDFW, SCC and the Carmel River Steelhead Association, to identify, develop, and implement mitigation efforts that benefit the Carmel River.

b. Carmel River Reroute and San Clemente Dam Removal Project

CAW also has permitted, financed and completed significant construction activities to re-route the Carmel River and remove the San Clemente Dam. The *Carmel River Reroute and San Clemente Dam Removal Project* is the largest dam removal project in California history, and was jointly developed and/or funded by the CAW, SCC, NOAA's National Marine Fisheries Service, the Planning and Conservation League Foundation, and the Nature Conservancy. This monumental and innovative project will:

- Remove the 106 foot high San Clemente Dam and implement a watershed restoration process that will bring the Carmel River back to life;
- Provide unimpaired access to over 25 miles of essential spawning and rearing habitat, thereby aiding in the recovery of threatened South-Central California Coast steelhead;
- Restore the river's natural sediment flow, helping replenish sand on Carmel Beach and improve habitat downstream of the dam for steelhead;
- Re-establish a healthy connection between the lower Carmel River and the watershed above San Clemente Dam;
- Improve habitat for threatened California red-legged frogs;
- Reduce beach erosion that contributes to destabilization of structures;
- Provide a long-term solution to the public safety risk posed by the potential collapse of

the dam, which potentially threatens 1,500 homes and other public buildings in the event of a large flood or earthquake;

The various construction activities that have been completed or are nearly completed to date include: complete excavation of the re-route cut, nearly complete installation of the diversion dike and the stabilized sediment slope, the complete demolition of San Clemente Dam itself and the near completion of the new river channel that allows for fish passage. An additional component of the project is the ultimate transfer of CAW property around San Clemente Dam to the U.S. Department of Interior Bureau of Land Management, which will create additional open space and habitat in the watershed.

c. Los Padres Dam Downstream Fish Passage Facilities

CAW and various stakeholders agreed to construct downstream fish passage facilities at Los Padres Dam, located at approximately River Mile 24.8 on the Carmel River. CAW owns and operates Los Padres Dam and has made various improvements to accommodate upstream fish passage over the Dam. Currently, when lake elevations fall below the dam's spillway crest, no downstream fish passage corridor exists. To improve downstream fish passage opportunities, the following facilities will be constructed: behavioral guidance system, floating weir surface collector, fish bypass conduit, bypass access portals, and bypass outfall. Construction of these facilities began in the second quarter of 2015, and will be completed before November 26, 2015.

d. Los Padres Dam Long Term Planning Study

In its April 10, 2015 *Decision Adopting the 2015, 2016, 2017 Revenue Requirement for California-American Water Company*, the CPUC authorized CAW to fund a study to determine the ultimate disposition of the Los Padres Dam and its effects on the Carmel River. CAW will fund MPWMD to continue independently studying the fate of the Los Padres Dam, including contribution from CAW of approximately \$1.0 million to assist MPWMD. Studies will include evaluating upstream steelhead passage at Los Padres Dam, whether the public trust resources of the Carmel River will be adversely affected or enhanced by removal or alteration of Los Padres Dam, what options exist to maintain physical existing surface storage in Los Padres Reservoir,

and analysis of the potential geomorphic effects of a resumption or increase of the natural flow of sediment. In addition, CAW expects to work with MPWMD to develop the scope of work and award the feasibility study to a qualified environmental consultant in the near future and anticipates completing the study during 2018. CAW also will continue to fund mitigation measures pursuant to MPWMD's current mitigation program through December 31, 2020.

e. Commitment to Fund and Implement Additional Mitigation Projects

Upon SWRCB approval of this Application on terms substantially similar to those requested herein, and subject to final approval from CDFW, NOAA, and other agencies with permitting jurisdiction, CAW will implement up to \$2.5 million in other projects on the Carmel River to improve fish passage and habitat. These include, in order of priority and estimated costs: additional spawning gravel injections below Los Padres reservoir (\$0.2 million); improvements to the existing upstream fish passage ladder and trap at Los Padres Dam (\$0.2 million); installation of a fish screen at the lower outlet pipe on Los Padres Dam (\$0.8 million); a pit tagging program (\$0.8 million); and a through-reservoir survival study for Los Padres Reservoir (\$0.5 million). Should the higher priority projects exceed the estimated amounts, funding will be pulled from the lower priority projects until the entire \$2.5 million is utilized. Additionally, the estimated cost from the above projects may be used to supplement other related projects occurring on the Carmel River (i.e., pit tagging work being contemplated by MPWMD).

B. Factors Beyond CAW's and Petitioners' Control Prevent Petitioners from Achieving all CDO Conditions and Deadlines

The requested modifications are necessary because factors beyond CAW's and Petitioners' control – namely the failure of the Regional Desalination Project and delays in the CPUC approval schedule for the MPWSP – make it infeasible to complete the MPWSP and eliminate unauthorized Carmel River diversions within the current CDO schedule (i.e., by December 31, 2016). Petitioners anticipate a final CPUC decision approving the MPWSP and authorizing construction before the end of 2016. Once authorized, CAW expects to begin construction of the MPWSP by mid-2017, and to begin producing potable water to replace

Carmel River diversions before the end of the requested extension period. Major infrastructure projects of this size and scope are often subject to delays and litigation, but this anticipated schedule reflects Petitioners' best judgment if delays are kept to a minimum.

Taking into account the commitments, efforts and accomplishments described above, Petitioners request that the SWRCB modify the CDO as shown in Attachment 1. Petitioners' make this request upon the express understanding and condition that the hearing record developed and adduced before the SWRCB for Orders WRO 2009-0060 and WRO 2010-0001 are incorporated within the proceedings on this Application, for all purposes. Further, this Application is made upon the express understanding and condition that Petitioners each shall preserve, and not waive, their collective or individual rights to petition for relief from any provision of the order amending and restating the CDO, for any reason, upon a claim that the order amending and restating the CDO causes a threat to public health or safety or otherwise jeopardizes the water supply for the Monterey Peninsula. Should the SWRCB consider adoption of an order amending and restating the CDO on terms or conditions different from the Proposed Order submitted as Attachment 1 to this Application, Petitioners request that the SWRCB not take action thereon until Petitioners have been provided notice of the draft order not less than 30 days prior to any meeting to adopt the order, and provided an opportunity to augment the record of proceedings with respect to the Application.

IV. Petitioners Request Assistance from the SWRCB.

Taking into account the commitments, efforts and accomplishments described herein, Petitioners request that the SWRCB commit to use reasonable efforts to assist Petitioners' efforts to eliminate unauthorized Carmel River diversions as follows:

1. Support issuance of a CPCN from the CPUC and support CAW's request(s) to the California Coastal Commission and other agencies with permitting jurisdiction for expedited permit issuance for the "Monterey Pipeline and other ASR related improvements," which will facilitate increased ASR diversion during high flows and other improved operations that will increase the amount of water in the Carmel River

- during dry months;
2. Cooperate with the Parties' in efforts to secure from the SWRCB's Division of Financial Assistance a one percent (1.000%), thirty-year loan from the program announced March 19, 2014 for water recycling projects for the MPWMD/MRWPCA GWR project, provided an application is submitted by December 2, 2015;
 3. Cooperate with the Parties to secure prioritization of the MPWMD/MRWPCA GWR grant request pursuant to Chapter 9 of AB 1471 (2014 Proposition 1); and
 4. Support, including expedited review of, water rights Application 32263 of Monterey County Water Resources Agency, and any amendments thereto, to facilitate the MPWMD/MRWPCA GWR project.

V. Conclusion

For the reasons stated herein, Petitioners respectfully request modification of Order WRO 2009-0060 as set forth in Attachment 1.

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Respectfully Submitted,

Dated: 11-20-15

CALIFORNIA-AMERICAN WATER COMPANY

By: Robert E. D.

MONTEREY PENINSULA REGIONAL WATER
AUTHORITY

By: _____

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

By: _____

PEBBLE BEACH COMPANY

By: _____

CITY OF PACIFIC GROVE

By: _____

Respectfully Submitted,

Dated: 11-19-15

CALIFORNIA-AMERICAN WATER COMPANY

By: _____

MONTEREY PENINSULA REGIONAL WATER
AUTHORITY

By: _____



MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

By: _____

PEBBLE BEACH COMPANY

By: _____

CITY OF PACIFIC GROVE

By: _____

Respectfully Submitted,

Dated: 11-19-15

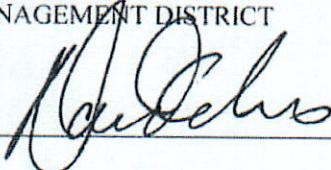
CALIFORNIA-AMERICAN WATER COMPANY

By: _____

MONTEREY PENINSULA REGIONAL WATER
AUTHORITY

By: _____

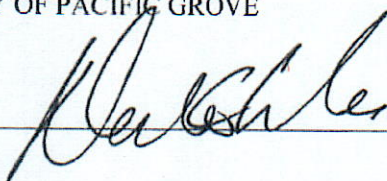
MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

By:  _____

PEBBLE BEACH COMPANY

By: _____

CITY OF PACIFIC GROVE

By:  _____

Respectfully Submitted,

Dated: 11-19-15

CALIFORNIA-AMERICAN WATER COMPANY

By: _____

MONTEREY PENINSULA REGIONAL WATER
AUTHORITY

By: _____

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

By: _____

PEBBLE BEACH COMPANY

Fenton: Keller

By: Thomas A. Jamison

CITY OF PACIFIC GROVE

By: _____

Attachment 1

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

PROPOSED ORDER AMENDING AND RESTATING ORDER WRO 2009-0060

NOW, THEREFORE, IT IS ORDERED THAT as of the effective date of this Order,¹ Cal-Am shall cease and desist from the unauthorized diversion of water from the Carmel River in accordance with the following schedule and conditions.

1. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2020.²
2. Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.³
3. Cal-Am shall adjust its diversions from the Carmel River in accordance with the following:
 - a. **Effective Diversion Limit.** The limits set forth in this Condition 3.a., as may be further reduced or increased pursuant to the terms and conditions of this Order, is referred to as the "Effective Diversion Limit."
 - (1) Immediate Reduction: Commencing on October 1, 2015 (Water Year 2015-2016), the Effective Diversion Limit shall be 8,671 afa.⁴
 - (2) Annual Diversion Limits:
 - i. **Water Year 2016-2017 Reduction.** Commencing on October 1, 2016

¹ The effective date of this Order shall be the date of issuance. As of the effective date, this Order shall supersede the ordering provisions of State Water Board WRO 2009-0060. All other provisions of State Water Board WRO 2009-0060 and all other State Water Board orders concerning Cal-Am's diversions from the Carmel River shall remain in effect until terminated by law or action of the State Water Board.

² Cal-Am lawfully diverts 3,376 afa under a legal basis of water right.

³ Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use.

⁴ Each Water Year runs from October 1 to September 30 of the following year.

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

(Water Year 2016-2017) the Effective Diversion Limit shall be 8,310 afa, and this Effective Diversion Limit shall be maintained through December 31, 2020 subject to the terms and conditions in this Order.

- ii. **Seaside Groundwater Basin Limitations.** The Effective Diversion Limit shall not apply to any exceedance that Cal-Am, the Monterey Peninsula Regional Water Authority ("MPRWA"), the Monterey Peninsula Water Management District ("MPWMD") the Pebble Beach Company ("PBC"), and /or the City of Pacific Grove (collectively "Petitioners") establish was necessary to meet reductions required by mitigation measures imposed pursuant to the Seaside Basin Watermaster's Seawater Intrusion Response Plan or by the court pursuant to the Seaside Groundwater Basin Judgment in response to a detection of seawater intrusion within the Seaside Groundwater Basin.
- iii. **Carryover:** After October 1, 2015 if Cal-Am's actual diversions during a given Water Year are less than the Effective Diversion Limit for that Water Year, Cal-Am shall be credited for the difference between the Effective Diversion Limit and Cal-Am's actual diversions. Any such credit may be carried over to offset any exceedance of the Effective Diversion Limit in future Water Years, subject to the restriction in Paragraph 3.a.(2)(iv) below.
- iv. **Cap on Carryover:** Notwithstanding the provision on carryover in Paragraph 3.a.(2)(iii), in any Water Year the sum of (a) Cal-Am's diversions of non-ASR⁵ water from the Carmel River and (b) water recovered from ASR storage shall not exceed the Effective Diversion Limit then in effect plus 750 afa.

⁵ "ASR water" means Carmel River water diverted to underground Aquifer Storage and Recovery ("ASR") storage pursuant to State Water Board Permits 20808A and 20808C, as discussed in Paragraphs 3.a.(3), 3.c., and 4 of this Order.

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

- v. **Milestones:** For purposes of calculating a reduction to the Effective Diversion Limit, the following Milestones and Deadlines will apply:

	Milestone	Deadline
1. (WY 2016-2017)	Issuance of a Certificate of Public Convenience and Necessity to Construct the Monterey Peninsula Water Supply Project ("MPWSP") by the California Public Utilities Commission.	September 30, 2017
2. (WY 2017-2018)	Start of construction for any of the Cal-Am Components of the MPWSP ⁶ and/or the Pure Water Monterey ⁷ project, meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work ⁸ .	September 30, 2018
3. (WY 2018-2019)	(1) Drilling activity for at least one MPWSP source water production well ⁹ complete; (2) foundation and structural framing complete for MPWSP pretreatment, seawater reverse osmosis, and administration buildings at desalination plant; (3) excavation complete for MPWSP brine and backwash storage basins; and (4) 25% of MPWSP transmission pipelines installed based on total length ¹⁰ .	September 30, 2019
4. (WY 2019-2020)	(1) 50% of drilling activity complete for MPWSP source water production wells based on total number of wells required; (2) mechanical systems for MPWSP brine and backwash storage basins complete; (3) Construction of MPWSP filtered water tanks and finished water tanks complete; (4) 50% of MPWSP transmission pipelines installed based on total length, including 100% installation of the "Monterey Pipeline and other ASR related improvements" (See Footnote 9.)	September 30, 2020
5. (WY 2020 – 2021 and beyond)	Substantial completion of the Cal-Am Components of the MPWSP, meaning the Cal-Am Components are sufficiently complete and appropriately permitted to allow delivery of MPWSP produced potable water to Cal-Am's Monterey Main system, eliminating further Cal-Am diversions of Carmel River water without valid basis of right	December 31, 2020

⁶ For purposes of this proposal the Cal-Am Components of the MPWSP include: source water production wells; desalination plant; brine disposal system; and transmission pipelines.

⁷ The Pure Water Monterey project is a proposed advanced water recycling project, jointly developed by two public agencies – the MPWMD and the Monterey Regional Water Pollution Control Agency ("MRWPCA").

⁸ Such work may include, among other things, any of the following: desalination plant site grading and preparation; electric utility installation; yard piping; subsurface excavation for structural foundations; transmission pipeline installation.

⁹ Not including the MPWSP Test Well completed in 2015.

¹⁰ For transmission pipeline installation Cal-Am will prioritize installation of the "Monterey Pipeline and other ASR related improvements," which will facilitate increased ASR diversion during high flows and other improved operations that will increase the amount of water in the Carmel River during dry months.

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

vi. **Reductions to the Effective Diversion Limit Based on Missed**

Milestones: The following reductions to the Effective Diversion Limit shall apply if an applicable Milestone Deadline is not met:

Water Year	Milestone Missed	Reduction in Effective Diversion Limit	Date Reduction Assessed
Oct. 1, 2016– Sept. 30, 2017	1	1000 AFA	Oct. 1, 2017
Oct. 1, 2017– Sept. 30, 2018	2	1000 AFA	Oct. 1, 2018
Oct. 1, 2018– Sept. 30, 2019	3	1000 AFA	Oct. 1, 2019
Oct. 1, 2019– Sept. 30, 2020	4	1000 AFA	Oct. 1, 2020
Oct. 1, 2020– Dec. 31, 2020	5	1000 AFA	Dec. 31, 2020

If a Milestone is not achieved by its Deadline but is subsequently achieved, the corresponding reduction to the Effective Diversion Limit shall be reversed on the first day of the Water Year following achievement of the Milestone. Once a Milestone has been achieved, any corresponding reduction will not be assessed in subsequent Water Years.

- vii. **Illustration:** The following table illustrates the effect of the reduction in the Effective Diversion Limit over the term of this Order, and assumes no Deadlines have been met and no carryover credits have been applied under Paragraph 3.a.(2)(iii), and no additional water rights have been obtained pursuant to Paragraph 6. The result is an elimination of unauthorized diversions from the Carmel River on December 31, 2020.

Water Year	Effective Diversion Limit if Milestones Missed, No Credits Applied, No Additional Water Rights Obtained
Oct. 1, 2015– Sept. 30, 2016	8,671 AFA

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

Oct. 1, 2016– Sept. 30, 2017	8,310 AFA
Oct. 1, 2017– Sept. 30, 2018	7,310 AFA
Oct. 1, 2018– Sept. 30, 2019	6,310 AFA
Oct. 1, 2019– Sept. 30, 2020	5,310 AFA
Oct. 1, 2020– Dec. 31, 2020	4,310 AFA
Thereafter	3,376 AFA

- viii. **Joint Annual Report.** At least 120 days prior to each Milestone Deadline described in Condition 3.a.(2)(v), Petitioners shall submit a joint report to the Deputy Director, Division of Water Rights, describing progress towards that Milestone, whether Petitioners expect the Milestone to be achieved by its Deadline and, if not, whether the Milestone will be missed for reasons beyond Petitioners' control. Within fifteen days of receiving the joint report by the Petitioners, the Deputy Director, Division of Water Rights shall submit a Staff Report to the State Water Board that attaches the joint report. Within 60 days of receipt of the Staff Report, the State Water Board shall receive, at a regularly scheduled meeting, written and oral reports from Petitioners, the Deputy Director, Division of Water Rights, and the public on progress towards Milestones. If Petitioners' joint report indicates that a Milestone is likely to be missed, the State Water Board shall determine during that meeting whether the cause for delay is beyond or within Petitioners' control. If the State Water Board determines that the cause is beyond Petitioners' control, it may suspend any corresponding reductions under Condition 3.a.(2)(vi) until such time as the Petitioners can reasonably control progress towards the Milestone.
- ix. **Status of Steelhead Fishery Report.** During the extension period CAW will provide funding in an amount not to exceed \$175,000 per year for the preparation of an annual report that evaluates the status of the threatened South-Central California Coast Steelhead Distinct Population Segment ("SCCC Steelhead DPS") in the Carmel River ("Status of

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

Steelhead Fishery Report"). Petitioners and various stakeholders agree that, if possible, the annual Status of the Steelhead Fishery Report will be prepared by the National Marine Fisheries Service ("NMFS") Southwest Fisheries Science Center ("SWFSC"). Petitioners and various stakeholders further agree that if NMFS West Coast Region finds a significant change in the status of the SCCC Steelhead DPS since the previous report (or, in the case of the first report, since the effective date of this Order), NMFS West Coast Region may provide recommendations for additional adaptive management measures to be taken with respect to the SCCC Steelhead DPS in the Carmel River. If SWFSC cannot complete the Status of the Steelhead Fishery Report for any or all years during the extension period, Petitioners and other stakeholders will work expeditiously and in good faith to designate another individual or entity with requisite expertise to complete the report. If the NMFS West Coast Region cannot review the Status of the Steelhead Fishery report in any or all years, Petitioners and other stakeholders will work expeditiously and in good faith to develop an alternative system for making adaptive management recommendations. Petitioners, stakeholders, and the preparer of the Status of the Steelhead Fishery Report will endeavor to deliver the report in a cost effective and efficient manner, to share resources, and to avoid duplication of effort to lower the cost of the report to the extent practicable. The Status of the Steelhead Fishery Report and any adaptive management recommendations shall be submitted to the SWRCB by Petitioners each year with the corresponding joint annual report.

- (3) ASR Project: The amount of water diverted to underground storage under State Water Board Permits 20808A and 20808C as of May 31 of each year shall be included in Cal-Am's annual production of Carmel River water that is subject to the Effective Diversion Limit, up to a maximum of 600 afa. On June 1 of each year, Cal-Am shall submit an operating plan to the Deputy Director for Water Rights specifying the quantity of water it intends to supply from the ASR Project for its customers after May 31 of each year. As described in Paragraph 4 below, after the first 600 afa have been recovered in a given Water Year, the

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

Effective Diversion Limit for that Water Year shall be reduced by the amount of ASR water recovered in that Water Year.

- (4) Sand City Desalination Plant: Any volume of water that is produced by the Sand City Desalination Plant and not served to persons residing within the City of Sand City shall be subtracted from the Effective Diversion Limit for the Water Year in which it is produced.
- (5) Pebble Beach: Within 90 days following adoption of State Water Board Order WRO 2009-0060, PBC certified, under penalty of perjury, the total quantity of water annually used under its water entitlement from MPWMD (for the funding assurances provided for the construction and expansion of the CAWD-PBCSD wastewater reclamation project). This amount was 36.352 afa. Ten percent (10%) of the amount reported, or 3.635 afa was to be added to the Effective Diversion Limit to allow Cal-Am to divert water from the river to supply water for PBC water entitlements initiated in the 12 months following adoption of State Water Board Order WRO 2009-0060. Thereafter, PBC has annually submitted and shall continue to annually submit, on September 30, a report to the Deputy Director for Water Rights accounting for any additional water that is diverted from the Carmel River as the result of an increased use of its MPWMD water entitlement. Increased diversions from the river by Cal-Am to satisfy PBC entitlements from MPWMD shall be added to the Effective Diversion Limit, and are not subject to Paragraph 2 of this Order. Water diverted from the river by Cal-Am for PBC entitlements can only be served to properties that have received a PBC entitlement from MPWMD and which are located in the Cal-Am's service area. After December 31, 2020, Cal-Am shall not illegally divert water from the river to supply the holders of PBC entitlements.
- (6) Supplemental Water Rights and Acquisitions: Provided Cal-Am is able to identify suitable and willing transacting parties, Cal-Am will exercise reasonable additional efforts to acquire supplemental Carmel River water rights at acceptable costs, and/or will pursue other Carmel River water acquisitions and water right changes in order to increase flows in the Carmel River and decrease Cal-Am's unauthorized Carmel River diversions ("Carmel River Flow Enhancement Program"). Cal-Am will use best efforts to implement

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

the Carmel River Flow Enhancement Program to the extent it can negotiate acceptable agreements with water right holders and provided participation will not negatively affect the rights of potential participants. Such acquisitions or water right changes may include leases and purchases of water rights along the Carmel River on a temporary or permanent basis, and may include water right change approvals or permits (permanent or temporary) from the State Water Board to increase opportunities to increase lawful diversions or reduce unauthorized diversions during periods of lower flow on the Carmel River. Fifty percent of water available under any Carmel River water right that is acquired by Cal-Am after the effective date of this Order shall be dedicated to instream use, and the remaining fifty percent shall be used to increase the Effective Diversion Limit in effect at the time a transaction is completed.

- (7) Malpaso Water Company: Water provided on an interim basis by the Malpaso Water Company LLC to Cal-Am under SWRCB License No. 13868A shall be added to the Effective Diversion Limit for the Water Year in which the water is provided to Cal-Am.
- (8) Additional Conservation Measures: In consideration for this Order modifying certain provisions of WRO 2009-0060, and subject to final approval from the California Department of Fish and Wildlife, the National Oceanic and Atmospheric Administration, and any other agencies with permitting jurisdiction, Cal-Am shall implement \$2.5 million in other projects on the Carmel River to improve fish passage and habitat. These include, in order of priority and estimated costs: additional spawning gravel injections below Los Padres Dam using excess gravel from Los Padres reservoir (\$0.2 million); improvements to the existing upstream fish passage ladder and trap at Los Padres Dam (\$0.2 million); installation of a fish screen at the lower outlet pipe on Los Padres Dam (\$0.8 million); a pit tagging program (\$0.8 million); and a through-reservoir survival study for Los Padres Reservoir (\$0.5 million). Should the higher priority projects exceed the estimated amounts, funding will be applied from the lower priority projects and utilized until the entire \$2.5 million is exhausted. Additionally, the estimated cost from the above projects may be used to supplement other related projects occurring on the Carmel River.

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

- (9) Los Padres Fish Passage. Cal-Am has committed to install of downstream fish passage facilities at Los Padres Dam and will endeavor to do so before December 31, 2015. Cal-Am will also endeavor to remove the Old Carmel River Dam and the Sleepy Hollow Ford before September 30, 2017.
- b. Either Cal-Am or the MPWMD may petition the State Water Board Deputy Director for Water Rights for relief from reductions imposed under this Order. No relief shall be granted unless all of the following conditions are met: (1) Cal-Am continues the moratorium on new service connections pursuant to Water Code section 350, and any orders from the PUC prohibiting new connections pursuant to Public Utility Code section 2708, and the MPWMD continues a moratorium on new service connections under its authority; (2) the demand for potable water by Cal-Am customers meets all applicable conservation standards and requirements; and (3) a showing is made that public health and safety will be threatened if relief is not granted. Any relief granted shall remain in effect only as long as a prohibition on new service connections remains in effect, and compliance with applicable conservation standards and requirements remains in effect.
- c. ASR Project water stored in the Seaside groundwater basin under State Water Board Permits 20808A and 20808C shall be used to mitigate the effect of Cal-Am's illegal diversions from the river. ASR water should be supplied to Cal-Am customers only during months when water is most needed in the river to preserve steelhead.
4. Cal-Am shall reduce its illegal diversions from the river at the same rate ASR water is recovered from the groundwater basin. After the first 600 afa have been recovered in a given Water Year, the Effective Diversion Limit for that Water Year shall be reduced by the actual amount of ASR water recovered in that Water Year.
5. In State Water Board Order WRO 2009-0060, Cal-Am was required to implement one or more small projects that, when taken together, totaled not less than 500 afa to reduce unlawful diversions from the river. Cal-Am was required to identify to the Deputy Director for Water Rights within 90 days of State Water Board Order WRO 2009-0060 the projects that it would implement, and to implement those projects within 24

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

months of entry of State Water Board Order WRO 2009-0060. Cal-Am satisfied this requirement by completing ASR Well #3. To the maximum practicable extent, Cal-Am shall continue to operate this small project to reduce illegal diversions from the river during the months when surface flow in the river begins to go dry and through the months when surface flow in the river disappears below river mile 6.5.

6. Cal-Am shall continue to post quarterly reports on its website and file the quarterly reports with the Deputy Director for Water Rights. The quarterly reports shall include the following:
 - a. Monthly summaries of the quantity of water it diverts from the river.
 - b. Monthly summaries of the quantity of ASR project water diverted from the river under State Water Board Permits 20808A and 20808C and stored in the Seaside ground water basin. The monthly reporting shall also state the quantity of ASR water recovered from aquifer storage, and the current balance of water in storage.
 - c. Monthly summaries of the quantity of water being produced by the Sand City desalination plant. The reporting shall identify new service connections within Sand City and thereafter report the quantity of water being delivered to the new connections. The monthly reports shall specify the quantity of water used to reduce diversions from the river during the reporting period.
 - d. Monthly summaries of the quantity of water saved by reducing system losses.
 - e. Monthly summaries of reductions in demand for potable water due to conservation actions such as increased water rates, MPWMD's retrofit program, efforts to reduce potable water for outdoor water use and demand reduction initiatives.
 - f. Monthly summaries identifying all new service connections. The report shall include the Cal-Am account number, the service address, the name of each authority granting any approval required for connecting to Cal-Am's system and the name of each authority granting any approval required before commencing construction; the issuer of the each approval and the date of each approval shall be separately listed for each service address.
 - g. Monthly summaries identifying existing service addresses that receive an increased supply of water due to a change in zoning or use. The report shall include Cal-Am account number, the service address and the name of each authority authorizing a change of use or of zoning and the date of such change.

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

- h. Each quarterly report submitted by Cal-Am shall be certified under penalty of perjury and shall include the following declaration: *"I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this report and any accompanying documents are true and correct, with full knowledge that all statements made in this report are subject to investigation and that any false or dishonest statement may be grounds for prosecution."*
- 7. Cal-Am shall file quarterly reports of its diversions under Paragraph 5 (small project) of this Order.
- 8. The Deputy Director for Water Rights is authorized to modify the timing and the content of the reporting required by all of the provisions of this Order to more effectively carry out the intent of this Order.
- 9. As of its effective date, this Order supersedes the ordering provisions of State Water Board Order WRO 2009-0060, but does not supersede or render moot any of the analysis or discussion contained in State Water Board Order WRO 2009-0060. Cal-Am shall comply with all requirements of State Water Board Order 95-10, except as modified pursuant to State Water Board Order WRO 2009-0060 or this Order.
- 10. The Deputy Director for Water Rights is directed to closely monitor Cal-Am's compliance with Order 95-10 and this Order. Appropriate action shall be taken to insure compliance with these Orders including the issuance of additional cease and desist orders under Water Code section 1831, the imposition of administrative civil liability under Water Code section 1055, and referral to the Attorney General under Water Code section 1845 for injunctive relief and for civil liability. If additional enforcement action becomes necessary, the Deputy Director is directed to consider including in such actions all Cal-Am's violations of Water Code section 1052 since the adoption of Order 95-10.
- 11. The conditions of this Order and Order 95-10 shall remain in effect until (a) Cal-Am certifies, with supporting documentation, that it has obtained a permanent supply of water that has been substituted for the water illegally diverted from the Carmel River and (b) the Deputy Director for Water Rights concurs, in writing, with the certification.

Attachment 1 to Application to Modify SWRCB Order WRO 2009-0060

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on _____.

AYE:

NAY:

ABSENT:

ABSTAIN:

Clerk to the Board

Attachment 2



SIERRA
CLUB
FOUNDED 1892

November 19, 2015

Ms. Felicia Marcus,
Chair, State Water Resources Control Board
1001 I Street
Sacramento CA 95814

Chair Marcus,

This letter transmits the comments of the Planning and Conservation League and the Sierra Club on California American Water Company's Application to Modify SWRCB Order WRO 2009-0600.

As you may know both PCL and the Sierra Club were active parties in the proceeding that resulted in that 2009 Cease and Desist Order. We presented witnesses and provided cross examination in that hearing. Additionally, the Sierra Club petitioned the Board in 1994 (through initiation of a complaint) to address both the legality of CAL-AM'S diversions from the Carmel River and the decline of the steelhead population in the River. Order 95-10 resulted from this complaint. Since the Board's issuance of the CDO we have been working diligently with parties to obtain permits and funding for alternative water supplies that will provide CAL-AM customers with alternative water supplies.

It is now apparent that it will not be possible for CAL-AM to implement those alternative water supplies in time for them to replace its illegal Carmel River diversions by the deadline in the CDO, December 31, 2016.

We have been in discussions with CALAM, your staff and other parties as the deadline for CDO compliance has approached. With one significant exception, we concur with the latest draft Application dated November 19, 2015 that has been made available to us.

Our concurrence includes support for the time extension and the milestones that have been proposed as triggers to demonstrate progress. We also concur with the proposed

funding for non-flow improvements to the habitat set forth in the application, and with the proposal for adaptive management.

However there is one significant provision in CAL-AM's Application that would not be consistent with the Board's public trust responsibilities. CAL-AM is proposing an Effective Diversion Limit for water year 2015 – 2016 of 8,671 acre feet annually. It would be reduced only slightly to 8,310 for the remaining term of the CDO extension.

That would be more than CALAM pumped in any of the past four years:

2011 - 2012	7,646 acre feet
2012 – 2013	8,007 acre feet
2013 – 2014	7,743 acre feet
2014 – 2015	7,228 acre feet

CAL-AM's proposed Effective Diversion Limit totally ignores the evidence that water use by CAL-AM customers has been steadily decreasing. In water year 2014-2015 its customers improved the efficiency of their water use so that their illegal diversions were over 1,400 acre feet less than the amount CALAM is proposing. Furthermore that was accomplished with no extraordinary financial or economic impacts to the users.

However the Carmel River steelhead have continued their precipitous decline. In 2013 - 2014 the steelhead fish count at San Clemente Dam was zero. In 2014 – 2015 it was only 7 fish. This year there were apparently no adult spawners returning below San Clemente Dam, measured by the fish counting devices still in place.

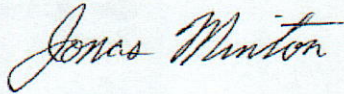
In addition the overly high Effective Diversion Limit would result in a steep cliff in water availability starting December 31, 2020 if alternative water supplies are not on line by that date. Under their proposal even if all the milestones were missed they would still be able to divert 5,310 acre feet of water in water year 2019 -2020, ending September 30, 2020. That would leave them only three months to reduce diversions down to their legally permitted amount of 3,376 acre feet starting January 1, 2021.

In light of the above we recommend that the Effective Diversion Limit be set at the average of the three most recent water years. That equates to 7,659 acre feet. That would provide CAL-AM some cushion over its water production in 2014-2015.

In addition, the Planning and Conservation League and the Sierra Club support the current proposal's potential maximum credit of 750 acre feet. Under this provision the amount of water diverted in any year less than the Effective Diversion Limit could be carried over as an addition to the Effective Diversion Limit for the following year. The amount of carryover credit could be up to 750 acre feet in any one year.

As you perform your public trust balancing responsibility, the impacts to the steelhead from CALAM's proposed increase in diversion levels would outweigh any economic or social impacts to water consumers (which have not been demonstrated).

Sincerely,



Jonas Minton,
Senior Water Policy Advisor, Planning and Conservation League



Rita Dalessio on behalf of the Ventana Chapter, Sierra Club



Larry Silver, Esq.
Counsel to Ventana Chapter, Sierra Club



Carmel River Steelhead Association

501 (c)(3) TIN 77-0093979

P.O. Box 1183

Monterey, CA 93942

Barbara Evoy
Deputy Director, Division of Water Rights.
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

November 18, 2015

RE: Application to Modify State Water Board Order 2009-0060 (Cease and Desist Order Carmel River)

Dear Ms. Evoy:

The Carmel River Steelhead Association (CRSA) has been part of the stakeholders group working with Cal Am on the request to extend WO 2009-0060. As a part of the group from the beginning, CRSA recommends that the State Water Board extend the Cease and Desist Order for the four years requested.

I have read the 9-14-15 letter addressed to you from National Marine Fisheries Service. I agree in principal to their comment that with the extension the fish will suffer further but they will survive. I do, however, feel NMFS did not analyze the request for extension in relationship to the added mitigation Cal Am has agreed to do, to fully note the actual condition of the river, to give accurate rescue data, or to give credit to the many other stakeholders volunteering time to save the Carmel River and its steelhead.

At one of the early meetings with Cal Am, the other stakeholders and your staff, I made the point that the best thing for steelhead would be to stop all illegal pumping and the excessive pumping to maintain water rights. Realizing that it is socially, economically and politically unrealistic for this to happen without a replacement water source and realizing even if Cal Am reduced pumping significantly the river would still have problems, the second best thing would be additional mitigation to help the fish during the extension and to help set the stage for recovery when water is no longer over-pumped from the river.

Cal Am has stepped up and promised to spend 2.2 million for mitigation above and beyond the funds spent or allocated in the NMFS/Cal Am settlement fund agreement. Three of the projects promised in the extension proposal - the gravel injection below the recently removed San Clemente Dam, the improvements to the existing fish ladder and trap CRSA build in the late 80s, and the installation of adequate fish screens on the Los Padres Dam outlets - will have an immediate and lasting benefit for steelhead and all three projects will help reduce the effects of the extension. In fact, the NMFS letter mentions the outlet screens as one thing that could benefit steelhead. Two other projects - the pit tagging study and the through-reservoir survival study for Los Padres Dam - will set the stage providing much needed information and put stakeholders in a better position to help steelhead when water is restored.

CRSA believes these five additional mitigations will significantly reduce the impacts of extending the Cease and Desist Order. The promised extensions, combined with the two projects

completed this year – the removal of San Clemente Dam and the Los Padres Dam downstream fish passage – will put steelhead in a much better place going forward than they are now.

Another thing to consider is that the letter from NMFS did not mention the tributaries of the Carmel River, and the fact that most if not all tributaries now dry back every year. This requires CRSA to rescue thousands of fry from them every year. To show the importance of the tributaries; in two years CRSA rescued more small steelhead from Cachagua Creek than were rescued from the main Carmel River. The drying back of the tributaries is the result of too many water users and changes in land use on these tributaries and has nothing to do with Cal Am pumping. In fact, these tributaries will still dry back when Cal Am is down to its legal limit of water. So while cutbacks in pumping from the main Carmel River will greatly help, it will not fully restore the steelhead population.

In conclusion and for the reasons listed above, CRSA supports extending WO 2009-0060.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian", with a long, sweeping horizontal line extending to the right.

Brian LeNeve
President, Carmel River Steelhead Association

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November 17, 2015

Ms. Barbara Evoy
Deputy Director, Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Re: Application to Modify Terms of Cease and Desist Order

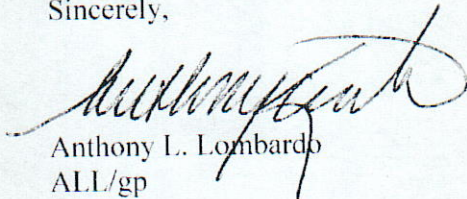
Dear Ms. Evoy:

As you may recall, our firm represents Quail Lodge, Carmel Valley Ranch Resort and Bernardus Lodge which are plaintiffs in the litigation involving the Cease and Desist Order.

We have reviewed the proposal to modify the terms of the Cease and Desist Order which is being presented to you by California American Water Company and my clients wholeheartedly endorse the request contained therein.

If you have any further questions regarding my clients' position in this matter, please do not hesitate to contact me.

Sincerely,


Anthony L. Lombardo
ALL/gp