



CALIFORNIA

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July 7, 2016

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

Matthew Quint
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Preliminary Staff Recommendation to Modify Cease & Desist Order WR
2009-0060

Dear Ms. Marcus, Mr. Howard, and Mr. Quint,

On behalf of The Trust for Public Land (TPL), I am writing in response to the State Water Resources Control Board's ("SWRCB") Notice of Comment Deadline & Rationale Document for Preliminary Staff Recommendation regarding termination of unauthorized diversions from the Carmel River.

The Trust for Public Land, in partnership with Trout Unlimited, Santa Lucia Conservancy and the Monterey Peninsula Regional Park District, is proceeding with what is believed to be an exceptional Carmel River conservation project that is slated to provide numerous important public benefits, including permanent dedication of a minimum of 175-190 acre feet per year of riparian water into the river, restoration of the 100-year flood zone along 1 mile of the river, protection of critical wildlife corridors to the east, west, north and south, and tremendously enhanced public recreational access and opportunities. In addition, TPL has secured interim water use forbearance through at least 2019 of approximately 300 acre feet per year, through the closure of 18 holes of the Rancho Canada 36-hole golf course effective this week, and the closure of the balance of the golf course on January 1 2017.

This historic opportunity to eliminate the second largest user of water on the Carmel River (after the California American Water Company, or CalAm) and return that water to the river for fisheries, recreational and other benefits, is made possible in part by a riparian water forbearance agreement familiar to SWRCB, which TPL has executed with CalAm, and is also reliant on a water use agreement TPL has executed with Rancho Canada Ventures and Rancho Canada Golf Club, who represent the two private parties that together with TPL control the water rights underlying the Rancho Canada Golf Course.

Informed by the importance and broad public resource benefits of the Rancho Canada conservation project, many of which we believe are directly supportive and advance SWRCB objectives for the Carmel River, and similarly advance objectives stipulated in the 2016 State of California Water Action Plan, we request that the SWRCB Board and staff consider the following two requests:

1. We encourage the express recognition, in either the SWRCB Narrative to the anticipated Order or in the Resolution approving the Order, of the benefits to the Carmel River of CalAm's decision to enter into the forbearance agreement with TPL on April 25, 2016. CalAm made this decision, with the support of other conservation organizations including the Sierra Club and Planning & Conservation League, with the objective that the forbearance agreement would support the proposed CDO terms in the April 28th Application. Nonetheless, CalAm did this in advance of any certainty of future State Water Board actions, because this timing was absolutely critical to TPL's ability to acquire two of the three properties underlying the Rancho Canada Golf Course, the first of which was acquired by TPL on June 30, 2016. This forbearance agreement (aka flow enhancement agreement) provides for approximately 300 acre feet per year of water forbearance between 7/1/16 – 12/31/19, with the possible extension of this forbearance through 2020. This increase in water into the Carmel River is expected to be of significant benefit to the steelhead fishery in the Carmel River. We also believe it could serve as a precedent that could create additional opportunities for CalAm to achieve flow enhancements along the Carmel River through similar agreements, to the further benefit of the Carmel River steelhead fishery. We are requesting that the Board and staff formally acknowledge the value of this forbearance agreement in your considerations on July 19th, and that SWRCB take under consideration the TPL-CalAm forbearance agreement in making your final determinations associated with the requested CDO extension;
2. As per SWRCB Chief Counsel Michael Lauffer's letter of April 24, 2016, we request that SWRCB also stipulate, in either the Narrative to the Order or in the Resolution, that water forbearance agreements, including specifically the TPL-CalAm forbearance agreement for the Carmel River (i) is a "reasonable and beneficial use of water for instream purposes," to quote Mr. Lauffer's much-appreciated letter, and (ii) that the properties engaged in the TPL-CalAm Carmel River forbearance agreement, and ideally properties generally involved in such agreements, would not suffer adverse water right outcomes from participation in flow enhancement agreements. We believe such a statement from SWRCB would be important not only for the Carmel River but also across the state. We are also concerned that absent a determination that temporary dedications are a beneficial use, landowners across the state could be disincentivized to enter into voluntary water conservation agreements, thereby undermining conservation efforts to advance objectives of the California Water Action Plan.

Thank you very much for your consideration of these two requests. We appreciate and applaud the attention of and actions taken by SWRCB to insure a healthy Carmel River now and in the future, and are very pleased to be proceeding with our Rancho Canada conservation project, to help advance those objectives for the river.

Sincerely,



David Sutton
California Land Conservation Director
The Trust for Public Land

Cc: Gina Fromer, California State Director, The Trust for Public Land
Alan Williams, Rancho Canada Ventures, LLC
Anthony Lombardo, Lombardo Land Group I & II