



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5600
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

SUPPLEMENT TO 1/26/06 MPWMD BOARD PACKET

Attached are copies of letters received between November 7, 2005 and January 3, 2006. These letters are also listed in the January 26, 2006 Board packet under item 18, Letters Received.

Author	Addressee	Date	Topic
Stuart L. Somach	Victoria Whitney and Steven Herrera	11/3/05	Revised Petition for Change for Diversion and Use of Water from the Carmel River for the Seaside Groundwater Basin Full-Scale Injection/Recovery Project <i>(12/8/05 Response from District Counsel Attached)</i>
Steven Herrera	Stuart L. Somach	12/13/05	Revised Petition for Change for the Seaside Groundwater Basin Full-Scale Injection/Recovery Project
Alex Hale	David Berger	12/19/05	Water Rights for Senior Citizen Housing Unit <i>(1/10/06 Response from David A. Berger Attached)</i>



State Water Resources Control Board



Alan C. Lloyd, Ph.D.
Agency Secretary

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterrights.ca.gov

Arnold Schwarzenegger
Governor

DEC 13 2005

In Reply Refer
to:334:KDM:11674

California-American Water Company
c/o Stuart L. Somach
Somach, Simmons & Dunn
813 Sixth Street, 3rd Floor
Sacramento, CA 95814-2403

RECEIVED

JAN 3 2006

MPWMD

Dear Mr. Somach:

REVISED PETITION FOR CHANGE FOR THE SEASIDE GROUNDWATER BASIN FULL-SCALE INJECTION/RECOVERY PROJECT, PERMITS 7130B AND 20808 (APPLICATIONS 11674 AND 27614, CARMEL RIVER IN MONTEREY COUNTY

The Division of Water Rights (Division) has reviewed your November 3, 2005 letter regarding the project identified above which raises the issue of whether the California-American Water Company (Cal-Am) received notice of the September 15, 2003 petitions to change. You state that the service list address for Somach, Simmons & Dunn for the notice of petitions lists is an old address. You suggest that this issue be resolved by accepting Cal-Am's prior 2002 protest of the Monterey Peninsula Water Management District's petitions to change Permits 7130B and 20808 to authorize direct diversion of 7,909 acre-feet per annum as a protest of the 2003 petitions to bank water in the Seaside groundwater basin.

The Division provides your office service of all notices that we issue via the Lyris electronic server in lieu of mailed notification. The mailed notice in this instance was a supplemental courtesy copy. Accordingly, unless you document failure to receive the electronic notice, the Division does not intend to re-open the protest period.

Katherine Mrowka is the senior staff person assigned to this matter, and she can be contacted at (916) 341-5363.

Sincerely,

ORIGINAL SIGNED BY

Steven Herrera, Chief
Water Rights Permitting Section

cc: Monterey Peninsula Water
Management District ✓
P.O. Box 85
Monterey, CA 93942-0085

David Laredo
DeLay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950

California Environmental Protection Agency

David Berger – General Manager
MPWMD
P.O. Box 85
Monterey, CA 93942-0085

December 19, 2005 **RECEIVED**

DEC 20 2005

MPWMD

Subject: To what extent have the additive water rights granted to us by Cal Am affected our ability to build a senior citizen housing unit on our property within the riparian corridor along the Carmel River?

Dear Mr. Berger:

BACKGROUND

Is there anyone in the district who could consider the historical documents attached and determine how many acre feet of water or water fixture credits were granted to our property by the Monterey County Board of Supervisors in 1977 when it issued Use Permit # 1953?

This permit gave Cal American Water the right to construct a water works facility along the Carmel River downstream and across the river from our property (which is now APN 169-131-020) so long as it provided sufficient water to mitigate the damages being done to the riparian corridor caused by pumping water out of the Carmel Valley aquifer.

We would like to build a senior citizen's unit on our property.

We are hopeful the management district supports the construction of senior citizen housing and is empowered to recognize and take into consideration the additive water rights granted to us by the board of supervisors when surveying and establishing the amount of interior water fixture credits that are available to us at this time on our parcel.

Condition 4. of Use Permit #1953 states: "That the said Water Company will make available at least 4 inches of water at the water company property line during the dry periods for those who want to obtain it."

As demonstrated by my August 4, 1977 letter to Mr. Richard Sullivan (Manager of the Cal-American Water Company at that time) I accepted the water granted to us and also offered to reduce the amount granted to us if they would make it also available for domestic use.

By his letter of response, Mr. Sullivan said he thought (but he did not know for sure) the intended purpose of granting rights to this additional water was for "vegetation mitigation" and the water rights were "not for private irrigational or domestic purposes."

I accepted his explanation. Two years later, we constructed a home along 754 feet of the Carmel River at 28040 Robinson Canyon Road. During the flood of 1991 a substantial portion of our property was eroded and swept downstream necessitating the expenditure

of over \$40,000 to stabilize the new "bald" river bank. We have used our domestic water supply to irrigate the river bank and riparian corridor and the scores of willow branches and trees I planted after the flood of 1981 and the flood of 1983. Because water was not very expensive at that time, we never pursued running a line to connect to the 4" water source Cal Am had granted us at their property line which was contiguous to ours.

PURPOSE OF INQUIRY

Now that water has become such a very expensive and precious item I would like to establish what effect, if any, the granting of these water rights to us has had on the "banked" water credits and potential uses of our property.

Construction of a senior citizen's unit within 200 feet of the river bank would normally not be allowed. Since we built in 1979 however, before the 1983 building limitation went into effect, we have been advised by the planning department we have the right to build the senior citizen unit under provisions of an approved use permit but only if we can modify our existing home and water use in such a way as to provide 8 water fixture credits necessary to build the planned senior citizen unit. Such a major reduction in water fixtures credits in our existing home would not be feasible or even possible without destroying the character and serviceability of that structure.

The main purpose of this inquiry is to establish whether or not and to what extent we have water credits available to build our senior citizen unit.

TECHNICAL BACKGROUND

The length of the river bank we've strived to maintain as good stewards of the land is 754 feet. A **twenty five foot wide swath** along this bank equals 18,196 square feet.

We believe the quantity of water rights granted to us by Cal Am Water Company therefore cannot reasonably be seen as being less than the amount of water needed to irrigate 18,196 square feet of trees, scrubs, groundcover and grass planted in Medium Sand in EvapoTranspiration Zone 3.

We strongly believe however the spirit and intent of the water rights granted to us were to be sufficient to irrigate the **entire riparian corridor** which is within 250 feet of the river.

If we are correct in this belief, then the volume of the water rights originally granted to us by Cal Am would reasonably be a sufficient amount of water to irrigate an area of approximately 3.41 acres, our original lot size (8 to 10 minutes a day) in Medium Sand in EvapoTranspiration Zone 3 which amounts to 10.52 acre feet.

	Inches/yr		Adj Factor	Square Feet	Conv to Gal	Gallons/yr	Gal/Ac Ft	Acre Feet
MAWA equals	46.3	X	0.8	148,540	0.623	3427697.2	325851	10.51922

Can the district confirm that our above estimate is reasonably correct or suggest some other quantity of water rights that may have been conveyed?

CENTRAL ISSUE

Before any valuable staff time is spent researching the mathematical portions of question above, we would first of all like the district to consider the **central issue of whether or not the magnitude of Cal Am's grant of water rights to us can be recognized as being "additive" to the existing water credits our property would otherwise normally enjoy, had not such a grant taken place?**

It is our hope the district is empowered to recognize, find and agree with the following things we believe are facts:

- All our land is within the riparian corridor (within 250' of the river).
- Cal American Water (as memorialized in the conditions of their use permits to build wells across the river from us) granted us the right to "4" of water to maintain the natural and man-planted willows, bushes, trees and grass that exist within the riparian corridor on our property.
- As a result of this water rights grant, the normal 50% allowance required by the district for residential outdoor use (which is added to the total interior fixture credit count to establish our "banked" water fixture credit inventory) seems to be at least somewhat duplicitous.

At the present time an inventory of the interior water fixtures in our home would amount to 21.2. If building our home today, we would be required to have an additional 50% of this amount for outdoor use. Water rights therefore granted to us under the district's water management rules and regulations creates a stand-alone "banked" water fixture credit allowance of 31.8 water fixture credits; 10.6 of which are allocated for outdoor use.

REQUESTED ACTION

Since we are in the **extraordinary position** of having the entirety of our property lying within the riparian corridor, and our property has been granted separate and distinct "additive water rights" to maintain this riparian corridor, **we request that a portion of the "banked" 10.6 water fixture credits (granted by the district for outdoor use) be made available for interior senior citizen unit use.**

This would provide an added benefit to the community and advance the public good to an extent which we believe would warrant the transfer of excess exterior water credits from outdoor to indoor use.

SUBSTANTIATING REASONS TO GRANT REQUESTED ACTION

Re-addressing the mathematical elements of this request, it seems to us the most reasonable and scientific method of determining the volume of water necessary to maintain the riparian corridor on our property would be to use the district's own approved formula for determining the Maximum Allowable Water Allowance for landscaped areas in Evapotranspiration Zone 3.

Total area of our parcel is now 60,113 square feet all of which falls within the riparian corridor. The length of the river bank is 754 feet. The footprint of building and hardstand improvements amount to 14,148 square feet.

House	3076
Garage	1080
Tennis Court	7200
Driveway	1320
Patio	160
Conc Walks	992
Gutter	<u>320</u>
	14,148 SF

This leaves **45,965 SF** of area to be landscaped and maintained within the riparian corridor by using the water rights Cal Am granted to us for this purpose.

	Inches/yr		Adj Factor	Square Feet	Conv to Gal	Gallons/yr	Gal/Ac Ft	Acre Feet
MAWA equals	46.3	X	0.8	45,965	0.623	1060684.7	325851	3.255122

If the spirit and intent of Cal Am's granting these separate and distinct water rights to our property in 1977 and in subsequent years, is recognized by the district as having been made to provide sufficient water to maintain the riparian corridor within the limits of our property, then the minimum amount of water reasonably necessary to accomplish that task today would have to be seen as being approximately 3.26 acre feet. If the intention was limited to providing only sufficient water to maintain the corridor during the driest half of the year (April through September) then the district's formula would have to allow 2.23 acre feet.

	Inches/yr		Adj Factor	Square Feet	Conv to Gal	Gallons/yr	Gal/Ac Ft	Acre Feet
MAWA equals	31.74	X	0.8	45,965	0.623	727130.3	325851	2.231480

We believe the quantity of the water rights granted to our property by Cal Am cannot be seen as being less than 2.231 acre feet of water.

While we believe we have the rights to this water we would like the district to confirm the magnitude of our "banked" water rights and to find that the banked amount includes at least this 2.23 acre feet of water granted to us by Cal Am for maintenance of the riparian corridor within the confines of our property.

The private landscaping need of our parcel is limited to less than 10% of our property area.

With that said, can 90% of our exterior water fixture credit allocation, automatically granted to us by the district, be reasonably considered duplicitous and therefore available for transfer to residential use if the planning department of the County of Monterey will approve this transfer?

We would be willing to provide a deed restriction forbidding any further private landscaping areas. 90% of our exterior allowance of 10.6 water fixture credits amounts to 9.54 water fixture credits.

FINAL SUMMARY OF ACTION REQUESTED

Since we need only 8 water fixture credits to build the senior citizen unit, we respectfully request that 8 of our 9.54 water fixture credits normally reserved for exterior use be transferred and "banked" as interior use water fixture credits reserved solely for the construction of a new senior citizen unit on our property.

Thank You.


Alex Hale

28040 Robinson Canyon Road
Carmel, CA 93923
624-7813 Home
624-6142 Office

Enclosures:

- Copy of 1977 Use permit #1953 language
- Copy of Hale letter to Cal Am
- Copy of Cal Am letter to Hale

August 4, 1977

Mr. Richard Sullivan - Manager
Cal-American Water Company
404 West Franklin
Monterey, CA 93940

Dear Mr. Sullivan;

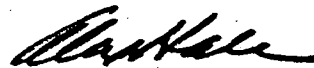
Use Permit 1953 issued by the County Planning Commission for construction of the Begonia well was appealed after its issue. The County Board of Supervisors denied the appeal and approved the permit with certain other conditions in addition to those imposed by the Planning Commission. A copy of these additional conditions is inclosed for your information.

As per condition 4, I hereby request a four inch water service be installed to our common property line.

Should this request cause your company greater expense and inconvenience than simply supplying a 2 inch service to my property at the Robinson Canyon property line, I would accept this 2 inch service in lieu of the 4 inch line.

I am extremely anxious to receive this water and would appreciate any help you might be in expediting its availability.

Sincerely,



Alex Hale

AH/dg
inc.

CALIFORNIA-AMERICAN WATER COMPANY

Monterey Peninsula
District404 W. Franklin Street — P. O. Box 951
Monterey, California 93940Area Code 408
Telephone 373-3051

August 9, 1977

Mr. Alex Hale
c/o Granite Construction Company
Box 780
Salinas, California 93901

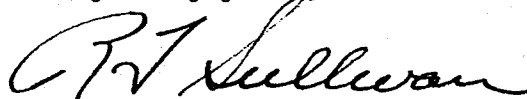
Dear Mr. Hale:

This is in response to your letter of August 4, 1977 in which you have requested a four-inch water service at the common property line at the Begonia Well in Carmel Valley, or a two-inch water service to your property at the Robinson Canyon property line.

Condition number 4 of the document enclosed with your letter states "That the said Water Company will make available at least four inches of water at the Water Company property line during the dry periods for those who want to obtain it". Although I was not here at the time the Begonia Use Permit was granted and the conditions set forth, I would assume that the intent of the above quoted condition was solely intended for vegetation mitigation, and not for private irrigational, or domestic purposes.

Should you desire to discuss this further, please feel free to contact me.

Very truly yours,



R. T. Sullivan
Vice President & Manager

RTS/mo

cc: Carmel Martin, Esq.

Use Permit to California-American Water Co. Denied; Use Permit Approved With Certain Conditions.

The public hearing on the appeal of Mrs. Alexander Strachwitz and Miss Francis Strachwitz from the decision of the Planning Commission granting a Use Permit to the California-American Water Co. for the establishment of a water works facility in the Carmel Valley Area having been continued to this time, the matter comes on regularly.

Mr. Fred Papp, Attorney for the appellants, is present and heard. Mr. Ed Lee, Vice President of the Carmel Valley Property Owners Association, also appears in opposition to the permit. Mr. Carmel Martin, Jr., Attorney for California-American Water Co., as well as Mr. David Plaque, Manager of said Company are heard on the subject. Dr. Stone again speaks on the growth of vegetation along the Carmel River.

After discussion, Supervisor Arneson moves to deny the appeal and approve the granting of the Use Permit to California-American Water Co., subject to the following conditions in addition to those placed on said Use Permit by the Planning Commission:

1. All rubbish, brush and undergrowth will be removed from both the gravel pits and the other sites.
2. All existing living trees will be maintained on these sites up to the property lines.
3. That a planned program of planting will be maintained pursuant to Dr. Stone's report, which will be filed with the County, to achieve the proper cycle.
4. That the said Water Company will make available at least four inches of water to the Water Company property line during the dry periods for those who wish to obtain it.
5. That the right-of-way have a graded area and sufficient planting be done to screen Mrs. Strachwitz's property if this property is used as the proposed water works facility.
6. That the said Water Company furnish water to the appellants and their family during the period that they are in the area.

Page 2 - Sarachewitz Appeal 3-30-71

have exhausted all possibilities of using an alternate route other than the one they have proposed.

The motion is seconded by Supervisor Smith, and carried by the following vote, to-wit:

AYES: Supervisors Tavernetti, Smith and Branson.

NOES: Supervisor Church.

ABSENT: Supervisor Atteridge (absent for voting).

FILE COPY
DO NOT REMOVE

CITY OF SACRAMENTO,
STATE OF CALIFORNIA

I, CHARLES A. MAGGINS, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Sacramento, State of California, do hereby certify that the foregoing is a full, true and correct copy of an original filed in the Board of Supervisors file.

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**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5600
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

January 10, 2006

Alex Hale
28040 Robinson Canyon Road
Carmel, CA 93923

SUBJECT: WATER FOR CONSTRUCTION OF SENIOR CITIZEN HOUSING UNIT

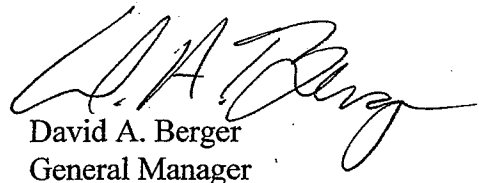
Dear Mr. Hale:

This will serve to acknowledge receipt of your letter of December 19, 2005 regarding water for a potential senior citizen housing project within the riparian corridor along the Carmel River.

I appreciate your bringing this matter to the District's attention. Because I'm not presently familiar with the subject matter you describe, I have referred your letter to our Water Demand Manager, Stephanie Pintar, for analysis and comment. You can expect that I will write you again in approximately two weeks with our response; or I will provide you an estimate of when I'll be able to do so if the substance of your letter requires additional time for response.

Again, thank you for writing to me on this subject.

Sincerely,



David A. Berger
General Manager

pc: MPWMD Board of Directors
Stephanie Pintar, Water Demand Manager

SOMACH, SIMMONS & DUNNA PROFESSIONAL CORPORATION
ATTORNEYS AT LAW813 SIXTH STREET
THIRD FLOOR
SACRAMENTO, CA 95814-2403
(916) 446-7979
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WEBSITE: www.lawssd.com**RECEIVED**

NOV 07 2005

MPWMD

November 3, 2005

HAND DELIVEREDVictoria A. Whitney, Chief
Division of Water Rights
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814Steven Herrera, Chief
Water Right Permitting Section
State Water Resources Control Board
Division of Water Rights
1001 I Street, 14th Floor
Sacramento, CA 95814

Re: Revised Petition for Change for Diversion and Use of Water from the Carmel River for the Seaside Groundwater Basin Full-Scale Injection/Recovery Project, *Application 11674 (Permit 7130B)*;
 Revised Petition for Change of Diversion and use of Water from the Carmel River for the Seaside Groundwater Basin Full-Scale Injection/Recovery Project, *Application 27615 (Permit 20808)*

Dear Ms. Whitney and Mr. Herrera:

During the October 26, 2005 Workshop in Salinas, I asserted that California American Water ("California American") had protested the Monterey Peninsula Water Management District's ("MPWMD") change petitions regarding Permit 20808/Permit 7130B. Mr. Laredo, MPWMD's legal counsel, challenged me on this point and indicated that the only protests on file were those of the Department of Fish and Game and NOAA Fisheries.

I reviewed my files and confirmed that on August 20, 2002, we had, in fact, filed a timely protest to MPWMD's Petition for Change of the above referenced permits with the State Water Resource Control Board ("SWRCB"). I have enclosed a file-stamped version of this protest for your information and convenience.

I also had Ms. Elizabeth Spence of my office review SWRCB files on this matter. Ms. Spence discovered, in that regard, two subsequent MPWMD filings, both of which were

Victoria A. Whitney
Steven Herrera
November 3, 2005
Page 2

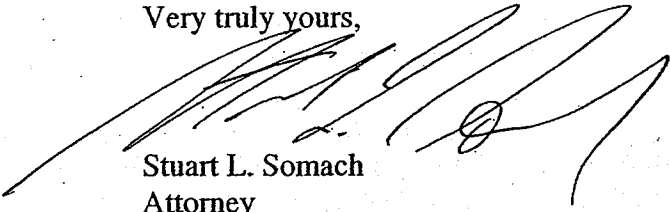
made on September 15, 2003. We were not provided any notice of these two filings. I am not aware of any reason why notice was not provided to us as is required. (Wat. Code, § 1703; Tit. 23, Cal. Code Regs., §§ 795, 830.) I do note, however, that the service list address for Somach, Simmons & Dunn is an old address. This seems odd, at best, since the address on our 2002 protest letter was our current address, not our old address, and we have been properly served countless documents at our current address by the SWRCB and other parties regarding the Carmel River. Moreover, I have corresponded numerous times with MPWMD, all with the use of this firm's current address. (I have absolutely no idea why they provided, in their correspondence to the SWRCB on this matter, the incorrect address for this firm.) Finally, in this regard, we have formally notified the SWRCB regarding our change of address.

Based on the foregoing, I respectfully request that the service list on the above-referenced matters be modified to include our current address and that our prior 2002 protest be accepted as a protest to the September 15, 2003 "Revised" MPWMD petitions. In the alternative, I request that we be given time to formally file new protests to the above referenced Revised MPWMD petition.

In addition to the above, I have today filed a Water Right Complaint with the SWRCB requesting that the above referenced permits be revoked. I have enclosed a copy of this Water Right Complaint for your information and convenience.

Please do not hesitate to contact me if you have any questions or need additional information.

Very truly yours,



Stuart L. Somach
Attorney

SLS:sb

Encl.

cc: Service List

Victoria A. Whitney
 Steven Herrera
 November 3, 2005
 Page 3

SERVICE LIST

<p>Dr. William Hearn National Marine Fisheries Service 777 Sonoma Ave., Room 325 Santa Rosa, CA 95404-6528</p>	<p>Dr. Stacy Li National Marine Fisheries Service 777 Sonoma Ave., Room 325 Santa Rosa, CA 95404-6528</p>
<p>Ms. Linda Hanson Department of Fish and Game Region 3 P.O. Box 47 Yountville, CA 94599</p>	<p>Robert W. Floerke, Regional Manager Department of Fish and Game Region 3 P.O. Box 47 Yountville, CA 94599</p>
<p>Larry Week, Chief Native Anadromous Fish and Watershed Branch Department of Fish and Game 1416 Ninth St., 12th Floor Sacramento, CA 95814</p>	<p>Nancee Murray, Staff Counsel Department of Fish and Game Office of the General Counsel 1416 Ninth Street, 12th Floor Sacramento, CA 95814</p>
<p>National Marine Fisheries Service c/o Mark Helvey Acting Habitat Conservation Supervisor 777 Sonoma Ave., Room 325 Santa Rosa, CA 95404</p>	<p>Carmel River Steelhead Association c/o Clive Sanders P.O. Box 1183 Monterey, CA 93940</p>
<p>Save Our Carmel River c/o Frances M. Farina 7532 Fawn Court Carmel, CA 93923</p>	<p>Lombardo & Gilles 318 Cayuga Street P.O. Box 2119 Salinas, CA 93902-2119</p>
<p>David Laredo DeLay & Laredo 606 Forest Avenue Pacific Grove, CA 93950</p>	<p>Monterey Peninsula Water Management District P.O. Box 85 Monterey, CA 93942-0085</p>

SOMACH, SIMMONS & DUNN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

813 SIXTH STREET
THIRD FLOOR
SACRAMENTO, CA 95814-2403
916) 446-7979
FACSIMILE 916) 446-8199

STATE WATER RESOURCES CONTROL BOARD

2002 AUG 20 PM 3:04

JULY 17 2002
SACRAMENTO

August 20, 2002

HAND DELIVERED

State Water Resources Control Board
Division of Water Rights
c/o Greg Wilson
1001 I Street, 14th Floor
Sacramento, CA 95814

Re: Protest - Monterey Peninsula Water Management District's Petition for Change from Storage Right at New Los Padres Reservoir to Direct Diversion at San Clemente Dam and Carmel Valley Aquifer Under Application 11674 (Permit 7130B) and Application 27614 (Permit 20808) of up to 7,909 Acre-Feet Annually of Water from the Carmel River

Dear Sir:

This letter is submitted as the California American Water Company's ("Cal-Am") Protest to the above referenced Petition of the Monterey Peninsula Water Management District ("MPWMD"). The Protest is based both on "Injury to Prior Rights" and "Environmental Considerations, Public Interest, Public Trust and Other Issues." The basis of Cal-Am's Protest is as follows:

Initially, it appears as if the MPWMD's Petition is one giant step backward in attempting to address the serious water supply and environmental issues associated with the Carmel River. The direct diversion of water as proposed in the Petition perpetuates the status quo and does nothing to solve the problems identified in State Water Resources Control Board ("SWRCB") Order 95-10. All that it does accomplish is to perfect to the MPWMD the bare "rights" to water that, by necessity, should be in Cal-Am's name. Indeed, Mr. Avila's cover letter implies that this is the only reason for the Petition.

At a time when Cal-Am is working closely and cooperatively with the National Marine Fisheries Service ("NMFS"), the United States Fish and Wildlife Service ("USFWS"), and the California Department of Fish and Game ("CDFG") to develop water supply alternatives that minimize environmental impacts, the MPWMD has developed a direct diversion scenario that not only ignores this collaborative process but actually, if implemented, would harm the very resources that are sought to be protected.

At a time when the Public Utilities Commission is working to develop an alternative to the existing direct diversion of water from the Carmel River through

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August 20, 2002
Page 2

exploration of desalination and an ASR Project, MPWMD would embrace the continued existing direct diversion of water from the Carmel River.

At a time when Cal-Am, working with the Division of Safety of Dams ("DSOD"), and other agencies are looking at options to permanently cease the diversion of water at San Clemente Dam, the MPWMD's Petition would mandate the continued use of that facility, regardless of dam safety issues and regardless of environmental consequences.

In short, one would be hard-pressed to find a less imaginative and more environmentally damaging approach to solving the water supply issues associated with the Carmel River than the one proposed in the MPWMD's Petition.

1. Protest Based Upon Prior Filed Application or Injury to Prior Rights:

One cannot transmute a storage right to water into a direct diversion right by the stroke of a pen. They are not the same thing. They are physically and legally different things. The MPWMD's Petition to "change" is, in fact and law, a new application to appropriate water and, as such, it is inferior in time to all of Cal-Am's pending applications to appropriate water.

In addition to this basic defect in the MPWMD's Petition, it is premised on a number of incorrect assumptions:

First, in spite of the statement to the contrary within Mr. Avila's cover letter, it is impossible to understand how granting of this direct diversion right will not prejudice the ability to fully develop an onstream storage facility as was originally contemplated with the issuance of Permit 20808. Moreover, it also prejudices the ability to develop offstream storage options, including the ASR. One cannot change storage rights to direct diversion rights and then expect to rely upon those direct diversion rights to store water.

Second, all of the direct diversion facilities which are the subject of the Petition are owned by Cal-Am and *not* the MPWMD. The Petition implies that MPWMD's use of these facilities "has been obtained." This has not occurred and, for the reasons noted immediately below, it is not likely to occur in the future.

Third, use of Cal-Am wells is greatly restricted by, among other things, Cal-Am's Memorandum of Understanding ("MOU") with NMFS. This MOU creates certain obligations that restrict Cal-Am's ability to allow a third-party such as the MPWMD to simply "take" those facilities for its use.

Fourth, the use of San Clemente Dam as a point of diversion has been substantially curtailed by the MOU. DSOD requirements and efforts to address dam safety concerns have focused on eliminating that facility as a point of diversion and even removal of the dam itself. Moreover, DSOD has recently asked Cal-Am to implement

dam safety measures, including draw-down of the water in San Clemente Reservoir. If implemented, such draw-down would render diversions impossible. In this context, it is simply ludicrous to focus on it as a new point of diversion under the MPWMD Petition.

Fifth, the Petition does not advance, at all, the SWRCB WR Order 95-10 mandate. All it does is seek to "legalize" diversions that the SWRCB has permitted while a real solution was to be developed. The Petition demonstrates the folly in relying upon the MPWMD to develop a water rights solution and underscores why Cal-Am has determined that it must take control of its own destiny if an appropriate water right solution is to be developed.

Sixth, the Petition does not adequately address exactly how the lack of year-around diversion rights actually solves any water supply problems. While a year-around direct diversion project might at least begin to address the water supply related aspects of the broader issues dealt with in Order 95-10, it would clearly require the MPWMD to obtain a new water right. This, of course, emphasizes why the best course is to defer to Cal-Am's existing applications. In any event, the MPWMD does *not* have any alternative source of water outside of the Permit referenced above.

2. Protest Based on Environmental Considerations, Public Interest, Public Trust and Other Issues

The above-referenced Petition ignores almost entirely those aspects of WR Order 95-10 that address environmental and public trust protections. The mere "legalization" of the direct diversion of water, as proposed, will exacerbate problems and not assist in addressing solutions to these problems. Moreover, MPWMD, by seeking to ignore a number of conditions associated with Permit 20808, evidences the fact that by abandoning a storage facility while still diverting water, it does not advance, at all, a fundamental requirement of WR Order 95-10 and Decision 1632.

It would appear that at least the following conditions that the MPWMD seeks to ignore should be adhered to:

- Condition 8 – Without adherence to this Condition the actual Permit is put on hold indefinitely and the concept of "due diligence" is ignored.
- Condition 21 – Water Code section 1600, *et seq.*, are arguably applicable to the Petition.
- Condition 43 – A formal Biological Opinion is required for the direct diversion of water as contemplated.

State Water Resource Control Board
August 20, 2002
Page 4

It should also be noted that a number of conditions that are to be ignored because they are associated with a storage reservoir were, in fact, the purpose of Permit 20808 and, therefore, must be addressed in some manner.

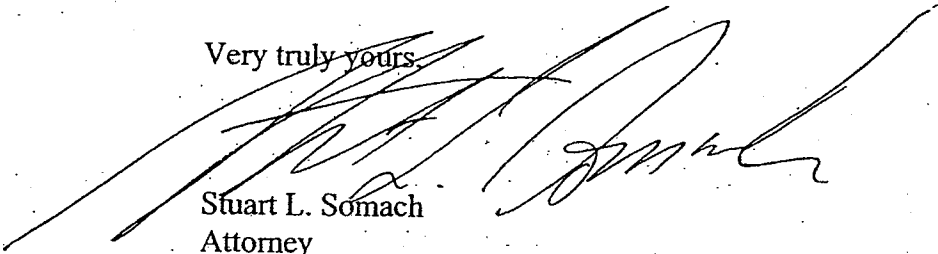
In addition to the foregoing, Cal-Am incorporates here issues raised under its Protest Based Upon Prior Filed Application or Injury to Prior Rights as a basis of this Protest.

3. Conditions Upon Which the Protest Could Be Disregarded and Dismissed:

Cal-Am and MPWMD are in direct conflict over the acquisition of water rights on the Carmel River and the most appropriate means to address relevant water supply and environmental concerns. Cal-Am has charted a course in which it has attempted to work collaboratively with NMFS, USFWS and CDFG to address environmental and public trust concerns. This has included the curtailment of the use of San Clemente Dam as a diversion point (also addressing DSOD concerns) and modification of the operation of Cal-Am wells along the Carmel River. In addition, Cal-Am intends to aggressively pursue feasible alternative water supply scenarios.

In stark contrast, MPWMD has unilaterally stepped backward in time to petition for a direct diversion project. Cal-Am proposes that the SWRCB deny the Petition and consider revoking Permit 20808 for lack of diligence. In that way the SWRCB can begin to process Cal-Am's application which can be adapted to accommodate a wide array of appropriate and environmentally beneficial water supply alternatives.

Very truly yours,



Stuart L. Somach
Attorney

SLS:sb

cc: Monterey Peninsula Water Management District
Mr. Ernest A. Avila
P.O. Box 85
Monterey, CA 93942-0085
Katherine Mrowka
Judith L. Almond
Jan S. Driscoll



State Water Resources Control Board



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Division of Water Rights
1001 I Street - 14th Floor • Sacramento, California 95814 • (916) 341-5300
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Arnold Schwarzenegger
Governor

WATER RIGHT COMPLAINT

For information in filling out this form,
see pamphlet titled "Investigating Water Right Complaints"

MPWMD
File: _____
(For staff use only)

Complainant

California American Water - c/o Stuart L. Somach	916-446-7979
(Name)	(Phone No.)
Somach, Simmons & Dunn, 813 Sixth St., Sacramento, CA 95814	
(Address)	(Zip Code)

Party complained against (Respondent)

Monterey Peninsula Water Management District	831-658-5600
(Name)	(Phone No.)
P.O. Box 85, Monterey, CA 93942-0085	
(Address)	(Zip Code)

Location of Respondent's Diversion

The diversion is located on: Carmel River - see D-1632, Permits 20808 and 7130B
(Name of Spring, Stream, or Body of Water)

At a point within _____ ¼ of _____ ¼ of Section _____ T _____ R, _____ B&M

County of _____ Assessor's Parcel No. _____

The general location is as follows: _____
(Name of Road, Distance to Nearest Town, Etc.)

Description of Complaint

The following situation or condition is occurring (attach additional sheets, photographs, maps, sketches, reports, etc. as needed.)

See Attachment "A" hereto.

Injury to Complainant or Public Trust Resources

The situation is causing injury to me or public trust resources as follows (attach additional sheets if necessary):

See Attachment "A" hereto.

Possible Resolution of Complaint

I offer the following possible solution to the situation (attach additional sheets if necessary):

See Attachment "A" hereto.

Complainant's Diversion and Water Rights (Fill in if Injury Claimed)

My diversion is located on: See Attachment "A" hereto.

(Name of Spring, Stream, or Body of Water)

At a point within _____ ¼ of _____ ¼ of Section _____ T _____ R, _____ B&M

County of _____ Assessor's Parcel No. _____

I use water for (what and where): _____

The basis of my claim to divert water is:

See Atch.

- An appropriative right under Licence No. _____, Permit No. _____, Application No. "A" hereto.
- A Riparian or pre-1914 claim supported by Statement of Water Diversion and Use No. Order 95-10
- Other (Describe): _____

A copy of this complaint has been sent to the Respondent by:

- Certified Mail
- Regular Mail
- Personal Delivery

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Signature *[Handwritten Signature]* Date 11/03/05
As Attorney & Agent for California's American Water

NOTE: Send original Complaint to the Division of Water Rights and a copy to the Respondent. Forms for submitting an Answer to Complaint will be sent to the Respondent by the Division of Water Rights.

ATTACHMENT "A"
to Water Right Complaint

Description of Complaint

A. Background Information

Permits Nos. 20808 and 7130B were issued to the Monterey Peninsula Water Management District ("MPWMD") subject to all of the conditions and assumptions contained within Decision 1632. Among the most significant assumptions and conditions were those that insured that water developed under the permits would be utilized to cure the water supply defects identified in SWRCB Order 95-10. (See D-1632, Condition 11; Order 95-10, Condition 2.) For various reasons, MPWMD has been unable or unwilling to proceed with its permits and has specifically rejected the assignment of Permits Nos. 20808 and 7130B to California American Water ("California American"). The need, however, to develop additional water supplies in an environmentally reasonable manner is undisputed.

In this regard, California American has proceeded before the California Public Utilities Commission with an application to undertake its Coastal Water Project ("CWP"). Successful implementation of the CWP will avoid the need to develop a storage project on the Carmel River. Perfection, however, of direct diversion rights on the Carmel River is an essential aspect of meeting the water supply needs of the Monterey Peninsula.

As the SWRCB is aware, the circumstances surrounding development of a Monterey Peninsula water supply project are complicated and have been politicized in the past. The scenario postulated under the current permitting scheme is simply unworkable. One cannot proceed with California American owning all of the water supply infrastructure, including all diversion, conveyance and delivery facilities and all of the water supply use capability, while MPWMD holds the last remaining unexercised appropriative water rights on the Carmel River. This scenario has, to date, resulted in deadlock on implementing a supply project and the deadlock will continue unless the situation is remedied. California American submits this complaint on the basis that MPWMD *has not historically and cannot in the future* develop a water supply project to make reasonable and beneficial use of the rights held under Permits Nos. 20808 and 7130B; that Condition 11 of D-1632, among other conditions, has not been satisfied; that MPWMD has not complied with the due diligence requirements of its permits and cannot do so; and for other reasons specified below.

B. Complaint

California American incorporates the above as articulating, in part, its Complaint. In addition, California American requests that the SWRCB revoke Permits Nos. 20808 and 7130B and approve the non-storage (except within the Seaside Groundwater Basin) components of California American's Applications 30215A, 30215B, 30715 and 30644,

all corresponding to the water rights currently held under Permits Nos. 20808 and 7130B. Revoking MPWMD's water rights and, in effect, assigning the non-storage components of those rights to California American (as the holder of the most senior SWRCB appropriation applications) will allow California American to pursue necessary Carmel River water rights. Doing so is consistent with the SWRCB's intent in D-1632 as well as Order 95-10. Currently, California American is cooperating with the SWRCB in the processing of its applications, including those matters outlined in California American's October 26, 2005 letter to Katherine Mrowka, including preparation of a WAA/CFII report and all associated environmental review.

Under current conditions, the water rights under Permits Nos. 20808 and 7130B will remain unexercised. MPWMD's inability to develop its rights creates three main problems warranting revocation of Permits Nos. 20808 and 7130B:

1. Multi-Year Droughts Impacting Water Uses

The Monterey Peninsula and its water users will continue to be susceptible to serious multi-year droughts. MPWMD attempted to exercise its rights under Permits Nos. 20808 and 7130B in 1995, when it proposed construction of the New Los Padres Dam ("NLPD"). The voters rejected MPWMD's request for authority to finance the project, however, based largely on MPWMD's insistence that the additional storage created by the NLPD be used to serve new growth on the Monterey Peninsula. Since that time, MPWMD has rejected all attempts to develop its permitted water rights.

MPWMD, however, has attempted to improperly mutate Permits Nos. 20808 and 7130B. California American has protested that attempted action. See letter to SWRCB, dated August 20, 2002, attached hereto. That protest further enumerates California American's concerns about MPWMD's ability to proceed with Permits Nos. 20808 and 7130B, and that letter is fully incorporated herein.

2. The Public Trust Doctrine

On an annual basis, and especially in times of drought, the public trust resources of the Carmel River will be affected during the summer and early fall months when instream flows are at their lowest. MPWMD's failure to exercise the rights under Permits Nos. 20808 and 7130B has had serious effects on the public trust resources of the Carmel River. In particular, MPWMD's failure has prevented California American from perfecting its applications and implementing direct diversion projects in conjunction with available ASR facilities, thereby adversely affecting the Carmel River's fish and riparian habitat. Steelhead trout and the California red legged frog are two federally endangered species affected by the failure to properly develop water rights on the Carmel River. California American desperately needs to develop its water rights, in conjunction with the CWP, in order to have the necessary flexibility in operation and diversion to address all public trust concerns.

3. Article X, Section 2 of the California Constitution

Continuing to allow MPWMD to hold the last remaining appropriative rights to the Carmel River, without any evidence that MPWMD can even exercise them, violates article X, section 2 of the California Constitution. The persistent water shortages affect both humans and the environment. Allowing MPWMD to hold these rights captive is not a reasonable and beneficial use of such rights.

C. Possible Resolution of the Complaint

California American is actively pursuing the CWP. This project is dependent, however, on the development of direct diversion rights from the Carmel River as well as on the development of a long-term ASR Project. (Of note, both of these projects would only provide water to meet current needs, not future growth, and these rights would only be exercised consistent with all public trust needs.) In order to ever divert another drop of Carmel River water, however, California American must have appropriative water rights. As discussed above, the MPWMD unexercised permit rights for the Carmel River – a river that SWRCB Order 98-08 finds to be fully appropriated – block California American from proceeding with the development of needed water rights. California American has filed the next-in-line, senior appropriation applications. California American proposes, therefore, that the SWRCB revoke permits and approve the non-storage portion (except within the Seaside Groundwater Basin) of California American's Applications 30215A, 30215B, 30715 and 30644. This action is justified for the three main reasons discussed above, and MPWMD is not injured by losing rights it has never used, nor ever will use. Moreover, California American's success will, in fact, further the interests that MPWMD was formed to serve.

Cal-Am/Cornell E. 200

SOMACH, SIMMONS & DUNN

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

813 SIXTH STREET
THIRD FLOOR
SACRAMENTO, CA 95814-2403
(916) 446-7979
FACSIMILE (916) 446-8199

STATE WATER RESOURCES CONTROL BOARD

2002 AUG 20 PM 3:04

SACRAMENTO

August 20, 2002

HAND DELIVERED

State Water Resources Control Board
Division of Water Rights
c/o Greg Wilson
1001 I Street, 14th Floor
Sacramento, CA 95814

Re: Protest - Monterey Peninsula Water Management District's Petition for Change from Storage Right at New Los Padres Reservoir to Direct Diversion at San Clemente Dam and Carmel Valley Aquifer Under Application 11674 (Permit 7130E) and Application 27614 (Permit 20808) of up to 7,909 Acre-Feet Annually of Water from the Carmel River

Dear Sir:

This letter is submitted as the California American Water Company's ("Cal-Am") Protest to the above referenced Petition of the Monterey Peninsula Water Management District ("MPWMD"). The Protest is based both on "Injury to Prior Rights" and "Environmental Considerations, Public Interest, Public Trust and Other Issues." The basis of Cal-Am's Protest is as follows:

Initially, it appears as if the MPWMD's Petition is one giant step backward in attempting to address the serious water supply and environmental issues associated with the Carmel River. The direct diversion of water as proposed in the Petition perpetuates the status quo and does nothing to solve the problems identified in State Water Resources Control Board ("SWRCB") Order 95-10. All that it does accomplish is to perfect to the MPWMD the bare "rights" to water that, by necessity, should be in Cal-Am's name. Indeed, Mr. Avila's cover letter implies that this is the only reason for the Petition.

At a time when Cal-Am is working closely and cooperatively with the National Marine Fisheries Service ("NMFS"), the United States Fish and Wildlife Service ("USFWS"), and the California Department of Fish and Game ("CDFG") to develop water supply alternatives that minimize environmental impacts, the MPWMD has developed a direct diversion scenario that not only ignores this collaborative process but actually, if implemented, would harm the very resources that are sought to be protected.

At a time when the Public Utilities Commission is working to develop an alternative to the existing direct diversion of water from the Carmel River through

State Water Resources Control Board
August 20, 2002
Page 2

exploration of desalination and an ASR Project, MPWMD would embrace the continued existing direct diversion of water from the Carmel River.

At a time when Cal-Am, working with the Division of Safety of Dams ("DSOD"), and other agencies are looking at options to permanently cease the diversion of water at San Clemente Dam, the MPWMD's Petition would mandate the continued use of that facility, regardless of dam safety issues and regardless of environmental consequences.

In short, one would be hard-pressed to find a less imaginative and more environmentally damaging approach to solving the water supply issues associated with the Carmel River than the one proposed in the MPWMD's Petition.

1. Protest Based Upon Prior Filed Application or Injury to Prior Rights:

One cannot transmute a storage right to water into a direct diversion right by the stroke of a pen. They are not the same thing. They are physically and legally different things. The MPWMD's Petition to "change" is, in fact and law, a new application to appropriate water and, as such, it is inferior in time to all of Cal-Am's pending applications to appropriate water.

In addition to this basic defect in the MPWMD's Petition, it is premised on a number of incorrect assumptions:

First, in spite of the statement to the contrary within Mr. Avila's cover letter, it is impossible to understand how granting of this direct diversion right will not prejudice the ability to fully develop an onstream storage facility as was originally contemplated with the issuance of Permit 20808. Moreover, it also prejudices the ability to develop offstream storage options, including the ASR. One cannot change storage rights to direct diversion rights and then expect to rely upon those direct diversion rights to store water.

Second, all of the direct diversion facilities which are the subject of the Petition are owned by Cal-Am and *not* the MPWMD. The Petition implies that MPWMD's use of these facilities "has been obtained." This has not occurred and, for the reasons noted immediately below, it is not likely to occur in the future.

Third, use of Cal-Am wells is greatly restricted by, among other things, Cal-Am's Memorandum of Understanding ("MOU") with NMFS. This MOU creates certain obligations that restrict Cal-Am's ability to allow a third party such as the MPWMD to simply "take" those facilities for its use.

Fourth, the use of San Clemente Dam as a point of diversion has been substantially curtailed by the MOU. DSOD requirements and efforts to address dam safety concerns have focused on eliminating that facility as a point of diversion and even removal of the dam itself. Moreover, DSOD has recently asked Cal-Am to implement

State Water Resources Control Board
 August 20, 2002
 Page 3

dam safety measures, including draw-down of the water in San Clemente Reservoir. If implemented, such draw-down would render diversions impossible. In this context, it is simply ludicrous to focus on it as a new point of diversion under the MPWMD Petition.

Fifth, the Petition does not advance, at all, the SWRCB WR Order 95-10 mandate. All it does is seek to "legalize" diversions that the SWRCB has permitted while a real solution was to be developed. The Petition demonstrates the folly in relying upon the MPWMD to develop a water rights solution and underscores why Cal-Am has determined that it must take control of its own destiny if an appropriate water right solution is to be developed.

Sixth, the Petition does not adequately address exactly how the lack of year-around diversion rights actually solves any water supply problems. While a year-around direct diversion project might at least begin to address the water supply related aspects of the broader issues dealt with in Order 95-10, it would clearly require the MPWMD to obtain a new water right. This, of course, emphasizes why the best course is to defer to Cal-Am's existing applications. In any event, the MPWMD does *not* have any alternative source of water outside of the Permit referenced above.

2. Protest Based on Environmental Considerations, Public Interest, Public Trust and Other Issues

The above-referenced Petition ignores almost entirely those aspects of WR Order 95-10 that address environmental and public trust protections. The mere "legalization" of the direct diversion of water, as proposed, will exacerbate problems and not assist in addressing solutions to these problems. Moreover, MPWMD, by seeking to ignore a number of conditions associated with Permit 20808, evidences the fact that by abandoning a storage facility while still diverting water, it does not advance, at all, a fundamental requirement of WR Order 95-10 and Decision 1632.

It would appear that at least the following conditions that the MPWMD seeks to ignore should be adhered to:

- Condition 8 – Without adherence to this Condition the actual Permit is put on hold indefinitely and the concept of "due diligence" is ignored.
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- Condition 43 – A formal Biological Opinion is required for the direct diversion of water as contemplated.

State Water Resource Control Board
August 20, 2002
Page 4

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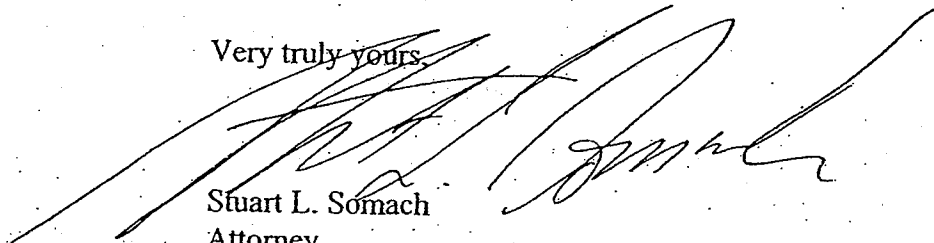
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In stark contrast, MPWMD has unilaterally stepped backward in time to petition for a direct diversion project. Cal-Am proposes that the SWRCB deny the Petition and consider revoking Permit 20808 for lack of diligence. In that way the SWRCB can begin to process Cal-Am's application which can be adapted to accommodate a wide array of appropriate and environmentally beneficial water supply alternatives.

Very truly yours,



Stuart L. Somach
Attorney

SLS:sb

cc: Monterey Peninsula Water Management District
Mr. Ernest A. Avila
P.O. Box 85
Monterey, CA 93942-0085
Katherine Mrowka
Judith L. Almond
Jan S. Driscoll

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is Hall of Justice Building, 813 Sixth Street, Third Floor, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On November 3, 2005, I served a true and correct copy of

WATER RIGHT COMPLAINT

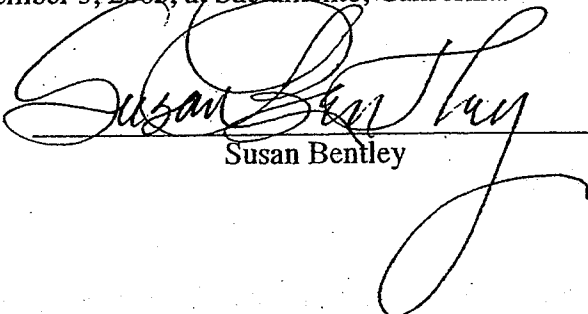
X (by certified mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach, Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

— (by personal delivery) by personally delivering a true copy thereof to the person and at the address set forth below:

— (by facsimile transmission) to the person at the address and phone number set forth below:

Monterey Peninsula Water
Management District
P.O. Box 85
Monterey, CA 93942-0085

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on November 3, 2005, at Sacramento, California.


Susan Bentley



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5600
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

December 8, 2005

Victoria A. Whitney, Division Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

Steven Herrera, Chief
Permitting Section
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

SUBJECT: Response to November 3, 2005 Letter from Stuart L. Somach to Division of Water Rights Re: California American Water Action Relative to MPWMD Petitions for Change to MPWMD Permits 7130B (Application 11674B) and 20808 (Application 27614) for the Seaside Basin Aquifer Storage and Recovery Project

Dear Ms. Whitney and Mr. Herrera:

I am writing in response to Stuart Somach's November 3, 2005 letter to you regarding Monterey Peninsula Water Management District's (MPWMD) Petitions for Change to MPWMD permits for the Seaside Basin Aquifer Storage and Recovery (ASR) Project.

In his letter, Mr. Somach asserts that California American Water (Cal-Am) had filed a timely protest to our Petitions. In support of this assertion, Mr. Somach states that "... on August 20, 2002, we had, in fact, filed a timely protest to MPWMD's Petition for Change of the above referenced permits..." and attached a copy of an August 20, 2002 letter addressed to the State Water Resources Control Board, Division of Water Rights, c/o Greg Wilson.

While the August 20, 2002 letter is a protest of MPWMD Petitions for Change, it protests a separate set of Petitions, ones that requested a change that would provide a legal basis of right for Cal-Am's existing diversions allowed under SWRCB Order No. WR 95-10 that are in excess of Cal-Am's recognized rights to divert 3,376 acre-feet per annum from the Carmel River. MPWMD responded to Cal-Am's August 20, 2002 protest by letter dated October 25, 2002 (**copy enclosed**). MPWMD and Cal-Am representatives subsequently met on November 11, 2002 in an attempt to resolve issues raised in Cal-Am's protest.

MPWMD initially filed the Petitions for Change for the Seaside Basin ASR Project with the Division of Water Rights by letter dated October 19, 2001. In response to direction by the Division of Water Rights to include additional information in the Petitions, MPWMD performed further testing and

A handwritten signature in black ink, appearing to be "DAM", located in the bottom right corner of the page.

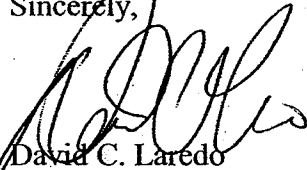
Victoria A. Whitney and Steven Herrera
December 8, 2005
Page 2

analysis of MPWMD's test injection well. This testing was authorized by Temporary Permits issued by SWRCB. Once the information required to respond to the Division of Water Rights' direction for further detail had been obtained, MPWMD filed two revised Petitions for Change, one for each Permit, by letters dated September 15, 2003. On April 15, 2005, the Division of Water Rights issued notice of MPWMD's Petitions for the Seaside Basin ASR Project. In response to the Notice, the Division of Water Rights received several protests, two of which were accepted by the Division of Water Rights. None of the protests was by Cal-Am or its representatives.

In conclusion, it appears that Mr. Somach has confused his August 20, 2002 letter protesting the Petitions filed by MPWMD to provide a legal basis of right for a portion of Cal-Am's existing diversions, as being directed toward MPWMD's Petitions separately filed for the Seaside Basin ASR Project. The fact remains that neither he nor any other Cal-Am representative has filed a protest of the MPWMD's Petitions for the Seaside Basin ASR project.

If you have any questions regarding this letter, please call me at (831) 646-1502.

Sincerely,



David C. Laredo
General Counsel

Enclosure: October 25, 2002 letter from Ernesto A. Avila, MPWMD General Manager, to California-American Water Company, c/o Stuart L. Somach, and Diane Lawson, Division of Water Rights, SWRCB

cc: Stuart L. Somach, Somach, Simmons & Dunn, Sacramento
Steven Leonard, Vice President and Manager, Coastal Division, California American Water, Monterey
David A. Berger, MPWMD General Manager
Andrew M. Bell, MPWMD District Engineer



ENCLOSURE

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5600
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

October 25, 2002

California-American Water Company
c/o Stuart L. Somach
Somach, Simmons & Dunn
813 Sixth Street, Third Floor
Sacramento, CA 95814-2403

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

**SUBJECT: Initial Response to Protest by Cal-Am
Change Petitions for Permits 7130B and 20808 (Applications 11674 and 27614)
Carmel River**

Dear Mr. Somach and Ms. Lawson:

This letter is Monterey Peninsula Water Management District's (MPWMD) initial response to the protest by the California-American Water Company (Cal-Am) to MPWMD's change petitions.

The State Water Resources Control Board (SWRCB) has accepted seven of Cal-Am's protest issues (SWRCB letter to Cal-Am dated September 12, 2002). Initial responses to each of these issues are given below.

Issue 1. The protest asserts that a storage right cannot be converted into a direct diversion right by petition. This protest issue is accepted for the storage elements of both permits.

MPWMD has requested a change to its existing rights under Permits 7130B and 20808. MPWMD's change petitions go not only to diversion to storage and rediversion rights under Permit 7130 B, but also to direct diversion rights under Permit 20808. During meetings in 2001, MPWMD was encouraged by SWRCB staff to utilize the petition process as a valid means to use MPWMD permits to legalize at least a portion of the diversions which Cal-Am is currently making without a legal basis in right. Under the existing permits, MPWMD holds a right to directly divert and redivert at 42 cubic feet per second from November 1 of each year to June 30 of the succeeding year at New Los Padres Dam, San Clemente Dam, and 32 wells along the Carmel River. MPWMD's change petitions were submitted to provide a legal water supply when and to the extent water is available without adversely affecting the environment.

Issue 2. The protest states that Cal-Am owns all of the direct diversion facilities that are the subject of the petitions, and the District has not obtained access to the facilities from Cal-Am.

Stuart L. Somach and Diane Lawson
October 25, 2002
Page 2

MPWMD has the power of eminent domain and regulatory authority over Cal-Am. MPWMD plans to either gain the authority to use Cal-Am's diversion works, or to acquire title and ownership of these works to utilize the water right under the change petitions.

Issue 3. The protest states that use of Cal-Am wells is restricted by Cal-Am's Memorandum of Understanding (MOU) with the National Marine Fisheries Service (NMFS). This MOU creates certain obligations that restrict Cal-Am's ability to allow a third party, such as the District, to simply "take" those facilities for its use. The accepted protest issue is the District's lack of ability to re-operate the diversion works in the manner requested in the petitions.

With the project proposed in the change petitions, MPWMD intends to (1) continue to cause Cal-Am to operate its Carmel Valley facilities in accordance with an annual MOU, (2) in cooperation with DFG and Cal-am, revise the MOU as necessary to enable use of change petition water rights, (3) construct and/or acquire facilities, or the right to use existing facilities, required to operate water diversion facilities as proposed in the change petitions, and (4) negotiate an independent MOU or Conservation Agreement with NMFS that will supplement or replace Order WRO 2002-0002 and the Conservation Agreement between Cal-Am and NMFS.

Issue 4. Cal-Am asserts that use of San Clemente Dam as a point of diversion has been substantially curtailed by the MOU. Division of Safety of Dams requirements and efforts to address dam safety concerns also modify Cal-Am's operations at this location. Accordingly, Cal-Am asserts that the District is unable to modify operations at San Clemente Dam in the manner requested in the petitions.

The reason MPWMD's change petitions request adding San Clemente Dam as a point of diversion is that there is no certainty as to the future modification or operation of San Clemente Dam and Reservoir. Cal-Am has not yet modified the dam structure to conform to California Division of Safety of Dam standards and has not committed to a plan to do so. MPWMD wishes to conform its points of diversion consistent with existing facilities and operations.

Issue 5. Cal-Am protests on the basis that the District lacks an alternate source of water supply for the months when direct diversion is not allowed under Permits 7130B and 20808.

As is stated in our initial response to Issue 1, above, MPWMD's change petitions were submitted to provide a legal water supply when and to the extent water is available without adversely affecting the environment. During any period in which diversion is not allowed in full or in part, Cal-Am may use its 3,376 acre-feet per annum right, plus pumping from the Seaside Groundwater Basin to supply water to the Monterey Peninsula area. If these sources are not sufficient, Cal-Am must either reduce or cease its Carmel River diversions, or continue to divert water without a legal basis of right.

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Issue 6. The protest asserts that the petitions ignore the environmental and public trust protection issues aspects [sic] of WR Order 95-10. The protest is accepted regarding potential impacts to steelhead and the riparian corridor.

MPWMD's change petitions were submitted to provide a legal basis for existing diversions of Carmel Valley sources to the Monterey Peninsula area, when and to the extent water is available without adversely affecting the environment. MPWMD intends to utilize water rights resulting from the change petition process in accord with conditions that will avoid or minimize alleged adverse impacts. To achieve this goal, MPWMD will develop proposed mitigations, in consultation with state and federal regulatory agencies as well as with protestants, to avoid or minimize adverse environmental impacts to acceptable levels.

Issue 7. The protest states that the District's request to remove permit conditions 8, 21, and 43 should not be approved for the following reasons:

- a. Removal of condition 8 would put Permit 20808 on hold indefinitely.*

Condition 8 of Permit 20808 is as follows: "Construction work shall be prosecuted with reasonable diligence and shall be completed by December 31, 2005." The MPWMD Board of Directors certified the Final EIR for the New Los Padres Dam and Reservoir Project in September 1994 and held an election for approval of this project and its funding in November 1995. One year later, Cal-Am submitted applications to MPWMD, SWRCB, the U.S. Army Corps of Engineers, and the California Public Utilities Commission (CPUC) for the same facilities, named the Carmel River Dam and Reservoir Project. Starting then and continuing today, MPWMD and Cal-Am have been cooperating in preparation of an EIR to evaluate Cal-Am's proposed project, along with alternatives to that project. MPWMD is the lead agency under the California Environmental Quality Act in preparing the EIR. Starting in 1998, a separate effort began with the CPUC evaluating alternatives to the dam project. That effort culminated in a recommended combination of water supply projects presented in the CPUC's report titled "Carmel River Dam Alternative Plan B, Plan B Project Report, A.97-03-052," dated July 2002. Cal-Am is now in the position of deciding which project or combination of projects it wishes to pursue, and the timetable for Cal-Am's decision and subsequent steps is not known. MPWMD believes it has been duly diligent in pursuing water supply augmentation for the Monterey Peninsula area. If the SWRCB elects not to suspend condition 8 of Permits 7130B and 20808, MPWMD will make a specific request to the SWRCB to amend the condition by extending the construction completion date.

- b. Removal of condition 21 is not appropriate because Fish and Game Code section 1600, et seq., is arguably applicable to the petitions. This protest issue is accepted for diversion at and in the vicinity of San Clemente Dam.*

In the change petitions, MPWMD is not necessarily proposing to construct diversion works-at San

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Clemente Dam. Regarding using San Clemente Dam as a point of diversion, please refer to our response to Issue 4, above. However, if added or modified diversion works are needed, MPWMD will apply to the California Department of Fish and Game for a Stream Alteration Agreement.

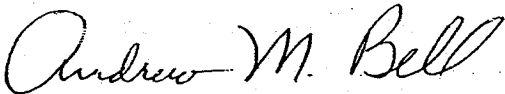
- c. Removal of condition 43 is not appropriate because a formal Biological Opinion is required for the direct diversion of water as contemplated.*

As stated in Issue 7.b above, additional facilities are not necessarily contemplated by MPWMD in the change petitions. However, if added or modified facilities are needed, MPWMD will seek and adhere to a Biological Opinion from the National Marine Fisheries Service, in accordance with this condition.

In its protest, Cal-Am proposes that the SWRCB deny the change petitions and consider revoking Permit 20808 for lack of diligence. Cal-Am's protest is silent regarding conditions under which the protest may be dismissed. However, MPWMD shall offer to meet with Cal-Am representatives to better understand Cal-Am's issues and concerns, to explain MPWMD's proposed utilization of water rights pursuant to the change petitions, and to identify potential mitigation measures that will address Cal-Am's concerns.

If you have any questions regarding this letter, please call me at (831) 658-5650, or Andy Bell at (831) 658-5620.

Sincerely,



for Ernesto A. Avila
General Manager

cc: David C. Laredo, MPWMD General Counsel
Andrew M. Bell, MPWMD District Engineer