



Supplement to 11/13/17 MPWMD Board Packet

Attached are copies of letters received between October 7, 2017 and November 6, 2017. These letters are listed in the November 13, 2017 Board packet under Letters Received.

Author	Addressee	Date	Topic
Eileen Sobeck	Roy Thomas, Copy to D. Stoldt	10/5/17	Response to 8/28/17 letter expressing concern with report prepared by Southwest Fisheries Science Center

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State Water Resources Control Board

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MPWMD

Roy Thomas, D.D.S.
26535 Carmel Rancho Blvd, Suite 5
Carmel, CA 93923

Dear Mr. Thomas,

The State Water Resources Control Board (State Water Board) received your August 28, 2017 letter addressed to Felicia Marcus expressing concern with the report prepared by the Southwest Fisheries Science Center (SWFSC) and submitted by the California American Water Company (Cal-Am) to satisfy condition 10 of State Water Board Resolution 2016-0040. As the Executive Director for the State Water Board, I am responding to your letter on Chair Marcus' behalf.

State Water Board Resolution 2016-0040 adopted Order WR 2016-0016 (Order) on July 19, 2016 modifying and amending Cease and Desist Order (CDO) 2009-0060 which was issued to Cal-Am. Condition 10 of Resolution 2016-0040 requires Cal-Am to provide funding up to \$175,000 per year for the preparation of an annual report to evaluate the status of the South-Central California Coast Steelhead (SCCCS) population in the Carmel River. Condition 4 of the Order enumerates the requirements for this annual report:

Status of Steelhead Fishery Report. During the extension period Cal-Am will provide funding in an amount up to \$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 Steelhead Fishery Report"). 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"). 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, Cal-Am will designate another individual or entity, in consultation with the other Applicants and other stakeholders, with requisite expertise to complete the report. If NMFS objects to the choice, Cal-Am shall designate a different individual or entity. If the NMFS West Coast Region cannot review the Status of the Steelhead Fishery report in any or all years, Applicants and other stakeholders may develop an alternative system for making adaptive management recommendations.

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Cal-Am will deliver the report in a cost effective and efficient manner, and will work with Applicants, stakeholders, and the preparer of the Status of the Steelhead Fishery Report 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 State Water Board by Cal-Am each year with the corresponding joint annual report.

The June 2017 SWFSC fishery report, submitted to the Division of Water Rights (Division) by Cal-Am on June 30, 2017, includes the years 1996 through 2014 to serve as a baseline for comparison but does not, as you indicate in your letter, provide any SCCCS population data from July 2016 to present.

The Division contacted the National Oceanic and Atmospheric Administration (NOAA), the California Department of Fish and Wildlife (CDFW) and Cal-Am directly for their comments on your letter and the SWFSC report. CDFW replied on September 18, 2017 (enclosed) indicating, among other things, that the SWFSC report is well written, and that "the Department had no objections to the data used, methods applied, analysis conducted, and recommendations identified..." CDFW also noted several concerns with certain points in your letter, but also agreed with you that the report does not provide the current status of steelhead in the Carmel River.

Kathryn Homing, Corporate Counsel for Cal-Am, sent me a letter dated September 27, 2017 that responds to Dr. Roy Thomas' August 28, 2017 letter and CDFW's September 18, 2017 letter. Per Cal-Am's letter, SWFSC will prepare an addendum to its report that will include additional data for 2014 through the end of 2016, to be completed by October 31, 2017.

If you have any questions or concerns, please contact Brian Coats via email at brian.coats@waterboards.ca.gov or by phone at (916) 341-5389.

Sincerely,



Eileen Sobeck
Executive Director
State Water Board

Enclosure: CDFW 9/18/17 Letter

Cc: Amanda Morrison
Central Coast Branch Chief
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(continued on next page)

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Cc: (continued)

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September 18, 2017

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

Subject: California Department of Fish and Wildlife (Department) Response to August 26, 2017 Letter From Dr. Roy Thomas Re: Cal-Am Water Company Compliance with State Water Board (Board) Resolution 2016-0040

Dear Ms. Marcus,

On September 8, 2017 Mr. Dean Marston, Fishery Program Manager for the Department's Central Region, was contacted by Mr. Brian Coats (Board Engineer). Mr. Coats requested a response from the Department regarding a letter the Board had recently received from Dr. Roy Thomas. Dr. Roy Thomas' letter (dated August 28, 2017) i) expresses concern regarding the present status of Carmel River Steelhead Rainbow Trout (*Oncorhynchus mykiss*), ii) questions whether or not a report filed by Cal-Am Water Company complies with Board Resolution No. 2016-0040 (Resolution), and iii) expresses concern regarding Monterey Peninsula Water Management District's (District) Steelhead mitigation efforts.

Mr. Coats asked the Department to answer three questions:

- i) Does the National Oceanic and Atmospheric Administration's (NOAA) Southwest Fisheries Science Center (Science Center) Report entitled "Status of the Carmel River Steelhead Population: Retrospective Analysis for Years 1996 to 2014", which was filed by Cal-Am Water Company (Cal-Am) on June 30, 2017, comply with Board Resolution 2016-0040 Stipulation No. 10 which requires Cal-Am to submit an annual report evaluating the status of Carmel River steelhead;
- ii) What is the quality of the Science Center's Report; and
- iii) What is the Department's opinion of the District's current fishery mitigation operations.

The Department respectfully provides the following answers to these questions.

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By way of introduction the Department acknowledges that Carmel River Steelhead are not doing well by virtue of the fact that only seven adult steelhead were captured at Los Padres Dam (LPD) fish trap in the winter/spring of 2017. It is worth noting that two fishery improvement projects have recently occurred, removal of San Clemente Dam (SCD) and improvement of spawning habitat in the reach of the Carmel River downstream of LPD, which may have influenced the number of adult steelhead that would have otherwise migrated to LPD (i.e. steelhead chose to spawn in the reach of the Carmel River between SCD and LPD rather than continue to migrate upstream to the LPD etc.). This said, if the adult steelhead population in the Carmel were healthy (i.e. in good condition) then many more than seven steelhead would have migrated to LPD given the amount of suitable steelhead spawning and rearing habitat that exists upstream of LPD.

It is also worth noting the context of Cal-Am's reporting requirement to the State Board. Board Order 95-10 and/or subsequent cease and desist orders provided that:

- i) Cal-Am is responsible for approximately 85 percent of the total water diversions from the Carmel River and its associated subterranean flow;
- ii) Cal-Am's combined diversions from the Carmel River constitute the largest single impact to instream beneficial uses of the river;
- iii) Cal-Am was annually illegally diverting, on average, 7,602 afa of water without a basis of right;
- iv) Fish and wildlife were being adversely affected by Cal-Am's legal and illegal diversions;
- v) Based in part upon the aforementioned, the Board requires Cal-Am to take appropriate actions to terminate all unlawful diversions from the Carmel River by December 31, 2016;
- vi) The Board recognized that Cal-Am would not meet the Board's December 31, 2016 deadline to cease all illegal diversion and therefore met with Cal-Am, and other stakeholders, to work out the details for a time extension; and
- vii) Cal-Am, as a condition of being granted a time extension to cease and desist all illegal water diversions from the Carmel River, is required to prepare an annual report that evaluates the status of the threatened South-Central California Coast Steelhead Distinct Population Segment in the Carmel River.

Does NOAA's Science Center Meet the Board's Annual Reporting Requirement?

Per the Board's requirement stipulated in Resolution 2016-0040, Cal-Am is required to submit an annual report that evaluates the status of Carmel River steelhead. The report that Cal-Am provided (i.e. Science Center Report) does not meet this requirement due to i) the Science Center Report does not state that this is the purpose for the report nor

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does it give acknowledgement to Cal-Am for having funded the work identified in the report, and ii) it is not an annual report regarding the current status of steelhead in the Carmel River but rather a retrospective analysis of the steelhead population in the Carmel River for the years 1996 to 2014.

What is the Quality of NOAA's Report?

NOAA's Science Center's report is well written and the Department has no objection to the data used, methods applied, analysis conducted, and recommendations identified given that the report consistently uses words that indicate there is a lot of uncertainty in any of the recommendations reached. The Department does provide, below, additional information for the Board to consider regarding juvenile fish rescues, and presence of striped bass, in the lower Carmel River.

What is the Department's opinion of the District's current fishery mitigation operations?

The Department has no objection to the District's current fishery mitigation efforts. It is worth noting that the District rescues fish during river dry back conditions and transfers them to Sleepy Hollow Fish Rearing Facility when conditions allow (i.e. such as when adjacent flow in the Carmel River is of sufficient volume to operate the facility). Carmel River flow in the lower river in the summer of 2017 has been greatly improved over recent years resulting in no river dry backs occurring and consequently no need to rescue fish in the mainstem Carmel River.

Juvenile Rainbow Trout Fish Rescues

Rescuing juvenile rainbow trout in the lower Carmel River is an effort that abounds with uncertainty even though the action appeals to human emotion when people see fish become stranded when river flow recedes. When juvenile fish are rescued, and transported to another area with sufficient river flow (i.e. either upstream or downstream) the rescue location), it is unknown what the eventual success of the fish rescue actually is. For example, when juvenile rainbow trout are rescued and transported upstream it is unknown if the carrying capacity of the habitat into which the rescued fish are placed is being exceeded resulting in the death of not only the rescued fish but also the juvenile trout that resided there prior to the rescued fish being translocated. Additionally, rescuing juvenile rainbow trout and rearing them in a juvenile rearing facility enables the rescued fish to be subject to fish handling impacts such as improved survival (i.e. greater than those of wild fish still in the river, etc.) which results in potential genetic advantage to a subset of fish that wind up being found in a specific reach of the lower Carmel River. Conducting tagging studies to evaluate the survival of rescued fish, as well as non-rescued fish, would be invaluable to inform efficacy of conducting future fish rescues. Additionally, conducting genetic studies to determine whether or not rescued fish genetics is swamping (i.e. bottleneaking) the Carmel River steelhead population would be prudent as well.

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Striped Bass in the Carmel River

It is true that striped bass (*Marone saxatilis*) occur in both in the lower Carmel River and the lower Lagoon. What is not known is what the overall predation effect these non-native fish are having upon native fish such as steelhead. What we do know, from evaluation of stomach contents from over 500 striped bass of varying size collected from the lower river Lagoon for the last several years, is that striped bass are having near zero predation impact upon juvenile rainbow trout. For example, out of ~500 striped bass collected from the lagoon only three striped bass (i.e. less than 1%) had rainbow trout in their stomachs. Rather than eating juvenile steelhead, we found that striped bass are eating primarily ocean shrimp that are washing into the lagoon during flood tides. For striped bass residing in the lower Carmel River upstream of the lagoon, it is unknown what the primary food item(s) these striped bass are preying upon. It may be that juvenile rainbow trout comprise the primary food source for these fish or, it may be that a non-juvenile rainbow trout prey item (i.e. say sculpin) are the primary food source. Research, conducted over a variety of locations and environmental conditions, must occur before a definitive conclusion can be reached. Assumptions that striped bass are having a substantial impact upon rainbow trout in the lower Carmel River and/or lagoon must be documented and evidence based before management actions are undertaken to remove them. Also the Department views striped bass as a second order (i.e. lower) production factor and that lack of sufficient river flow caused by excessive diversion is having primary (i.e. first) order production impacts upon the Carmel River steelhead population (i.e. lack of flows reduces habitat quantity/quality as well as growth rates all of which impact juvenile, and eventual adult, production). Therefore, the Department believes it is a distraction to focus on striped bass when insufficient river flow is the primary factor controlling juvenile rainbow trout production. Getting Cal-Am to cease its illegal diversions should continue to draw the greatest level of restoration attention and subsequent effort.

Comments Regarding Additional Content of Dr. Roy Thomas' Letter to the Board

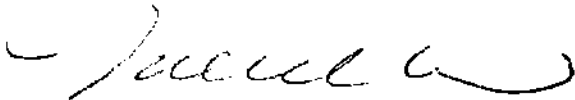
It should be noted there are mis-statements and mis-characterizations of conditions and events in Dr. Thomas's letter regarding the level of steelhead mitigation and the number of fish in the river over the last few years, among other contentions. For context of Carmel River conditions, since the Winter of 2011/12, the Central Coast experienced an 'Exceptional' drought which resulted in severe and significant impacts in all streams in the area. For example, in the Winter of 2013/14 the Carmel River lagoon sandbar remained closed all year due to lack of sufficient flow, thereby blocking all steelhead immigration and emigration that year. In subsequent winters (2014/15 and 2015/16), the sandbar only opened briefly a few times after some storm events, significantly limiting adult steelhead immigration and juvenile steelhead emigration. Overall the drought impacts resulted in reduced stream habitat, extremely low flows, no or limited immigration and emigration opportunities, longer than normal stream dryback conditions,

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and much reduced environmental water releases from Los Padres Reservoir. Not only did this have a direct impact on the steelhead population, but it also limited the mitigation actions Monterey Peninsula Water Management typically conducts. As the most severe drought recorded in the last century, steelhead populations were impacted in all Central Coast streams, not only the Carmel River. Another circumstance which resulted in blocked or interrupted migration for steelhead occurred in the upper watershed in 2013-2015, the San Clemente Dam Removal which not only removed the fish ladder providing upstream passage, but reduced flows downstream of the project.

For additional information please contact Mr. Dean Marston by phone at 559-243-4005 ext. 122 and/or by email at dean.marston@wildlife.ca.gov.

Sincerely,



Julie Vance
Regional Manager
Central Region

Cc: See Page 6

Felicia Marcus, Chair
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September 26, 2017

VIA EMAIL & UPS OVERNIGHT DELIVERY

SEP 27 2017

Ms. Eileen Sobeck
Executive Director, State Water Resources Control Board
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**Re: California American Water's Response to August 28, 2017 letter from Dr. Roy Thomas and
September 18, 2017 letter from California Department of Fish and Wildlife re Initial Status of
Steelhead Fishery Report Under SWRCB Order WR 2016-0016**

Dear Ms. Sobeck,

California-American Water Company ("Cal Am") has received copies of correspondence to the State Water Resources Control Board ("SWRCB") from Roy L. Thomas, DDS, dated August 28, 2017, and from the California Department of Fish and Wildlife ("CDFW"), dated September 18, 2017. Both letters express concern about whether the June 2017 Southwest Fisheries Science Center's ("Science Center") Status of the Carmel River Steelhead Population: Retrospective Analysis for Years 1996 to 2014 ("Initial Status Report"), submitted to the SWRCB in compliance with the SWRCB's Order WR 2016-0016, satisfies the Order's requirement to submit an annual report evaluating the status Carmel River steelhead.

On July 19, 2016, the SWRCB adopted Order WR 2016-0016, amending Cease and Desist Order WR 2009-0060 (the "CDO") and, in accordance with certain specified terms and conditions, extending the CDO's deadline for terminating Cal Am's unpermitted diversions from the Carmel River to December 31, 2021. Condition 4 of Order 2016-0016 requires Cal Am to provide funding for an annual Status of the Steelhead Fishery Report ("Status Report"), preferably prepared by the Science Center, and to submit that report to the SWRCB by May 30 of each year. Specifically, Order 2016-0016 provides:

During the extension period Cal-Am will provide funding in an amount up to \$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 Steelhead Fishery Report"). If possible, the annual Status of the Steelhead Fishery Report will be prepared by the National Marine Fisheries Science ("NMFS") Southwest Fisheries Science Center ("SWFSC"). If NMFS 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 may provide recommendations for additional adaptive management measures to be taken with respect to the SCCC Steelhead DPS in the Carmel River.

... Cal-Am will deliver the report in a cost effective and efficient manner, and will work with Applicants, stakeholders, and the preparer of the Status of the Steelhead Fishery Report to share resources, and to avoid duplication of effort to lower the cost of the report to the extent practicable.

Condition 5 of Order 2016-0016 also required Cal Am to fund \$2.5 million in projects to improve fish passage and habitat during the extension period, including \$1.0 million for a pit tagging program and \$0.5 million for a through-reservoir survival study for Los Padres Reservoir. Following the SWRCB's adoption of Order 2016-0016, Cal Am entered into an agreement with the Science Center for Cal Am to fund and the Science Center to undertake the pit-tagging program, the Los Padres Reservoir study, and preparation of the annual Status Report. The Science Center proposed to integrate into each annual Status Report the results from its annual cycle of tagging and monitoring, as well as other relevant datasets, including those of the Monterey Peninsula Water Management District ("MPWMD"); at the time the Initial Status Report was due in May, the Science Center had not completed its first annual cycle of tagging and monitoring.

Cal Am believes that the Initial Status Report prepared by the Science Center is consistent with the requirements and intent of Condition 4. The Initial Status Report establishes important baseline information for assessing the status of the Carmel River fishery over the term of Order 2016-0060, and will provide a basis to evaluate the need for additional or different adaptive management programs in the future, if warranted. Cal Am's understanding is that in selecting the Science Center as the preferred preparer of the Status Report, the Petitioners and stakeholders desired a more in-depth, scientific analysis of steelhead decline or improvement, and the reasons for any such findings, rather than simply reciting the prior year's fish count numbers collected by MPWMD (MPWMD's annual reports are publicly available at <http://www.mpwmd.net/environmental-stewardship/mitigation-program>). Nevertheless, Cal Am appreciates the perspectives of Dr. Thomas and CDFW regarding the content of the Initial Status Report, and has discussed these concerns with the Science Center. The Science Center has agreed to prepare an addendum to its report for submission to the SWRCB, pulling together its own data as well as the data collected by MPWMD from 2014 through the end of 2016. The Science Center anticipates completion of such an addendum by October 31, 2017. The Science Center's next Status Report, due May 30, 2018, will include data from 2017.

Please don't hesitate to contact us with any questions or concerns.

Sincerely,



Kathryn D. Horning
Corporate Counsel
California American Water

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