

## EXHIBIT 4-A

### MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

#### MEMORANDUM

DATE: February 15, 2008

TO: Chair Judi Lehman, Directors Dave Potter and Bob Brower

FROM: David A. Berger, General Manager

SUBJ: SWRCB Draft Cease & Desist Order—CAW Unauthorized Diversions from the Carmel River

**SUMMARY:** As one of the objectives created in the 2/13/08 MPWMD strategic planning workshop, the Board asked you to serve as an ad hoc committee for the purpose of communicating with legislators, members of the state Water Resources Control Board (SWRCB) and Public Utilities Commission (CPUC), and other key entities regarding the draft Cease and Desist Order (CDO). The purpose of this memorandum is to highlight District staff's initial analysis and identified policy questions related to the draft CDO. Attached to this memo are copies of the draft CDO, a letter from California American Water outside counsel objecting to and requesting a SWRCB hearing on the draft CDO, and other pertinent materials. In summary, while its intent seems valid in terms of stimulating action toward solving the Monterey Peninsula's long-standing water supply problem, District staff believes the draft CDO contains factual errors, key assumptions that are flawed and misdirected objectives. If approved by the SWRCB in its present form, the draft CDO's 50%, phased reduction in Carmel River pumping by CAW would have a profound impact on the Monterey Peninsula community, until the point at which California American Water (CAW) fully complies with SWRCB Order 95-10.

#### PRELIMINARY ANALYSIS:

1. Draft CDO Contradicts and is Inconsistent with Order 95-10
  - SWRCB Water Rights Division staff mistakenly presume phased, 50% reduction in CAW's Carmel River maximum allowed pumping (i.e. from 11, 285 acre-feet/year (AFY) to 5,642 AFY is an appropriate method to achieve compliance with Order 95-10.
  - However, further conservation is not an option in Order 95-10, Condition 2, which clearly and exclusively directs CAW to secure a replacement water supply, valid Carmel River diversion rights or permits, or a combination of these actions.
  - Order 95-10 Condition 3 (b) initially required CAW to reduce its diversions from the Carmel River by 20% (i.e. down to its 11,285 AFY maximum pumping goal) "in combination with conservation measures *required by the District...* (and that)...urban and irrigation conservation measures shall remain in effect until Cal-Am ceases unlawful diversions (italics added for emphasis)."
  - Draft CDO statement that rationing stages of Regulation XV represent "a plan that can be implemented to reduce water diversion and consumption" is inaccurate, contrary to District policy, and an inappropriate basis for its proposed, seven-year production ramp-down schedule.
  - SWRCB staff ignored the larger consumer impact of their proposed reduction, when combined with the court-mandated production ramp-down in the Seaside Basin

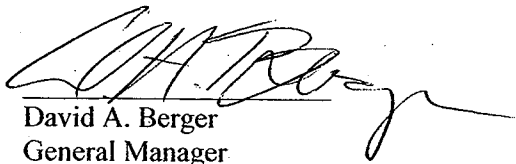
adjudication decision (i.e. combined CAW pumping reduction of 2,006 AFY in 2009, increasing every two years to 6,896 AFY reduction in 2015).

## 2. Draft CDO Findings are Inaccurate and Misleading

- Contains flawed assumption of past population growth, and its impact on CAW main system production; overestimates the effect of population growth on CAW main system customer demand
- Uses population estimates mistakenly applied to the entire MPWMD area, rather than the CAW main system service area, i.e. "Fact 14" states "since 1995, the "population of the Monterey Peninsula *area* has increased by 12%, from 100,000 to...the current...112,000 (emphasis added).
- Order 95-10 itself (p. 6) cites 105,000 as the estimated population served by CAW, which would represent an increase of only 7,000 or 6.7% (if 112,000 is accurate).
- State Department of Finance official population estimates for the six cities that CAW serves, show their combined total population increased by 4,024 or 4.9% over the 12 years from 1/1/95 to 1/1/07; equals only a 0.4% average annual growth rate.
- Fails to account for the comparatively larger impact of the District's mandatory retrofit-on-sale and toilet rebates in suppressing growth in CAW customer demand. Since 1995 to present, these two District policy programs have produced nearly 750 AFY in permanent, cumulative annual water savings
- Ignores fact that CAW's Monterey Peninsula customers already achieved the lowest per capita water use of any urbanized area in California according to a 2006 survey.

### KEY POLICY ISSUES:

- 1) Is the significant additional community conservation that would be necessary, should the SWRCB approve the phased diversion reduction in the draft CDO, a reasonable and fair demand of the community given that no replacement supply is currently available?
- 2) Is the mandatory production ramp-down schedule in the draft CDO realistically achievable by the community, in the absence of drought or other water supply shortage; and, if not, should it be removed or changed? If so, how?
- 3) Should SWRCB consider revising the draft CDO to eliminate the phased pumping reduction schedule, and instead include a target or deadline for CAW compliance with Order 95-10? If so, what should that target/deadline be?

  
 David A. Berger  
 General Manager

cc: Board of Directors  
 General Counsel  
 Water Resources Manager  
 Water Demand Manager  
 Planning and Engineering Manager

**Attachments:**

- Exhibit A: SWRCB draft Cease and Desist Order**
- Exhibit B: SWRCB Order 95-10, conditions 2 and 3 b**
- Exhibit C: Projected CAW Main System Production Reduction Table, WY 2008-21**
- Exhibit D: Letter from CAW outside counsel, Jon D. Rubin dated February 4, 2008**
- Exhibit E: Potential Impacts and Actions related to Draft Cease and Desist Order Identified during February 13, 2008 MPWMD Board Strategic Planning Session**

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# State Water Resources Control Board



Linda S. Adams  
Secretary for

Environmental Protection

Division of Water Rights  
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Arnold Schwarzenegger  
Governor

JAN 15 2008

In Reply Refer to:  
JWC:A011674A

CERTIFIED MAIL

B. Kent Turner, President  
California American Water  
P. O. Box 951  
Monterey, CA 93940

Dear Mr. Turner:

**NOTICE OF DRAFT CEASE AND DESIST ORDER REGARDING THE CONTINUED  
UNAUTHORIZED DIVERSION OF WATER FROM THE CARMEL RIVER IN MONTEREY COUNTY**

Enclosed is a draft Cease and Desist Order (CDO). This letter serves as notice to California American Water (Cal-Am) of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with this enforcement action. Therefore, this matter requires your immediate attention.

Division staff determined that in the twelve years since Order 95-10 was adopted, Cal-Am has not complied with Condition 2 of that Order. Condition 2 requires Cal-Am to terminate its unauthorized diversions from the Carmel River. Since 1995, Cal-Am has annually diverted approximately 7,150 acre-feet from the Carmel River in excess of the legitimate water right amount recognized by the State Water Board in Order 95-10. This continued unauthorized diversion of water in excess of existing water rights is a trespass under Water Code section 1052. Additionally, Cal-Am's continued illegal diversions are causing continued harm to public resources of the Carmel River.

Based on these findings, I approved the issuance of the enclosed draft CDO that requires Cal-Am to cease and desist from diverting and using water in excess of its legal rights, or comply with the constraints of the enclosed CDO within the specified time schedules. If Cal-Am disagrees with the facts or time schedules for the corrective actions set forth in the enclosed draft CDO, Cal-Am may request a hearing before the State Water Board no later than 20 days from the date of receipt of this notice.

Unless a written request for a hearing regarding the CDO signed by or on behalf of Cal-Am is delivered to or received by mail by the State Water Board within 20 days after the receipt of this letter, the State Water Board may adopt the CDO, based on the facts and information set forth in the enclosed draft CDO, without a hearing (Water Code, § 1834).

If there are any questions concerning this matter, please contact Ms. Yvonne West, Staff Counsel, Office of Enforcement, at (916) 341-5445.

Sincerely,

*James W. Kassel*

James W. Kassel  
Assistant Deputy Director for Water Rights

Enclosure: Draft Cease and Desist Order

cc: See next page.

*California Environmental Protection Agency*

B. Kent Turner, President  
California American Water

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JAN 15 2008

cc: David A. Berger, General Manager  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, CA 93940

Thomas Howard, Chief Deputy Director  
State Water Resources Control Board

Victoria A. Whitney, Deputy Director for Water Rights  
State Water Resources Control Board

Andy Sawyer, Assistant Chief Counsel  
State Water Resources Control Board

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

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In the Matter of Unauthorized Diversion of Water by the  
California American Water Company DBA California American Water  
**Cease and Desist Order WR 2008-00XX-DWR**

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SOURCE: Carmel River tributary to the Pacific Ocean

COUNTY: Monterey County

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**YOU ARE HEREBY GIVEN NOTICE THAT:**

The State Water Resources Control Board (State Water Board) is authorized under Water Code section 1831 to issue a Cease and Desist Order (CDO) requiring California American Water (Cal-Am) to make further reductions in its unauthorized diversions from the Carmel River. The State Water Board issued Order WR 95-10 (Order 95-10) in 1995, determining that a substantial portion of the diversions made from the Carmel River by Cal-Am is unauthorized. At that time, the State Water Board deferred enforcement action and instead established water conservation goals and other actions Cal-Am could take to reduce the effects of its diversions as it sought to obtain an adequate legal water supply. In the twelve years since Order 95-10 was adopted, Cal-Am has not terminated its unlawful diversions from the Carmel River. Therefore, the State Water Board is authorized to issue a CDO in accordance with Water Code section 1831(d) which states:

The State Water Board may issue a CDO in response to a violation or threatened violation of any of the following:

- (1) The prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to Division 2 (commencing with section 1000) of the Water Code.
- (2) Any term or condition of a permit, license, certification, or registration issued under Division 2 of the Water Code.
- (3) Any decision or order of the State Water Board issued under Part 2 (commencing with section 1200) of Division 2 of the Water Code, section 275, or Article 7 (commencing with section 13550) of Chapter 7 of Division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {ADD DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the proposed CDO against Cal-Am for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

## FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. The Carmel River is a central coast California stream that drains a watershed area of 255 square miles and flows into the Monterey Bay. Cal-Am owns and operates the San Clemente Dam and the Los Padres Dam and 21 downstream extraction wells on the Carmel River.
2. San Clemente Dam had an original storage capacity of 2,140 acre-feet (af). Water is stored in this facility under pre-1914 appropriative water rights. Los Padres Dam is operated pursuant to License 11866 (Application 11674A), and authorizes a maximum withdrawal of 2,950 acre-feet per annum (afa). Historically, stored water has been released from Los Padres Dam to the river and re-diverted for use at San Clemente Dam. Cal-Am also has legal rights for 60 acres of riparian land adjacent to the Carmel River.
3. Due to extensive sedimentation in San Clemente and Los Padres reservoirs, the primary source of water supply for Cal-Am's customers is the 21 wells situated downstream of San Clemente Dam on the lower Carmel River. The wells pump subterranean water from the Carmel River for customer use. The wells supply about eighty-nine percent of water needs for Cal-Am customers. The balance of water is supplied by pumps drawing water from the Seaside Groundwater Aquifer.
4. On July 6, 1995, the State Water Board adopted Decision 1632 (D-1632) that approved Monterey Peninsula Water Management District's (MPWMD) Application 27614. Decision 1632 approved water rights for development of the proposed 24,000 af New Los Padres Dam Project.
5. On July 6, 1995, the State Water Board also adopted Order WR 95-10 regarding four complaints filed against Cal-Am. The Order required Cal-Am to terminate unlawful diversions from the Carmel River and to comply with specified conditions. The State Water Board found that Cal-Am has legal rights to divert 3,376 afa of water from the Carmel River, after taking into consideration the reduced capacity of Los Padres Reservoir due to sedimentation. (Order 95-10, p. 25.) Cal-Am's rights to divert 3,376 afa from the Carmel River consist of 1,137 afa of pre-1914 appropriative + 60 afa of riparian + 2,179 afa under License 11866 (Application 11674A).
6. Order 95-10 and D-1632 were both later amended by Orders 98-04 and 2002-02 to allow: 1) direct diversion and diversion to storage throughout the year from the Carmel River at times when flows were physically available over and above fish flow requirements; 2) that the total quantity of water originating in the Carmel River diverted to beneficial use by Cal-Am and MPWMD could not exceed 16,000 af; and 3) that Cal-Am would cease withdrawals of water from the San Clemente Dam and reduce diversions from production well facilities located in Subunit 2 of the Carmel River during low flow periods of the year, except during an emergency. The 16,000 af identified by Order 98-04 includes rights established by License 11866, Permit 7130B, Application 27614, Application 30215; pre-1914 appropriative and riparian rights.
7. In 1995, Cal-Am was diverting about 14,106 afa of water from the Carmel River to supply water to approximately 100,000 people in the greater Monterey Peninsula area. (Order 95-10, p. 1)
8. In Order WR 95-10, the State Water Board found that Cal-Am's diversions were having an adverse effect on: (a) the riparian corridor downstream of river mile 18.5; (b) wildlife dependent upon the corridor; and (c) steelhead and other fish that inhabited the river. (Order WR 95-10, pp. 25-8, 33-34.) There continues to be an annual drawdown or drying of the Carmel River in the area upstream of the Highway 1 bridge. Because Cal-Am is the largest diverter of water on the river, this drawdown of the river is attributable, at least in part, to Cal-Am's illegal diversions from the Carmel River. Cal-Am's pumping from the subterranean stream contributes to the reduction of surface flow. This reduction of flows creates segregated small pools of water that trap and strand steelhead and other fish which inhabit the river. The potential for substantially higher steelhead mortality is mitigated by volunteers from the local community who make two sweeps of the river annually to rescue stranded steelhead. Nevertheless, there are adverse effects on steelhead and other fish caused by the river drawdown.

9. Order 95-10 imposed several conditions on Cal-Am's continued unauthorized diversion from the Carmel River. (Order 95-10, p. 40) Condition number 2 of Order 95-10 states:

*Cal-Am shall diligently implement one or more of the following actions to **terminate** its unlawful diversions from the Carmel River: (1) obtain appropriate permits for water being unlawfully diverted from the Carmel River; (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of the Order which was to maximize production from the Seaside wells to honor servicing the existing connections and honoring existing commitments and to reduce diversions from the Carmel River. (Emphasis added)*

10. Since before 1996 Cal-Am and MPWMD have been attempting to develop other projects to obtain additional water to serve Cal-Am's customers. These projects have consisted of:

- Development and construction of a new Los Padres Dam (1995-1997). The New Los Padres Dam Project was presented to voters in the area in 1997. The project was not approved because of apparent growth inducing concerns in Carmel and the Carmel Valley area of Monterey County.
- Development of the Aquifer Storage and Recovery (ASR) project (2002 to present). Flows of the Carmel River in excess of the National Marine Fisheries Service fishery bypass requirements are proposed to be diverted from the river to underground storage in the Seaside Groundwater Aquifer. The State Water Board, in issuing water right Permit 20808A (Application 27614A) for the ASR project, allows the diversion of up to 2,426 afa of water from the Carmel River when flows exceed the bypass flows necessary for protection of endangered steelhead. Water is to be injected and stored underground in the Seaside Groundwater Aquifer before withdrawn for use.
- Development of the Coastal Water Project (2005-2013). This project proposes a 10,370 afa desalination plant. Three locations are currently being considered for development of the facility.

11. Condition 3(b) imposed by Order 95-10 states:

*Urban and irrigation conservation measures shall remain in effect until Cal-Am ceases unlawful diversions from the Carmel River. Conservation measures required by the District shall have the goal of achieving 15 percent conservation in the 1996 water year and 20 percent conservation in each subsequent year. To the extent that the requirement conflicts with prior commitments (allocations) by the District, the Chief, Division of Water Rights shall have the authority to modify the conservation requirement. The base for measuring conservation savings shall be 14,106 afa. Water conservation measures required by this Order shall not supersede any more stringent water conservation requirements imposed by other agencies.*

12. In 1996-1997, Cal-Am failed to meet the reduction in diversions from the Carmel River required by Order 95-10 and an Administrative Civil Liability complaint (ACL) was issued. Cal-AM entered into a settlement agreement with the Division in response to that ACL complaint in which Cal-Am agreed to implement additional water conservation measures. In 1998, Cal-Am reduced its diversion of water from the Carmel River from 14,106 afa to 11,285 afa. Since 1998 Cal-Am has submitted quarterly monitoring reports of its monthly water use showing diversions between 9,538 af and 11,178 af of water annually from the Carmel River. During the same period, MPWMD reports Cal-Am's production from the Carmel River between 10,133 afa and 11,179 afa. (MPWMD's Technical Memorandum 2006-02, Table 1) Both of these reported amounts exclude the water diverted from the Carmel River to the Seaside Groundwater Aquifer.



13. MPWMD's Regulation 15, adopted in 1999 and amended in 2005, calls for conservation and rationing of water within the MPWMD/Cal-Am service area in drier years. Since Regulation 15 was adopted, Cal-Am has been operating under Stage 1 Water Conservation guidelines. Regulation 15, as shown below, identifies a plan that can be implemented to reduce water diversion and consumption.
  - Stage 1 Water Conservation guidelines call for Cal-Am to maintain its annual production of water from the Carmel River to less than 11,285 afa.
  - Stage 2 Water Conservation guidelines call for Cal-Am to maintain water use under regulatory constraints by implementing Landscape Water Budgets for large irrigators of three acres or more. This conservation level is triggered if Cal-Am fails to meet the end of month target amounts.
  - Stage 3 Water Conservation guidelines call for an immediate additional 7% reduction in water use if Cal-Am's current year to date end of month production amount exceeds the historical average year to date end of month production amount: 1) twice during the November to March period of each year; or 2) once during the April to September period of each year.
  - Stage 4 Water Rationing guidelines call for an additional 15% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 27,807 af but not less than 21,802 af.
  - Stage 5 Water Rationing guidelines call for an additional 20% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 21,802 af but not less than 15,615 af. If total usable storage is equal to or greater than 27,807 af on May 1, no water rationing is imposed.
  - Stage 6 Water Rationing guidelines call for an additional 35% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 15,615 af but not less than 9,610 af. If total usable storage is equal to or greater than 27,807 af on May 1, no rationing shall be imposed.
  - Stage 7 Water Rationing guidelines call for an additional 50% reduction in water use beginning June 1 or earlier, if on May 1 the total usable storage available to Cal-Am is less than 9,610 af. If total usable storage is equal to or greater than 27,807 af on May 1, no water rationing shall be imposed.
14. Since 1995, the population of the Monterey Peninsula area has increased from 100,000 to the current population figure of 112,000. In water year 2006 Cal-Am reportedly diverted 10,540 af from the Carmel River for consumptive use. The record of water diverted from the Carmel River during water year 2007 is incomplete because, as of the date of this action, Cal-Am has failed to file the 2007 fourth quarter report as required by condition 13a of Order 95-10.
15. On May 18, 2007, MPWMD met to discuss the future water needs for the Monterey Peninsula area including Carmel, Monterey and Seaside, The Presidio (Department of Army), Del Rey Oaks, Pacific Grove, Sand City, and the Monterey Peninsula Airport District. Based on the general plans provided by each entity within the service area, MPWMD estimates the total amount of water needed for future development to be an additional 4,545 afa.
16. On November 30, 2007, the State Water Board amended Permit 20808 (Application 27614) with the issuance of Permit 20808A that allows for the diversion of up to 2,426 af of water from the Carmel River for injection into wells located in the Seaside Aquifer as part of the ASR project. Permit 20808A requires that for the protection of the steelhead fishery in the Carmel River, minimum instream bypass flow requirements must be met before diversions from the Carmel River may occur.

17. Order 95-10 condition 2 intended that Cal-Am would make one-for-one reductions in the unlawful diversions from the Carmel River for water obtained from other sources, such as conservation. The current water management strategy used by Cal-Am/MPWMD, however, has not resulted in any significant reduction of unlawful diversions from the Carmel River since 1998. Instead, it appears that water savings resulting from conservation efforts have been redirected to support marginal increases in development.

**THE STATE WATER BOARD FINDS:**

1. Since 2000, Cal-Am has illegally diverted at least 7,164 afa from the Carmel River. Even with the approval of amended Permit 20808A, Cal-Am will still need to illegally divert between 4,738 afa and 7,164 afa (depending on the type of water year) to meet its current level of water use unless additional conservation measures are mandated and/or alternative sources are utilized. This continued diversion is considered a trespass under Water Code section 1052.
2. Cal-Am's unauthorized diversions continue to have adverse effects on the public trust resources on the Carmel River and should be reduced.
3. In the 12 years since Order 95-10 was adopted, Cal-Am has not complied with condition 2 of that Order which requires Cal-Am to terminate its unlawful diversions from the Carmel River. In fact, Cal-Am received an ACL in 1996-1997 for failure to reduce diversion from the Carmel River and in subsequent years has not made any significant reductions in its diversions beyond the initial 20% reduction required by condition 3(b) of Order 95-10.
4. Cal-Am's failure to reduce its unauthorized diversion along with the continued increase in demand for water within the Cal-Am/MPWMD service area, due to population growth and continued development, demonstrates a substantial risk that Cal-Am will continue its unauthorized diversions unless the State Water Board takes further action.

**IT IS HEREBY ORDERED**, pursuant to sections 1831 through 1836 of the Water Code, Cal-Am shall cease and desist from diverting water from the Carmel River in excess of its legal rights in accordance with the following corrective actions:

1. Commencing on October 1 of the water year (October 1 through September 30) following the date of this Order, Cal-Am shall reduce its unauthorized diversions from the Carmel River in accordance with the following reduction schedule until all unlawful diversions of water from the Carmel River have been curtailed:

| <b>Water Year*</b> | <b>Percent Reduction**</b> | <b>Max. End of Year Diversion Amount</b> |
|--------------------|----------------------------|--|
| 2008-09            | 15 percent                 | 9,592 afa                                |
| 2009-10            | 15 percent                 | 9,592 afa                                |
| 2010-11            | 20 percent                 | 9,028 afa                                |
| 2011-12            | 20 percent                 | 9,028 afa                                |
| 2012-13            | 35 percent                 | 7,335 afa                                |
| 2013-14            | 35 percent                 | 7,335 afa                                |
| 2014-              | 50 percent                 | 5,642 afa                                |

\* A water year is defined as October 1 of each year to September 30 of the succeeding year.

\*\*The base line for measuring the percent reduction shall be 11,285 afa.

Water diversion reduction measures required by this Order shall not supersede any more stringent water conservation requirements imposed by other agencies.

2. The State Water Board Deputy Director for Water Rights (Deputy Director) shall have the authority to modify the above reduction diversion schedule upon a showing by Cal-Am or MPWMD that such a reduction would have adverse impacts on public health and safety.
3. Within 90 days of the date of this Order, Cal-Am shall submit a work plan detailing how Cal-Am will comply with the above schedule for reducing water diversion from the Carmel River while developing alternative sources of supply to bring Cal-Am into compliance with its legal water right entitlements. The work plan shall consider all practical measures to reduce Carmel River demand or increase supplies and shall have a time line for achieving these measures. Cal-Am shall modify the plan in accordance with direction from the Deputy Director and shall implement the final work plan after its approval by the Deputy Director.

Upon the failure of any person or entity to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), and upon the request of the State Water Board, the Attorney General shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Water Code, § 1845, subd. (a).) Section 1845, subdivision (b) of the Water Code provides:

- (1) Any person or entity that violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.
- (2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the [board], shall petition the superior court to impose, assess, and recover those sums.
- (3) Civil liability may be imposed administratively by the [board] pursuant to section 1055.

STATE WATER RESOURCES CONTROL BOARD

*James W. Kassel*  
*Assistant Deputy Director for Water Rights*

Dated:

EXHIBIT B

objectively monitored, (2) minimize its diversions for the Carmel River, and (3) mitigate the environmental effects of its diversions.

**ORDER**

**NOW THEREFORE, IT IS HEREBY ORDERED** that Cal-Am shall comply with the following conditions:

1. Cal-Am shall forthwith cease and desist from diverting any water in excess of 14,106 afa from the Carmel River, until unlawful diversions from the Carmel River are ended.
2. Cal-Am shall diligently implement one or more of the following actions to terminate its unlawful diversions from the Carmel River: (1) obtain appropriate permits for water being unlawfully diverted from the Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of this Order not this condition, and/or (3) contract with another agency having appropriate rights to divert and use water from the Carmel River.
3. (a) Cal-Am shall develop and implement an urban water conservation plan. In addition, Cal-Am shall develop and implement a water conservation plan based upon best irrigation practices for all parcels with turf and crops of more than one-half acre receiving Carmel River water deliveries from Cal-Am. Documentation that best irrigation practices and urban water conservation have already been implemented may be substituted for plans where applicable.  
  
(b) Urban and irrigation conservation measures shall remain in effect until Cal-Am ceases unlawful diversions from the Carmel River. Conservation measures required by this Order in combination with conservation measures required

by the District shall have the goal of achieving 15 percent conservation in the 1996 water year and 20 percent conservation in each subsequent year.<sup>23</sup> To the extent that this requirement conflicts with prior commitments (allocations) by the District, the Chief, Division of Water Rights shall have the authority to modify the conservation requirement. The base for measuring conservation savings shall be 14,106<sup>24</sup> afa. Water conservation measures required by this order shall not supersede any more stringent water conservation requirements imposed by other agencies.

4. Cal-Am shall maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest practicable extent. The long-term yield of the basin shall be maintained by using the practical rate of withdrawal method.
5. Cal-Am shall satisfy the water demands of its customers by extracting water from its most downstream wells to the maximum practicable extent, without degrading water quality or significantly affecting the operation of other wells.
6. Cal-Am shall conduct a reconnaissance level study of the feasibility, benefits, and costs of supplying water to the Carmel Valley Village Filter Plant from its more nearby wells downstream of the plant. The objective of supplying water from the wells is to maintain surface flow in the stream as far downstream as possible by releasing water from San Clemente Dam for maintenance of fish habitat. The results

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<sup>23</sup> Each water year runs from October 1 to September 30 of the following year.

<sup>24</sup> 14,106 afa represents Cal-Am's total diversions from the Carmel River.

**EXHIBIT C**

Monterey Peninsula Water Management District

**Projected CAW Main System Production Reductions  
Water Years 2008 - 2021  
(All Values in Acre-Feet)**

| Water Year | Seaside Coastal | Carmel River | Seaside Coastal and Carmel River Sources |                             |                                 |                              |
|------------|-----------------|--------------|--|-----------------------------|---------------------------------|------------------------------|
|            |                 |              | Annual Production Limit                  | Annual Production Reduction | Cumulative Production Reduction | Cumulative Percent Reduction |
| 2008       | 3,504           | 11,285       | 14,789                                   | ---                         | ---                             | ---                          |
| 2009       | 3,191           | 9,592        | 12,783                                   | 2,006                       | 2,006                           | 13.6%                        |
| 2010       | 3,087           | 9,592        | 12,679                                   | 104                         | 2,110                           | 14.3%                        |
| 2011       | 3,087           | 9,028        | 12,115                                   | 564                         | 2,674                           | 18.1%                        |
| 2012       | 2,669           | 9,028        | 11,697                                   | 418                         | 3,092                           | 20.9%                        |
| 2013       | 2,669           | 7,335        | 10,004                                   | 1,693                       | 4,785                           | 32.4%                        |
| 2014       | 2,669           | 7,335        | 10,004                                   | 0                           | 4,785                           | 32.4%                        |
| 2015       | 2,251           | 5,642        | 7,893                                    | 2,111                       | 6,896                           | 46.6%                        |
| 2016       | 2,251           | 5,642        | 7,893                                    | 0                           | 6,896                           | 46.6%                        |
| 2017       | 2,251           | 5,642        | 7,893                                    | 0                           | 6,896                           | 46.6%                        |
| 2018       | 1,820           | 5,642        | 7,462                                    | 431                         | 7,327                           | 49.5%                        |
| 2019       | 1,820           | 5,642        | 7,462                                    | 0                           | 7,327                           | 49.5%                        |
| 2020       | 1,820           | 5,642        | 7,462                                    | 0                           | 7,327                           | 49.5%                        |
| 2021       | 1,494           | 5,642        | 7,136                                    | 326                         | 7,653                           | 51.7%                        |



February 4, 2008

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James W. Kassel  
Assistant Deputy Director for Water Rights  
State Water Resources Control Board  
Division of Water Rights  
1001 I. Street, 14th Floor  
Sacramento, CA 95814

Re: *Response to Notice of Draft Cease and Desist Order Regarding Diversion  
of Water from the Carmel River*

Dear Mr. Kassel:

California-American Water Company ("CAW") received the January 15, 2008 Notice of Draft Cease and Desist Order Regarding the Continued Unauthorized Diversion of Water from the Carmel River in Monterey County ("Draft CDO"). Diepenbrock Harrison will be assisting CAW in its defense of the Draft CDO.

CAW is a privately owned Class A water service and wastewater utility company regulated by the California Public Utilities Commission ("CPUC"). CAW collects, treats, and distributes water for public and private use and consumption. CAW provides municipal water service to most of the Monterey Peninsula, including the cities of Carmel, Del Rey Oaks, Monterey, Pacific Grove, Sand City and Seaside. In addition, CAW services the unincorporated areas of the Carmel Valley and the Highway 68 corridor. CAW has approximately 38,000 metered customers. Without sufficient water supplies, the health and safety of CAW's customers will be jeopardized - a fact recognized by the State Water Resource Control Board ("State Water Board").

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## DIEPENBROCK HARRISON

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In its Draft CDO, the State Water Board staff alleges that CAW has not complied with Condition No. 2 of State Water Board Order 95-10. Condition No. 2 of Order 95-10 requires CAW to pursue one or more of three courses of action to obtain supplemental water supplies. The courses of action set forth in Condition No. 2 include: (1) obtaining appropriative permits for water CWA is currently diverting from the Carmel River; (2) obtaining water from other sources of supply and making one-for-one reductions in unlawful diversions from the Carmel River [excluding production from the Seaside groundwater basin] and/or; (3) contracting with another agency having appropriative rights to divert and use water from the Carmel River. (Order 95-10, p. 40). CAW has taken diligent steps to pursue each of these courses of action.<sup>1</sup> It is beyond reasonable dispute that CAW is meeting the terms and conditions of Order 95-10. The Draft CDO fails to present evidence that warrants a different conclusion.

In addition, the Draft CDO proposes a schedule for "compliance." The schedule conflicts with the mandates of the California Public Utilities Code and actions required to protect health and safety. The schedule would likely place CAW in a no win position. It would force CAW to decide if it will comply with CDO, but violate the California Public Utilities Code and jeopardize the health and safety of its approximately 38,000 metered customers. Again, the Draft CDO also fails to present evidence to support its unworkable, proposed schedule.

Accordingly, if the State Water Board staff maintains its effort to impose the Draft CDO, CAW respectfully requests, pursuant to California Water Code section 1834, that the State Water Board schedule a hearing on the matter.

During a hearing, CAW will demonstrate that the allegations presented in the Draft CDO are unwarranted and that the Draft CDO is unsupported by sufficient evidence. The following describes some of the activities undertaken by CAW, in furtherance of the conditions set forth in Order 95-10. It also explains why the schedule proposed in the Draft CDO cannot be imposed.

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<sup>1</sup> CAW has also undertaken a number of additional actions to minimize its impact on public trust resources. For example, CAW has entered into annual Memoranda of Understanding with the California Department of Fish and Game and MPWMD to have quarterly meetings regarding a water budget that guides the withdrawal of water in light of current Carmel River conditions.



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### CAW is Pursuing Appropriative Permits for Carmel River Water Rights

CAW is a joint water rights owner to the Phase I Aquifer Storage and Recovery Project ("ASR"). As the State Water Board and its staff are well aware, the ASR is an effort by CAW and the Monterey Peninsula Water Management District ("MPWMD") to capture water extracted by CAW's Carmel River wells during high river flows and direct that water through a new pipeline to MPWMD injection wells within the Seaside groundwater basin. In addition to recharging the basin, this water would be accounted as a separate, stored source of water that could be extracted during periods of low river flows. Consequently, pumping of Carmel River water would be reduced during low-flow periods.

The State Water Board issued water right Permit 20808A for the ASR, which allows diversion of up to 2,426 acre-feet from the Carmel River when flows exceed those necessary to protect endangered steelhead. CAW and MPWMD are completing the process of obtaining a streambed alteration agreement and waste discharge requirements for this Project. These rights are appropriative rights to Carmel River Water.

CAW has also renewed its efforts to perfect rights to 2,984 acre-feet per year of Carmel River water pursuant to the rights recognized in table 13 of Decision 1632. CAW was informed on December 13, 2007 that, because the State Water Board has already determined that water for those rights is available, CAW could possibly perfect those rights without the extensive analysis required for other appropriative rights. CAW is committed to providing the State Water Board, Division of Water Rights with an amended application and appropriate California Environmental Quality Act documentation by March 31, 2008.

CAW has filed applications with the State Water Board for appropriative rights to Carmel River water for the Carmel River Dam. CAW is a regulated utility, California Public Utilities Code section 1001 requires CAW to obtain a Certificate of Public Convenience and Necessity ("CPCN") from the CPUC before constructing or extending any line, plant, or system. CAW submitted water rights and CPCN applications for the Carmel River Dam; however, Assembly Bill ("AB") 1142 (1998) required the CPUC to study all available alternatives to a dam on the Carmel River and identified desalinization as a potential solution to long-term Monterey Peninsula water supply deficiencies. Thus, at this time, CAW does not have the legal authority to move forward with those appropriative rights.

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Assistant Deputy Director for Water Rights  
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### CAW is Pursuing Additional Sources of Water Supply

As noted previously, one compliance option for Condition No. 2 is to obtain water from alternative sources of water and reduce pumping from the Carmel River on a one-for-one basis. The CPUC's AB 1142 Report (2002),<sup>2</sup> also known as the "Plan B" report, identifies desalinization as a potential solution to long-term Monterey Peninsula water supply deficiencies. The Coastal Water Project proposes a 10,370 acre-foot desalinization operation and a conveyance system to move water from the desalinization facility to CAW's existing distribution system. CAW submitted the desalinization proposal to the CPUC for review. The CPUC determined that before it could consider approval of the Project, it needed to prepare an environmental impact report. To that end, the CPUC has hired an outside consultant, which is undertaking that effort. The CPUC expects to release a draft environmental impact report for public review in 2008.

CAW has also secured temporary supplies of additional water through an operating lease for the City of Sand City's desalination plant. This operating lease will provide CAW annually with 300 acre-feet of water once it begins operation in 2009. That additional supply will slowly diminish over the next 20 years as additional water is demanded by new uses within the City of Sand City, but will provide some immediate relief to demand from the Carmel River.

Finally, the Seaside Watermaster is investigating a recycled water project that would artificially replenish the Seaside groundwater basin. CAW hold two votes on the Watermaster Board and pays over 80% of the costs incurred by the Watermaster. Subject to Court approval, this would make additional water available from the Seaside Basin that CAW could use in lieu of Carmel River water.

### CAW is Entering into Contracts with Water Rights Holders

The third listed compliance option in Condition No. 2 is for CAW to enter into contracts with appropriative right holders. As the State Water Board staff is well aware, the vast majority of the appropriative rights to the Carmel River were granted to MPWMD in Decision 1632. CAW entered into a contract with MPWMD to become a joint owner of the ASR, and has agreements with MPWMD to formalize joint ownership of additional water rights.

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<sup>2</sup> AB 1142, which commissioned the Report, was passed by the Legislature in 1998.

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### The Proposed Remedy in the Draft CDO Conflicts with the Public Utilities Code and Order 95-10

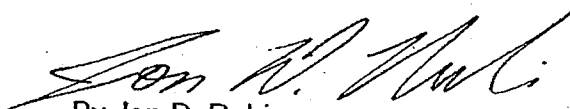
The Draft CDO proposes a schedule that would require CAW to reduce its appropriation of water from the Carmel River, as a remedy to the alleged violation of Condition No. 2. The schedule in the Draft CDO is not drafted in a manner that is consistent with the law. The schedule conflicts with the mandates of the California Public Utilities Code, which require CAW, as a regulated utility, to provide service to all customers within its service area. It also conflicts with Order 95-10, in which the State Water Board found that "[t]he people and the businesses on the Monterey Peninsula must continue to be served water from the Carmel River in order to protect public health and safety." (Order 95-10, p. 37). Finally, like other sections of the Draft CDO, the schedule presented in the Draft CDO is not supported by sufficient evidence.

### Conclusion

In sum, the information outlined in this letter, as well as additional information CAW will be prepared to submit as evidence at the hearing, clearly demonstrate that issuance of a cease and desist order against CAW cannot be supported by sufficient evidence. CAW is in compliance with Order 95-10. It has been diligently pursuing a variety of measures in an effort to obtain necessary, supplemental water, in addition to measures to minimize its effects on public trust resources. Further, the schedule presented in the Draft CDO is contrary to law and unsupported by sufficient evidence. For all of these reasons, CAW objects to the Draft CDO. If the State Water Board staff continues to pursue the Draft CDO, CAW requests, pursuant to the procedure established under California Water Code section 1834, a hearing before the State Water Board.

Very truly yours,

DIEPENBROCK HARRISON  
A Professional Corporation



By Jon D. Rubin  
Attorneys for California-American Water Company

cc: B. Kent Turner  
Carrie Gleeson, Esq.  
Tim Miller, Esq.

EXHIBIT E

**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT (MPWMD)  
STRATEGIC PLANNING RETREAT  
February 13, 2008 \* Sunset Cultural Center**

Marilyn Snider, Facilitator—Snider and Associates (510) 531-2904  
Julia Chambers, Recorder (510) 525-0350

**WHAT ARE THE ACCOMPLISHMENTS OF THE MPWMD SINCE THE APRIL 19, 2007  
STRATEGIC PLANNING RETREAT?**

Brainstormed Individual Perceptions:

- California American Water (CAW) Conservation rate case has been filed
- Budget under control
- Phase 1 ASR project is under construction
- Made presentations to governing boards of the eight land-use jurisdictions within the District
- Healthy staff/board working relationship
- Obtained permanent water right for ASR
- Completed in-house production of public outreach video
- Conducted a successful open house
- Completed design and prototype of a new data base system
- Successful fish rearing program under difficult conditions
- Conducted a committee meeting from the District conference room with a live video stream to participants
- Worked effectively with Monterey Regional Water Pollution Control Agency (MRWPCA) staff regarding the groundwater replenishment project
- Assessed potential for cloud seeding program in Carmel River Watershed
- Negotiated agreement with Marina Coast Water District
- Signed water conservation reimbursement agreement with CAW
- Completed Carmel River Channel Maintenance Program
- Approved ten water distribution system permits
- Good working relationship between the Board members and staff
- Completed contingency rationing implementation plan
- Solidified technical support role to the Seaside Groundwater Basin Watermaster
- Adopted Integrated Regional Water Management Plan (IRWMP)
- Improved communication with other water agencies
- Developed new divisional budget reports
- Provided technical accuracy for the Watermaster process
- Significant improvement in the District's public image
- Collaborative relationship with CAW
- Positive working relationship with Department of Water Resources staff
- Expanded the Rebate Program and codified changes in the MPWMD Rules and Regulations
- Community Advisory Committee was formulated and completed its charge
- Completed Phase 1 Seaside Watermaster contract tasks
- Negotiated Phase 2 Seaside Watermaster contract tasks
- Facilitated live webcast of Board meetings through AMP web link
- Maintained continuous flow in the Upper Carmel River
- San Clemente Dam Fish ladder video has been enhanced
- Worked effectively with other special districts to achieve goals

- Completed a study of all projects on the Matrix of Water Supply Alternatives
- Board adopted the MOU regarding formation of the Monterey Bay Regional Water Solutions Task Force
- Applied for funding for Sleepy Hollow Steelhead Rearing Facility (SHSRF) water intake retrofit project
- Conducted and televised a special Board workshop at which the CAW Division Manager described Monterey Division operations and rates
- Completed annual inspection of Carmel River channel

**WHAT ARE THE POTENTIAL POSITIVE IMPACTS OF THE SWRCB DRAFT CEASE AND DESIST ORDER WR 2008-00XX-DWR ON MPWMD?**

Brainstormed Individual Perceptions:

- Increased collaboration with regions with similar restrictions
- Moves up desalination viability
- Enhanced potential for state funding for water supply efforts
- Intensifies quest for regional water supply solutions
- Reduces potential use of Carmel River water as a source for the Ryan Ranch System
- Increase in conservation
- Decrease in availability of wastewater
- More public awareness and participation in water matters
- Compels people to work together for a solution
- Environmental recovery of the Carmel River
- Opportunity to amend SWRCB Order WR 95-10 one-to-one replacement requirement
- Rationing
- Reduction in use of water that we are using
- Increase in river flow
- Eventual solutions to the problem
- Encourages incremental solutions
- Become a model for sustainability
- Increased focus on issue by legislators, CPUC, etc.

**WHAT ARE THE POTENTIAL NEGATIVE IMPACTS OF THE SWRCB DRAFT CEASE AND DESIST ORDER WR 2008-00XX-DWR ON MPWMD?**

Brainstormed Individual Perceptions:

- Public will blame Board/District
- Public pays fine that will be levied for not meeting the order
- Building moratorium
- Loss of allocation
- Impact on MPWMD ASR water right
- Effect on water entitlement
- Reduced competitiveness as tourist destination
- Enables us to appeal to someone higher than the SWRCB
- Passive resistance by community
- Complicates water credit discussions
- Increases applications for wells

- Increases applications for water transfer
- Reduces potential use of Carmel River water as a source for the Ryan Ranch System
- Expense and effort to participate in hearing process
- Decrease in availability of wastewater
- Loss of investment capital in the community
- Water Rationing
- Decrease in quality of life
- Water rationing in wet years (hard to explain to public)
- Loss of jobs
- Increase spending on the part of the District to come up with solutions
- Reduction in use of water that we are using
- Endanger public health and safety
- Diversion of staff from other projects
- Increase water rates with less water
- Encourages incremental spending
- Increased focus on issue by legislators, CPUC, etc.

#### **WHAT ACTIONS COULD BE TAKEN REGARDING THE DRAFT CEASE AND DESIST ORDER WR 2008-00XX-DWR?**

- Reconvene CAC (Community Advisory Committee)
- Become a party and participate in the hearing
- Prepare the data in support of our plan
- Publicity to community on the meaning of the order, our plan, etc.
- Meet with other jurisdictions
- Encourage SWRCB to conduct hearings locally
- Explore funding mechanisms
- Fund out how to expedite a project
- Accelerate planning for expanded ASR
- Accelerate planning for MPWMD Desalination Project
- Highlight and accentuate efforts to date (e.g., desalination, collaboration)
- Reach out to the media to help explain what is expected
- Take out advertising
- Coordinate with other party participants
- Force (nicely) CAW Am to participate with us in addressing draft Cease and Desist Order (CDO)
- Allow all elected Board members to speak to the community
- File Public Records Act request with SWRCB (discovery)
- Develop expert testimony to address specific negative impacts
- Prepare a plan to present to the public stating what the District will do, step-by-step if the draft CDO stands (e.g. moratorium, rationing)
- Publicize well the MPWMD public hearing on draft CDO and proposed actions
- Conduct lobby effort with legislators, PUC, and WRB members
- Develop and implement integrated strategies
- Make estimate of community affordability of water supply projects
- Correct population growth and other "factual" inaccuracies in the draft CDO
- Communicate directly with key non-party jurisdictions the District's role and position
- Request from CAW an update on Coastal Water Project, including their timeline

- Propose deadline for Order WR 95-10 compliance in lieu of “up to 50%” conservation mandate specified in draft CDO
- Budget for the draft CDO activities

**WHAT OTHER EXTERNAL IMPACTS/TRENDS MIGHT HAVE A NEGATIVE IMPACT ON MPWMD?**

Brainstormed Individual Perceptions:

- Carmel River Steelhead Association accusations
- Multiple Public Utilities Commission (PUC) proceedings
- Economic slowdown
- CAW corporate mentality
- American Water is for sale
- Increase in applications for well permits
- Increase in applications from multiple entities for construction of desalination facilities
- Other regulatory and permitting agencies
- Enforcement issues
- Inadequate rainfall
- Implementation of water rationing would require increased staff
- Parochial interests constraining regional cooperation (e.g., cities, public agencies, citizens)
- Uncertainty regarding San Clemente Dam Seismic safety project
- Sierra Club and no growth interest

**NEXT STEPS/FOLLOW-UP PROCESS**

| WHEN                       | WHO                                      | WHAT   |
|----------------------------|--|--|
| February 15, 2008          | Executive Assistant                      | Distribute retreat record to retreat attendees and those unable to attend or who had to leave early. |
| Within 48 hours of receipt | Retreat attendees (Board and Management) | Read record of strategic planning session.   |
| February 28, 2008          | Board                                    | Adopt updated strategic plan.  |
| By March 15, 2008          | Division Managers                        | Present strategic plan to their staff.   |
| Monthly                    | Board and General Manager                | Review progress on goals and objectives, and revise objectives as needed (amend, delete, and add).   |
| Monthly                    | Executive Assistant                      | Distribute strategic plan update.  |