

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0060

In the Matter of the Unauthorized Diversion and Use of Water
by the California American Water Company

Parties

**Water Rights Prosecution Team¹
California American Water Company**

Interested Parties

**Monterey Peninsula Water Management District, City of Carmel by the Sea,
City of Seaside, Seaside Basin Watermaster, Pebble Beach Company,
Monterey County Hospitality Association, City of Monterey, City of Sand City,
Division of Ratepayers Advocates of the California Public Utilities Commission,
Public Trust Alliance, Carmel River Steelhead Association,
Ventana Chapter of the Sierra Club, California Sportfishing Protection Alliance,
Planning and Conservation League, California Salmon and Steelhead Association,
National Marine Fisheries Service**

SOURCE: Carmel River

COUNTY: Monterey

CEASE AND DESIST ORDER

BY THE BOARD:

INTRODUCTION

The California American Water Company (Cal-Am or CAW) diverts water from the Carmel River in Monterey County. The water is used to supply the residential, municipal, and commercial needs of the Monterey Peninsula area (peninsula) communities. In 1995 the State Water

¹ The Water Rights Prosecution Team includes: (1) James Kassel, Assistant Deputy Director for Water Rights, (2) John O'Hagan, Manager, Water Rights Enforcement Section (3) Mark Stretars, Senior Water Resource Control Engineer, (4) John Collins, Environmental Scientist and (5) Staff Counsels Reed Sato, Yvonne West and Mayumi Okamoto. In addition, for purposes of complying with *ex parte* prohibitions, Kathy Mrowka, Senior Water Resource Control Engineer, is also treated as a member of the Prosecution Team.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Cal-Am shall cease and desist from the unauthorized diversion of water from the Carmel River in accordance with the following schedule and conditions.⁴⁶

1. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2016.
2. Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.⁴⁷
3. At a minimum, Cal-Am shall adjust its diversions from the Carmel River in accordance with the following:
 - a. Commencing on October 1, 2009,⁴⁸ Cal-Am shall not divert more water from the river than the base of 10,978 afa,⁴⁹ as adjusted by the following:
 - (1) Immediate Reduction: Commencing on October 1, 2009, Cal-Am shall reduce diversions from the river by 5 percent, or 549 afa.

⁴⁶ Attachment 1 to this order, "Table 1, Projected Reductions in Illegal Diversions from the Carmel River," shows the reductions in illegal diversions from the Carmel River that should result from conditions 1, 2 and 3 of this order.

⁴⁷ Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use. Metering each unit of a multiunit building tends to increase accountability in the use of water and the effectiveness of water conservation requirements.

⁴⁸ Each water year runs from October 1 to September 30 of the following year.

⁴⁹ Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a basis of right. (3,376 + 7,602 = 10,978 afa).

- (2) Annual Reductions: Commencing on October 1, 2011, the base shall be further reduced by 121 af per year through savings that will accrue from reduced system losses, the retrofit program, the reduction of potable water used for outdoor irrigation, demand reduction and similar measures. The 121 af reduction shall be cumulative. For example, 121 af shall be reduced in the first year and 242 af shall be reduced in the second year. Commencing on October 1, 2015, annual reductions shall increase to 242 af per year. The 242 af per year reduction shall also be cumulative. Annual reductions shall continue until all unlawful Cal-Am diversions from the river have been terminated.
- (3) ASR Project: The amount of water diverted to underground storage under Permit 20808A (Application 27614A) as of May 31 of each year and which will be supplied to Cal-Am customers after that date shall be subtracted from the base.⁵⁰ On June 1 of each year, Cal-Am shall submit an operating plan to the Deputy Director for Water Rights specifying the quantity of water it intends to supply from ASR Project for its customers after May 1 of each year. Water pumped from the project for delivery to customers should be consistent with the requirements of paragraph "c" below.
- (4) Sand City Desalination Plant: Once the Sand City Desalination Plant becomes operational, 94 af shall be subtracted from the base. In addition, based on actual production from the plant, any other water that is produced and not served to persons residing within the City of Sand City shall be subtracted from the base amount for each water year.
- (5) Small Projects: Water produced from new sources developed pursuant to Condition 4 of this order shall be subtracted from the base.
- (6) Pebble Beach: Within 90 days following adoption of the order, the Pebble Beach Company shall certify, under penalty of perjury, the total quantity of water annually used under its water entitlement from MPWMD (for the funding assurances provided for the construction and expansion of the CAWD-PBCSD

⁵⁰ This condition shall apply to Phase I and Phase II of the ASR project.

wastewater reclamation project).⁵¹ Ten percent (10%) of the amount reported shall be added to the adjusted base to allow Cal-Am to divert water from the river to supply water for PBC water entitlements initiated in the following 12 months. Thereafter, the PBC shall annually submit, on September 30, a report to the Deputy Director for Water Rights accounting for any additional water that is diverted from the Carmel River as the result of an increased use of its MPWMD water entitlement. Increased diversions from the river by Cal-Am to satisfy PBC entitlements from MPWMD shall be added to the adjusted base, and are not subject to section 2 of this order. Water Diverted from the river by Cal-Am for PBC entitlements can only be served to properties that have received a PBC entitlement from MPWMD and which are located in the Cal-Am's service area. Cal-Am shall not divert water from the Carmel River after December 31, 2016, to supply PBC's water entitlement from MPWMD.

- b. Either Cal-Am or the MPWMD may petition the State Water Board Deputy Director for Water Rights for relief from annual reductions imposed under condition 3., a (2). No relief shall be granted unless all of the following conditions are met: (a) Within 18 months of the adoption of this order, Cal-Am has imposed a moratorium on new service connections pursuant to Water Code section 350 or has obtained an order prohibiting new connections from the PUC pursuant to Public Utility Code section 2708 or MPWMD has imposed a moratorium on new service connections under its authority; (b) the demand for potable water by Cal-Am customers has been reduced by 13 percent;⁵² and (c) a showing is made that public health and safety will be threatened if relief is not granted. Any relief granted shall remain in effect only as long as (a) a prohibition on new service connections remains in effect, and (b) the 13 percent conservation requirement remains in effect.
- c. ASR project water stored in the Seaside groundwater basin under Permit 20808A (Application 27614A) should be used to mitigate the effect of Cal-Am's illegal diversions from the river. ASR water should be supplied to Cal-Am customers only during months when water is most needed in the river to preserve steelhead.

⁵¹ Water currently diverted from the river by Cal-Am to supply PBC entitlements is accounted for in the existing base.

⁵² For purposes of measuring compliance, the 13 percent reduction shall be measured against the adjusted base required by this condition for the year in which the conservation requirement is imposed.

Commencing no later than June 1 of each year, Cal-Am should use stored groundwater to supply the needs of its customers and reduce diversions from the river. Consistent with Cal-Am's operating plan, water should be pumped from the groundwater basin at the maximum practicable rate for as long as possible. This condition shall apply to both Phase I and Phase II of the ASR project. The river's habitat and fish may receive greater benefits from a substitution regime that differs from that called for by this condition, a regime requiring that substitution commence at a different date, at a different rate or be coordinated with the level of flow in the river. In addition, it may be desirable to hold stored water from one year to the next to assure that more water is available for the steelhead and its habitat in years when the potential for steelhead survival may be greater. Several substitution trials may be necessary to determine which regime will have the greatest benefit. The National Marine Fisheries Service and the California Department of Fish and Game are encouraged to negotiate different substitution regimes with Cal-Am. The State Water Board will honor such agreements, provided Cal-Am submits the written agreement to the Deputy Director for Water Rights no later than May 1 of each year and the written agreement is approved by the Deputy Director.

4. Cal-Am shall reduce its illegal diversions from the river at the same rate ASR Project water is pumped from the groundwater basin as long as stored water is available under the operating plan.
5. Cal-Am shall implement one or more small projects that, when taken together, total not less than 500 afa to reduce unlawful diversions from the river. Within 90 days of entry of this order, Cal-Am shall identify to the Deputy Director for Water Rights the projects that it will implement and shall implement the projects within 24 months of entry of this order. Cal-Am may petition the Deputy Director for additional time in which to implement the projects. However, no time extension shall be considered unless the petition is accompanied by detailed plans and time schedules for each project. Detailed justification shall be provided for additional time. Detailed justification shall be provided for any request for an extension to allow Cal-Am time to obtain prior approval from the PUC. To the maximum practicable extent, small projects shall be operated to reduce illegal diversions from the river during the months when surface flow in the river begins to go dry and through the months when surface flow in the river disappears below river mile 6.5.

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

- (h) Each quarterly report submitted by Cal-Am shall be certified under penalty of perjury and shall include the following declaration: *"I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this report and any accompanying documents are true and correct, with full knowledge that all statements made in this report are subject to investigation and that any false or dishonest statement may be grounds for prosecution."*
7. Starting six months after adoption of this order, Cal-Am shall file quarterly reports of its progress toward implementing Condition 3 (small project implementation) and note specifically any problems with its schedule of implementation.
8. The Deputy Director for Water Rights is authorized to modify the timing and the content of the reporting required by all of the provisions of this order to more effectively carry out the intent of this order.
9. Cal-Am shall comply with all requirements of Order 95-10, except as follows:
- (a) Condition 1 of Order 95-10 is superseded by Condition 2 of this order.
 - (b) Condition 3(b) of Order 95-10 is superseded by Condition 2 of this order.
 - (c) The last sentence of Condition 4 is deleted because the Seaside groundwater basin watermaster will determine the manner in which water may be withdrawn from the groundwater basin.
 - (d) All other conditions of Order 95-10 shall remain in full force and effect until fully implemented.
10. The Deputy Director for Water Rights is directed to closely monitor Cal-Am's compliance with Order 95-10 and this order. Appropriate action shall be taken to insure compliance with these orders including the issuance of additional cease and desist orders under Water Code section 1831, the imposition of administrative civil liability under Water Code section 1055, and referral to the Attorney General under Water Code section 1845 for injunctive relief and for civil liability. If additional enforcement action becomes

necessary, the Deputy Director is directed to consider including in such actions all Cal-Am's violations of Water Code section 1052 since the adoption of Order 95-10.

11. The conditions of this order and order 95-10 shall remain in effect until (a) Cal-Am certifies, with supporting documentation, that it has obtained a permanent supply of water that has been substituted for the water illegally diverted from the Carmel River and (b) the Deputy Director for Water Rights concurs, in writing, with the certification.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 20, 2009.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.

NAY: Board Member Tam M. Doduc

ABSENT: None

ABSTAIN: Board Member Walter G. Pettit



Jeanine Townsend
Clerk to the Board

ATTACHMENT 1

TABLE 1
PROJECTED REDUCTIONS IN ILLEGAL DIVERSIONS FROM THE CARMEL RIVER
 (all amounts are in acre-feet)

Water Year (Oct - Sept)	Base Amount ¹	Mandatory Cumulative Annual Reduction ²	Estimated ASR Project Operational Yield ³	Estimated Sand City Desalination Plant ⁴	Estimated Small Project Output ⁵	Estimated Coastal Water Project Output ⁶	Total to Base Amount	Total Estimated Amount Diverted from Carmel River	Estimated Amount Diverted w/o Valid Basis of Right
2009-10	10,978	549	145	75	0	0	769	10,209	6,833
2010-11	10,978	549	145	290	0	0	984	9,994	6,618
2011-12	10,978	670	145	280	0	0	1,095	9,883	6,507
2012-13	10,978	791	145	270	0	0	1,206	9,772	6,396
2013-14	10,978	912	145	260	0	0	1,317	9,661	6,285
2014-15	10,978	1,033	145	250	0	0	1,428	9,550	6,174
2015-16	10,978	1,275	145	240	0	0	1,660	9,318	5,942
2016-17	10,978	1,517	145	230	0	11,730	1,892	3,376	0

1) Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a valid basis of right (60 afa of the 3,376 afa is assumed diverted under riparian right to riparian vegetation along Carmel River).
 2) Reduction in 2009-2010 and 2010-2011 is initial amount of 5% (549 ac-ft). Starting October 1, 2011, add 121 af each year until October 1, 2015, when the annual reduction becomes 242 afa.
 3) Average amount diverted for Phase 1 ASR project from water year 1994-1995 to 2006-2007 (R.T. Phase 1, Vol. I pp. 41-42). Amount may increase when Phase 2 of the ASR project becomes operational.
 4) Number may vary based on actual production from desalination plant. Assumes 3 months of operation in 2009-10.
 5) Production from small projects cannot be estimated at this time.
 6) Estimated production of Coastal Water Project (R.T. Phase 2, Vol. V, p. 1333).