



MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

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September 30, 2009

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: COMMENT LETTER – 10/20/09 BOARD MEETING: CAL-AM CDO

Chair Charles R. Hoppin and Members of the Board:

This letter presents comments of the Monterey Peninsula Water Management District (Water Management District or District) on the Revised Draft State Water Resources Control Board (SWRCB) Cease and Desist Order (CDO) issued on September 16, 2009, relating to the unauthorized diversion and use of water by California American Water from the Carmel River in Monterey County.

Having carefully compared the September 16, 2009 version of the CDO with the prior draft CDO dated July 27, 2009, the Water Management District notes a number of the modifications respond to matters raised by the District. These modifications are appreciated. Nonetheless, even with these changes, the revised draft CDO presents an unacceptable threat to public health, safety and welfare of the District and the communities of the Monterey Peninsula.

A fundamental flaw in the revised draft CDO is the assumption that past water demand accurately reflects future demand. The revised draft CDO relies upon this precept at page 52, stating "The water available to supply Cal-Am's customers, from all sources (including Cal-Am's illegal diversions from the Carmel River), is in rough equilibrium with current customer needs." This assumption is in error. It is unlikely that immediate past water demand reliably predicts future water needs. Such an assumption ignores the current economic recession. Accordingly, water use is now depressed. The faltering economy, as well as water conservation programs, have caused this drop in demand; the revised draft CDO cannot ignore the community's plummeting hotel occupancy, the fact that restaurant seats are empty, that retail sales are depressed, and that businesses have closed.

Although water use has declined, demand can be expected to rebound as the economy improves. The draft CDO ignores this likelihood. It locks the Monterey Peninsula into a new and lower base Carmel River diversion value that fails to provide sufficient water for basic needs, and will not meet future water needs that are reasonably expected to occur.

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Further, even in its revised form, the draft CDO contains errors of facts. Based on these reasons, the Water Management District renews its objection to issuance of the revised draft CDO in its present form.

The Draft CDO Threatens Public Health and Safety

The revised draft CDO does not adequately address health and safety concerns identified by the Water Management District and others.

The revised draft CDO states, at page 51, "Having sufficient water to operate a water treatment and supply system is a valid concern," but the limits set forth in the draft CDO ignore the health and safety standards presented in the testimony of the SWRCB expert, Mark Stretars (Exhibit PT-49, page 4). Mr. Stretars' testimony presents the only factual basis for water consumption requirements in the hearing record.

The revised draft CDO, beginning at page 50, analyzes health and safety entirely from the perspective as to whether or not Cal-Am can maintain system pressure sufficient for health and fire safety purposes. The CDO cites the hearing record on page 51 and states "having sufficient water to operate its system reliably is typically a problem for one day a year, although it could be for as long as 3 to 5 days at a time." The draft CDO then concludes, on page 51, "We should not give too much weight to this contention". The Water Management District believes that this reasoning is incorrect. Concerns about health and safety are paramount to this decision.

The revised draft CDO fails to explain how health and safety requirements referenced by Mr. Stretars can be met. Failure to provide the minimum amount of water for residential use will harm public health and safety. Diversion limits proposed in the revised draft CDO reduce water for individual Cal-Am residential customers to levels less than those allowed by Title 23, section 697(b). The draft CDO ignores this fact.

During Water Year 2007, single-family residential use in Cal-Am's main system averaged approximately 68 gallons per person per day (gppd). This quantity is less than the health and safety standard referenced by Mr. Stretars, i.e., 75 gppd. This poses not the isolated "one day a year" problem upon which the decision is based, but poses a long term, every day limit that dries up the water supply needed by residents and businesses alike on the Monterey Peninsula. The SWRCB must recognize that the reductions it orders will harm public health and safety. The draft CDO acknowledges ancillary economic effects at page 52, footnote 44, noting that the "economy is also dependent upon the vitality of the hospitality industry."

Nonetheless, the evidentiary record shows the forced water use reduction will harm residents and businesses. By ignoring the public health and safety standard presented by the prosecution team's expert, the SWRCB decision is arbitrary and capricious. Simply stated, the amount of

water allowed for use by the revised draft CDO is not reasonable and jeopardizes public health and safety.

The Draft CDO Is Based Upon Flawed Assumptions

The revised draft CDO arbitrarily assumes sufficient water will be saved from leak reduction, retrofit, and outdoor irrigation limits to satisfy mandated reductions in Carmel River diversions and to satisfy other water requirements of the area, such as the court-ordered ramp down of Seaside Basin ground-water pumping. There is no evidence in the hearing record that quantifies or supports these assumed savings. The revised draft CDO now includes an added word to somewhat acknowledge this concern, referencing that water saved by various programs are "approximate" values (see e.g., footnotes 34, 35 and 36 on pages 42 and 43). This acknowledgement belies and may exacerbate the real problem. The revised draft CDO fails to include a means to balance the theoretic reduction in water supply with the reality of water demand. Programs may be required, but assuming specific quantities of water will be saved is speculative.

Even if the leak reduction, retrofit, and outdoor irrigation programs save the water in the approximate amounts assumed, the revised draft CDO still contains a "double-dipping" flaw. These same water conservation measures are stated as the means to offset the court-mandated Seaside Basin reductions as well as the SWRCB-mandated Carmel River reductions. The hearing record is devoid of evidence to support the conclusion that both purposes can be met by these same activities.

Evidence does not support the CDO-required water reductions. The hearing record does not support the conclusion that an additional, ever-increasing 121 acre-feet annually (afa) will be saved each year beginning on October 1, 2010 due to leak correction, retrofit, and outdoor irrigation limits.

The draft CDO was revised to be equivocal as to the water that can be saved by reason of leak reduction (e.g., "Cal-Am should be required to reduce its diversions from the river by about 68 af per year". (Draft CDO, page 42.) The SWRCB added footnote 34, at page 42 of the revised draft CDO, to clarify "The State Water Board recognizes *it is unlikely that exactly 68 af will be saved for each year...* and that in any given year the water saved may be more or less than 68 af." (Emphasis added.)

Similarly, footnote 35, at page 43 of the revised draft CDO, was added to clarify "The State Water Board recognizes that the actual amount of water saved by the retrofitting program during any given year may be more or less than 41 af."

And further, footnote 36, at page 43 of the revised draft CDO, was added to clarify "The State Water Board recognizes that the actual amount of water saved by reducing the quantity of water for outdoor use may be greater or less than 100 af and that the quantity saved in any given year

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may be more or less than 12 af.” The revised draft CDO acknowledges these calculations are uncertain; at page 43 the conclusion as to how much water can derive from this program was changed from: “We are of the opinion that it *should* be feasible to save 100 af over eight years” was changed to read: “We are of the opinion that it *may* be feasible to save 100 af over eight years ...” (Emphasis added.)

Despite these approximations and the acknowledged uncertainty as to how much water can be saved, and despite the lack of an evidentiary basis in the hearing record, the draft CDO nonetheless assumes that water savings will occur at the greatest level cited and hardwires these annual reductions into the required reductions, starting at page 64, “Commencing on October 1, 2010, the base shall be further reduced by 121 afa per year through savings that will accrue from (1) reduced system losses, (2) the retrofit program, and (3) the reduction of potable water use for outdoor irrigation.” This assumption is inconsistent and capricious. Specifically, the draft CDO both acknowledges water savings are approximate, and in any year “the water saved may be more or less”, but nonetheless mandates these reductions, even if the means to cause the savings are ineffective.

Further, the revised draft CDO lacks rationale to justify the basis for ordering water savings rates to double on October 1, 2015, as required on page 64, paragraph (2). The hearing record lacks evidentiary support for the annual ever-increasing water supply reduction of 242 af. The CDO contains no reference as to means by which this result can be achieved.

Lastly, community reliance on Carmel River water use is almost entirely prohibited as of December 31, 2016. As of that date, the revised draft CDO requires “all unlawful diversions from the river” be terminated without any consideration as to whether or not the community has reliable substitute water supplies. December 31, 2016 may correlate to the development of an alternate water supply, but it may not. The revised draft CDO sets this deadline in a vacuum, ignoring the myriad factors that can delay alternative water projects, despite the fact that alternatives are not yet planned, not permitted, not financed, and not built.

There is no basis to support the assumptions made as to the quantity of water that can be saved, or the date when water savings can be doubled. In addition, there is no evidence to show that Cal-Am’s unlawful diversions can cease by December 31, 2016. These decisions are each arbitrary and capricious.

The Draft CDO Relies Upon Fuzzy Math

The draft CDO, beginning at page 39, was revised to better describe the Adjudication of the Seaside Groundwater Basin and its court-ordered impact on the water supplies of the Monterey Peninsula. The Water Management District agrees with the statement in the draft CDO, at page 39, “We find that the adjudication will decrease the supply of water available to Cal-Am and its customers.” The draft CDO later calculates that the court order will reduce Cal-Am’s water supply by 2.8% in 2009, but then ignores future ramp-down amounts required by the

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adjudication. At no point, does the revised draft CDO set forth a clear calculation of the reduced water supply that will remain available to the community. The table attached to this letter (**Enclosure 1**) provides such a calculation that shows the maximum amount of water that will be available from Carmel River sources for Cal-Am customer service for Water Years 2010 through 2017, and should be incorporated into the final order. This table is based on Attachment 1 of the revised draft CDO, i.e., *Table 1, Projected Reductions in Illegal Diversions from the Carmel River*, and has been corrected to be consistent with the text of the order (Conditions 1 through 3 on pages 62 through 64).

Enclosure 2 shows the combined effect of Cal-Am's reduced diversions from the Carmel River that would result from the revised draft CDO and Cal-Am's reduced diversions from the Coastal Subareas of the Seaside Groundwater Basin that are expected to occur between Water Years 2010 and 2017, if the CDO is adopted as drafted. As shown, the total maximum allowable diversions by Cal-Am from both sources would range from 13,516 af in WY 2010 to 11,591 af in WY 2017. These combined allowable diversions represent the total amount of water that will be available to serve customers in Cal-Am's main distribution system each year.

Enclosure 2 also shows the percent reductions in diversions that will be required relative to the current allowable diversion limit, i.e., WY 2009, and the original Order 95-10 allowable diversion limit. As shown, the combined reductions in Cal-Am's allowable diversions in WY 2010 will require a 6.6% reduction in Cal-Am's diversions relative to the WY 2009 base and a 19.6% reduction in Cal-Am diversions relative to the Order 95-10 base. These required reductions increase each year and would reach approximately 18% and 30% by the end of WY 2016, respectively.

The revised draft CDO concludes "Water to offset the loss of groundwater may be found by aggressively implementing: (1) the retrofit program, (2) the program to reduce potable water for outdoor irrigation; and (3) the main replacement program and demand management by programs such as MPWMD's Regulation XV, prohibiting waste and non-essential water use." The revised draft CDO does not estimate water savings from demand management, casually noting on page 44, "Cal-Am, in conjunction with MWPMD, should undertake demand management to reduce Cal-Am's need to illegally divert water from the river."

This is questionable math. Identical efforts described to offset the court-ordered Seaside Groundwater Basin Adjudication (retrofit, outdoor irrigation, and main replacement) at page 39 of the revised draft CDO, later provide justification for the Board's assumption that the community will be able to offset reduced diversions from the Carmel River.

At page 40, the revised draft CDO states, "Such efforts *may* offset the loss of groundwater production over a period of years." (Emphasis added.) This is wishful thinking. Unsubstantiated assumptions, however, should not be used to deprive the public of its major reliable source of water supply. The hearing record is devoid of any evidence to show water supply offsets caused by the Seaside Adjudication and the CDO can be met by these measures.

There is no basis to conclude that the reductions specified in the revised draft CDO avoid harming public health, safety and welfare. The revised draft CDO does not provide an opportunity to avoid the very specter it discusses at page 52, "Thus, an immediate and substantial reduction in the quantity of water that Cal-Am diverts from the Carmel River could present a threat to public health and safety."

The New Carmel River Base Diversion Amount Is Flawed and Poses Ambiguity for Water Management

The revised draft CDO uses flawed logic to reduce Cal-Am's base amount for Carmel River diversion to 10,978 afa. The Water Management District objects to this base annual diversion value for the following reasons:

- Using 10,978 afa as the new diversion base is arbitrary, capricious, and unfair. Footnote 31 at page 39 relies on MPWMD-Exhibit DF2; that exhibit shows average Cal-Am annual diversion between 1996 and 2007 to approximate 10,967 af. However, the average diversion includes years when Cal-Am diverted more than the proposed base amount. While the SWRCB can require Cal-Am to reduce diversions, it should do so by a CDO that directly causes a reduction, not by imbedding a reduction requirement that exceeds past practice by adopting a new unsupportable base annual diversion value.
- A logic flaw underlies selecting a base annual diversion value solely in reliance on past water consumption data. One cannot assume reduced water demand resulted entirely from water conservation practices. As previously noted, economic and social factors must also be considered; reduced water demand may well be temporary and may increase as the economy improves. The base annual diversion value cannot presuppose past reductions in water use can be replicated in future years.
- The new, different annual base diversion value confuses the public, complicates water conservation performance standards, and injects ambiguity into water management issues. The long-standing base annual diversion of 11,285 af was established in Order WR 95-10, and has been continuously applied since Water Year 1997. This was the base Carmel River diversion quantity presented to the Court in the Seaside Basin adjudication (*Cal-Am v. City of Seaside, et al*; Case No. M66343, dated March 27, 2006; SBW-2) and is the base Carmel River diversion quantity used by the California Public Utilities Commission (CPUC). A key manner in which this base was used is in the draft environmental impact report (EIR) that evaluates Cal-Am's Coastal Water Project and its alternatives. Water conservation and water rationing standards have been stated and promulgated as percentage reductions from past use. Even the revised draft CDO characterizes mandatory reductions in terms of a percentage required (e.g., at page 64, "Commencing on October 1, 2009, Cal-Am shall reduce diversion from the river by 5 percent, or 549 afa.") A change to the base diversion value is not necessary. The SWRCB can require

reductions from the existing 11,285 af base established in Order WR 95-10. A change to the base, however, complicates water conservation assessment, and makes meaningless comparisons of past and future conservation measures. For these reasons, the base annual Carmel River diversion value for Cal-Am should continue to be set at 11,285 af.

The Draft CDO Fails to Follow Proper Process

The SWRCB consistently deprived the Water Management District of its right to be a full hearing participant in these proceedings, effectively relegating the District to a "second class" Party. This treatment is impermissible; the SWRCB failed to recognize the special status of the District as the legislatively-created sole authority to integrate management of the ground and surface water resources within the Monterey Peninsula area. The District has been disadvantaged throughout the hearing by limits affecting examination of witnesses and cross-examination rules, by limits on its post-hearing communications, and again by separate limits imposed upon oral comments at the September 2, 2009 public hearing. The District's counsel was the sole representative not allowed time to finish his remarks. The District has consistently been afforded less time to argue, and subjected to a more stringent page limit to brief the issues than has been afforded the Prosecution Team. These limits have effected a deprivation of due process, and have resulted in an unfair hearing.

Notice of this proceeding fails to name the Water Management District as a Party. Notice of this proceeding fails to refer to Permit 20808A. The Key Issue noticed for hearing also does not refer to Permit 20808A, or note the Water Management District's shared rights to that Permit. Although the draft CDO was revised to emphasize "operation of the ASR project under Permit 20808A is outside the scope of this proceeding..." (draft CDO, page 40) the revised draft CDO nonetheless expressly modifies terms and conditions under which the joint Cal-Am and District water right in Permit 20808A (Application 27614A) may be used (page 64, paragraph 2 (3)). The revised draft CDO impermissibly modifies the District's water right and sets new limits on how the District may use its permit. At page 64, the revised draft CDO, states "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."

The revised draft CDO modifies and impairs the Water Management District's vested interest in Permit 20808A. This exceeds both the scope of this proceeding and the Key Issue. In this manner, the revised draft CDO violates the District's right to due process by inappropriately depriving the Water Management District of its water right without benefit of notice or separate hearing.

The Water Management District objects to any modification, directly or indirectly, to the terms or conditions of Permit 20808A in this proceeding.

The Draft CDO Has an Unjust Effect on Water Entitlements

The revised draft CDO fails to recognize the unique 365 afa water entitlement by Pebble Beach Company (PBC) and others. As noted by PBC, the water entitlement dates to 1989 and was an essential means by which the Carmel Area Wastewater District/Pebble Beach Community Services District (CAWD/PBCSD) Wastewater Reclamation Project was funded. The revised draft CDO ignores the fact that over 60 million dollars were invested in reliance upon the entitlement, and that the end result was a considerable savings of potable water previously used to irrigate golf courses in the Del Monte Forest. The revised draft CDO wrongly interferes with this vested right, that arose from a reasonable business plan, the purpose of which was to reduce the community's reliance on Carmel River water. The discussion and analysis contained in section 19.1, pages 53 through 59, of the revised draft CDO is therefore flawed.

The Standard for Future Relief in the Draft CDO is Unreasonable

The draft CDO, paragraph 2 b on page 65, states various conditions that must be met before a petition can be submitted to request relief from the CDO. Taken together, these conditions prevent a request of relief even when the effect of the SWRCB order causes present harm to public health and safety. It is imperative that all other prior conditions that limit a request for relief be removed. Harm to public health or safety, by itself, provides sufficient cause for review. Any contrary provision is arbitrary and capricious.

A Moratorium Is Unjust and Unneeded

The current Water Management District rules already require a moratorium at the time Stage 5 rationing of the water rationing plan is implemented; this stage is designed to reduce aggregate water use by between 16 and 34 percent. If water demand is reduced to required levels without water rationing, however, no justification exists for imposing a moratorium. To do so would force further economic stagnation upon the region, and can harm the health and safety of the community.

The Water Management District has performed its legislatively-delegated role as integrated water manager for this area for more than three decades. It promotes conservation and has managed the "defacto moratorium" on new water use under an allocation system which has not increased since June 1993. Cal-Am water is limited, subject to many restrictions, and has been carefully managed to facilitate planned needs such as medical care facilities, senior and assisted living, low income housing and other uses of value to each unique community.

Water remaining in the allocation is minimal, too small to significantly affect the Carmel River. Cities judiciously preserve this allocation as an exercise of restrained and prudent planning. The draft CDO needlessly penalizes those jurisdictions for their water-frugal planning. The proposed moratorium is unjust and unneeded. If water demand can be reduced without the need for water

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rationing, no justification exists for imposing a moratorium. To do so will force further economic stagnation, and harm the community's health and safety.

Factual Errors

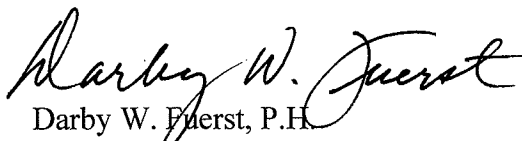
An errata sheet is enclosed that identifies minor errors of fact and miscalculation that are imbedded in the revised draft CDO (**Enclosure 3**).

Conclusion

For the reasons stated above, the Water Management District asks that the SWRCB decline to issue the revised draft CDO of September 16, 2009.

In the event the SWRCB determines to issue a CDO, however, the Water Management District respectfully requests that a stay of the order be issued pursuant to Water Code section 1832 to enable further review. Water Code section 1832 provides, "Cease and desist orders of the board shall be effective upon issuance thereof. The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part an cease and desist order issued pursuant to this chapter.

Respectfully submitted,


Darby W. Fuerst, P.H.
General Manager

Enclosures

Cc: MPWMD District Board
MPWMD General Counsel

Table 1
 Projected Reductions in Illegal Diversions from the Carmel River: Water Years 2010 - 2017
 (All Values in Acre-Feet)

Water Year (Oct - Sep)	Base Amount ¹	Mandatory Cumulative Annual Reduction ²	Allowable Diversions ³	Estimated ⁴ ASR Project Operational Yield ⁵	Estimated Sand City Desalination Plant ⁶	Estimated Small Project Output ⁷	Estimated Coastal Water Project Output ⁸	Estimated Total Mandatory Reduction	Estimated Total Amount Diverted from Carmel River	Estimated Amount Diverted Without Valid Basis of Right
2010	10,978	549	10,429	145	75	0	0	769	10,209	6,833
2011	10,978	670	10,308	145	290	0	0	1,105	9,873	6,497
2012	10,978	791	10,187	145	280	0	0	1,216	9,762	6,386
2013	10,978	912	10,066	145	270	0	0	1,327	9,651	6,275
2014	10,978	1,033	9,945	145	260	0	0	1,438	9,540	6,164
2015	10,978	1,154	9,824	145	250	0	0	1,549	9,429	6,053
2016	10,978	1,396	9,582	145	240	0	0	1,781	9,197	5,821
2017	10,978	1,638	9,340	145	230	0	11,730	7,602	3,376	0

Notes:

1. Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a valid basis of right.
2. Reduction in Water Year (WY) 2010 is initial amount of 5% of the base amount (549 af). Starting in WY 2011, add 121 af each year until WY 2016, when the annual reduction becomes 242 af.
3. "Allowable Diversions" are calculated as the base amount minus the mandatory cumulative annual reduction for the specified year.
4. All *italicized* values are estimated or are derived from estimated values that are shown for illustration only. These values are uncertain and likely to change.
5. Average amount diverted for Phase 1 ASR project from WY 1995 through WY 2007 (R.T. Phase 1, Vol I, pp.41-42). Amount may increase when the Phase 2 ASR project becomes operational.
6. Number may vary based on actual production from desalination plant. Assumes three months of operation in WY 2010.
7. Production from small projects cannot be estimated at this time.
8. Estimated production of Coastal Water Project (R.T. Phase 2, Vol V, p. 1333).

Table 2
Maximum Allowable Annual Diversions from
Carmel River Sources and Coastal Subareas of the Seaside Groundwater Basin
by California American Water for Customer Service: Water Years 2010 through 2017

(All Values in Acre-Feet, Unless Indicated Otherwise)

Water Year	Maximum Allowable Diversions from Carmel River¹	Maximum Allowable Diversions from Seaside Basin²	Total Maximum Allowable Diversions³	Percent Reduction from WY 2009 Base Amount⁴ (14,476 AF)	Percent Reduction from Order 95-10 Base Amount⁵ (16,806 AF)
2010	10,429	3,087	13,516	6.6%	19.6%
2011	10,308	3,087	13,395	7.5%	20.3%
2012	10,187	2,669	12,856	11.2%	23.5%
2013	10,066	2,669	12,735	12.0%	24.2%
2014	9,945	2,669	12,614	12.9%	24.9%
2015	9,824	2,251	12,075	16.6%	28.2%
2016	9,582	2,251	11,833	18.3%	29.6%
2017	9,340	2,251	11,591	19.9%	31.0%

Notes:

1. The maximum allowable diversions from the Carmel River are taken from Table 1 of our September 30, 2009 comment letter and are based on the reductions specified in draft Cease and Desist Order WR 2009-00XX, dated September 16, 2009.
2. The maximum allowable diversions from the Seaside Basin refer to diversions by California American Water (Cal-Am) from the Coastal Subareas of the Seaside Groundwater Basin for customers in its main distribution system. The values are based on the reductions specified in the Seaside Basin Adjudication Decision (*California American Water v. City of Seaside, et al.*, Case No. M66343, California Superior Court, Monterey County, March 27, 2006, as amended February 9, 2007).
3. The total maximum allowable diversions are the sum of the maximum allowable diversions by Cal-Am from Carmel River and Seaside Coastal Basin sources. These values represent the total amount of water available each year to serve customers in Cal-Am's main distribution system.
4. The base amount in WY 2009 was 14,476 AF, including 11,285 AF from the Carmel River and 3,191 AF from the Coastal Subareas of the Seaside Groundwater Basin.
5. The base amount in Order 95-10 was 16,806 AF, including 14,106 AF from the Carmel River and 2,700 AF from the Coastal Subareas of the Seaside Groundwater.

**Errata Sheet for
September 16, 2009 Revised Draft Cease and Desist Order WR 2009-00XX
in the Matter of the Unauthorized Diversion and Use of Water
by the California American Water Company**

Following are recommended corrections to the revised draft Cease and Desist Order (CDO) and requested clarifications. The corrections and points for clarification are shown in *italics*.

Page 3, first paragraph. The fifth item should be corrected to read “The ongoing diversion is a violation of Water Code Section 1052 prohibiting the unauthorized diversion or use of water (p. 5, Finding 1).”

Page 13, first paragraph. The last sentence should be corrected to read “Neither the parties nor the State Water Board may *rely* upon statements of fact in officially noticed papers to bypass normal evidentiary rules.”

Page 46, first paragraph. The last sentence should be corrected to read “Cal-Am can also seek to serve its customers and reduce illegal diversions by developing and operating temporary water supply projects until *its proposed Coastal Water Project or the Regional Project sponsored by the Marina Coast Water District* is constructed and becomes operational.”

Page 62, footnote 54. As described previously, Attachment 1 to the order, i.e., Table 1, Projected Reductions in Illegal Diversions from the Carmel River, is inconsistent with Conditions 1 and 3 of the draft CDO and should be corrected. Specifically, the reference to Water Year (WY) 2009 in the first column is inaccurate as this water year will end on September 30, 2009, and the required reductions cannot be made retroactively. Accordingly, each of the values shown should be advanced one year. In addition, the increase in the annual reduction from 121 acre-feet (af) to 242 af (third column) should not occur until WY 2016, i.e., starting October 1, 2015. As shown, this increase is applied in WY 2014. Lastly, no annual reduction for WY 2016, i.e., 242 af, is shown. These corrections have been made in the proposed replacement table, which is included as **Enclosure 1**. Also note that the proposed replacement table specifies the unit of measurement, i.e., acre-feet, and includes a new column showing “allowable diversions” from the Carmel River for each year. The values in this column are the maximum annual amounts that Cal-Am could divert from the Carmel River under the proposed draft CDO. These amounts could be further reduced if other projects, such as the Phase 1 ASR Project or the Sand City Desalination Facility, produce water to serve Cal-Am’s customers.

Page 64, Section 3, ASR Project. The second sentence should be revised to read “*By 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 *the ASR* for its customers after *May 31* of each year.” This change is consistent with the operating plan that was developed for the Phase 1 ASR Project which specifies an injection season from December 1 through May 31 and a recovery season from June 1 through November 30. Advancing the reporting date to June 1 would allow Cal-Am to evaluate more of the available injection data before finalizing and submitting an operating plan. This change should also be made to the last sentence in the first paragraph on page 65.

**Errata Sheet for
September 16, 2009 Revised Draft Cease and Desist Order WR 2009-00XX
in the Matter of the Unauthorized Diversion and Use of Water
by the California American Water Company**

Page 65, footnote 61. This footnote should be revised to read “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.”

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