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JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

11/17/2020

VIA POSTAL MAIL AND ELECTRONIC MAIL

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RE: Order WR 2016-0016, Ordering Paragraph 3.b.viii – 2020 Joint Annual Report

Dear Mr. Svindland and Mr. Cook:

On June 4, 2020, Mr. Cook submitted a joint annual report on behalf of California American Water Company (Cal-Am) as part of Order WR 2016-0016 (2016 Order) against Cal-Am for unauthorized diversions from the Carmel River. The report notified the State Water Resources Control Board (State Water Board, or Board) that Cal-Am would not accomplish the 2016 Order's Milestone 5, which entailed specific progress in constructing Cal-Am's proposed desalinated water supply project by September 30, 2020. The report also stated that Cal-Am's missing this specified milestone would be "beyond Cal-Am's control." On October 21, 2020, Mr. Svindland submitted a letter updating and expounding upon the subjects of the joint annual report.

As part of a schedule for Cal-Am to terminate all unauthorized diversions, the Board's 2016 Order established an interim "Effective Diversion Limit" that would be further reduced in the event that Cal-Am missed an annual, project-specific milestone. The

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

2016 Order also included a provision under which the Board may request a presentation by Cal-Am, in consultation with its fellow Applicants¹, at a regularly scheduled meeting regarding the circumstances of a missed milestone. After such a presentation, the Board could suspend the Effective Diversion Limit reduction if it found that the missed milestone was “beyond Applicants’ control.”

In Mr. Svindland’s letter dated October 21, 2020, Cal-Am clarified that it does not request that the State Water Board schedule such a presentation or make such findings or actions regarding Milestone 5. Instead, Mr. Svindland states that Cal-Am is prepared to both meet customer water demands and to comply with the reduced Effective Diversion Limit in Water Year 2020-2021.

State Water Board staff and I appreciate Cal-Am’s progress and efforts to develop a permanent water supply for its Monterey service area to replace its unauthorized supplies from the Carmel River. However, as acknowledged in your correspondences, there are long-evident and significant regulatory, legal, and policy issues regarding the Monterey Peninsula’s long-term water solution. Mr. Svindland’s October 21, 2020 letter expresses and reiterates Cal-Am’s viewpoints that Cal-Am’s proposed desalination project is the “only permanent and sufficient” water supply solution for its Monterey Peninsula service area, that Cal-Am has done everything within its own control to advance the project, and that the actions of Monterey Peninsula Water Management District would have been the primary or sole reason the State Water Board may not have granted relief from Effective Diversion Limit reductions. To be clear, the State Water Board has not made any determinations on these points.

In the 2016 Order, the State Water Board expressly stated that if either the Pure Water Monterey groundwater replenishment project or the proposed desalination project “fails to move forward as envisioned, the step-wise reduction of diversions ensures a staggered approach to ending reliance on unlawful Carmel River diversions through continued conservation, efficiency and smaller supply development.” Accordingly, regardless of control or fault, the 1,000-acre-foot Effective Diversion Limit reduction is an appropriate and intended consequence of Cal-Am’s missing Milestone 5. The 2016 Order’s diversion limitations, conditions, and other requirements remain in effect. We are encouraged by your confirmation that Cal-Am is willing and able to remain in compliance with the 2016 Order.

If relying only on its existing lawful water supplies, Cal-Am may face challenges in serving existing demands over varying water years and will be unable to accommodate

¹ The “Applicants” referenced throughout the 2016 Order are Cal-Am, Monterey Peninsula Water Management District, Monterey Regional Water Authority, City of Pacific Grove, and Pebble Beach Company. It is State Water Board staff’s understanding that Monterey Regional Water Authority, a joint powers authority of the Cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City and Seaside, has either dissolved or is in the process of dissolving.

Monterey Peninsula jurisdictions' intended and planned future development and growth. Affordable housing and economic development within the Monterey Peninsula area are

important both to the local communities and to the State of California. However, these shared goals cannot be achieved at the continued expenses of violations of state water law and degradation of the state's natural resources held in public trust for all current and future Californians.

Cal-Am has indicated it will continue to pursue development and construction of its proposed desalination project despite regulatory hurdles, legal challenges, and other uncertainties. Regardless of whether additional progress occurs, it is highly unlikely that any project will meet future milestones or be constructed and operational by the end of next year. But the 2016 Order only requires Cal-Am to remain in compliance with the Effective Diversion Limit and to terminate unauthorized diversions by the final compliance deadline of December 31, 2021. Accordingly, I strongly encourage Cal-Am to continue to engage collaboratively with other Applicants and interested parties to resolve disputes, to secure other near-term solutions for ending Cal-Am's unauthorized Carmel River diversions by December 31, 2021, and to develop longer-term water supply solutions for meeting the Monterey Peninsula's and the broader region's economic, social, and environmental needs in the decades to come.

Sincerely,



Eileen Sobeck, Executive Director
State Water Resources Control Board

CC: [via electronic mail]

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