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12 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

13 In the matter of) DIVISION OF WATER RIGHTS
14) PROSECUTION TEAM'S CLOSING
15 **California American Water Company**) BRIEF
Cease and Desist Order Hearing)
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1 **I. INTRODUCTION**

2 The State Water Resources Control Board (State Water Board) Order WR 95-10
3 (Order 95-10) held that Cal-Am was illegally diverting water from the Carmel River
4 to serve users on the Monterey Peninsula. By adopting Order 95-10 the State Water
5 Board chose to *defer*, not abdicate, enforcement against **California American Water**
6 **Company** (Cal-Am) for violation of Water Code section 1052. (Order 95-10, p. 39.) The
7 State Water Board should now exercise its enforcement authority granted by California
8 Water Code section 1831(d) and adopt Draft Cease and Desist Order WR 2008-00XX-
9 DWR (Draft CDO) with the minor modifications recommended herein.

10 Order 95-10 required Cal-Am to: “(1) prepare a plan setting forth (a) specific
11 actions which will be taken to develop or obtain a legal supply of water and (b) the dates
12 specific actions will have occurred so that progress on the plan can be objectively
13 monitored, (2) minimize its diversions for the Carmel River, and (3) mitigate the
14 environmental effects of its diversions.” (Order 95-10, pp.39-40.) Order 95-10 was a
15 stop-gap measure to minimize impacts on the public trust until the Los Padres Dam
16 Project could be completed and Cal-Am’s illegal diversions terminated.

17 It is now over 13 years after the adoption of Order 95-10 and Cal-Am still has not:
18 (1) prepared a definitive plan for obtaining a legal supply of water with milestones for
19 which Cal-Am can be held accountable, (2) decreased its illegal diversions beyond the 20
20 percent reduction first required in 1997, and (3) mitigated to the fullest extent possible the
21 adverse environmental effects of its illegal diversions. The State Water Board is faced
22 again with Cal-Am’s unauthorized diversion and Cal-Am’s assertions that it is pursuing a
23 large alternative supply project with an uncertain chance of success and no contingency
24 plan.

25 In asking the State Water Board to exercise its authority under Water Code section
26 1831(d) it is not necessary for the Prosecution Team to demonstrate that Cal-Am’s illegal
27 diversions are having adverse impacts on the public trust. Nor is the Prosecution Team
28 required to show that the Draft CDO will benefit public trust resources. The State Water

1 Board has legal authority to curtail illegal diversions, period. The public trust impacts are
2 relevant to the remedy requested herein because, as all the Parties have acknowledged,
3 it is practically impossible to require Cal-Am to cease its illegal diversions immediately.
4 Instead, a balance must be struck between ending illegal diversions, protecting the fishery
5 and other public trust resources in the Carmel River, and the health and safety needs of
6 the community in the Monterey Peninsula area. For the reasons discussed in greater
7 detail below, the Prosecution Team believes that the Draft CDO with the minor changes
8 recommended herein strikes a fair and enforceable balance between these competing
9 interests.

10 **II. THE PROSECUTION TEAM HAS PRESENTED SUFFICIENT EVIDENCE TO**
11 **ESTABLISH THAT CAL-AM IS UNLAWFULLY DIVERTING WATER FROM THE**
12 **CARMEL RIVER IN EXCESS OF ITS RECOGNIZED LEGAL RIGHT AND THAT THE**
13 **REMEDY PROPOSED IN THE DRAFT CEASE AND DESIST ORDER (CDO) IS**
14 **REASONABLE.**

15 The "burden of proof" means the obligation of a party to establish by evidence a
16 requisite degree of belief concerning a fact in the mind of the trier of fact or, in the present
17 case, the hearing officers of the State Water Board. (Evid. Code, § 115.) The burden of
18 proof, including both the initial burden of going forward and the burden of persuasion by a
19 preponderance of the evidence, is on the party asserting the affirmative of an issue
20 before an administrative agency. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d
21 1044, 1051 fn. 5.)

22 Accordingly, the Prosecution Team has the burden of proof of establishing that
23 Cal-Am is unlawfully diverting water from the Carmel River and that the Draft CDO is a
24 reasonable remedy. Likewise, the converse is also true. The parties asserting a claim
25 that the time schedule in the Draft CDO will unreasonably impact public health and safety
26 have the burden of showing by a preponderance of the evidence that their claims are
27 validly supported by the requisite evidence. The Prosecution Team has satisfied its
28 burden of proving by a preponderance of the evidence that Cal-Am is unlawfully diverting
water from the Carmel River in excess of 3,376 acre feet per annum (afa) and that the
proposed reductions in the Draft CDO are reasonable.

1 **III. CAL-AM'S DIVERSIONS FROM THE CARMEL RIVER IN EXCESS OF 3,376 AFA**
2 **ARE UNLAWFUL AND CONSTITUTE A CONTINUING TRESPASS REQUIRING THE**
3 **ISSUANCE OF THE DRAFT CDO.**

4 Order 95-10 established Cal-Am's valid right to divert from the Carmel River as
5 3,376 afa comprised of 1,137 afa of pre-1914 appropriative rights, 60 afa of riparian
6 rights, and 2,179 afa of appropriative rights under License 11866. (Order 95-10, p. 25,
7 fn. 16.) As presented in the Prosecution Team's case-in-chief, since the issuance of
8 Order 95-10, Cal-Am has annually diverted an average of 10,978 afa from the Carmel
9 River. (PT-11A, p. 2; Hearing Transcript, Phase I Thursday June 19, 2008, p. 40, lines
10 17-21.) Therefore, Cal-Am has diverted an annual average of 7,632 afa without a valid
11 basis of right. (Hearing Transcript, Phase I Thursday June 19, 2008, p. 41, lines 12-14.)
12 The diversion or use of water in a manner other than as authorized by Division 2 of the
13 Water Code is a trespass. (Wat. Code, § 1052.) Diverting water without a valid basis of
14 right necessarily means that the diversion does not comport with the related provisions of
15 the Water Code, specifically those that establish a comprehensive statutory scheme for
16 the lawful appropriation of water.

17 **a. Order 95-10 cannot be interpreted as an appropriative permit to divert**
18 **water.**

19 Order 95-10 cannot be viewed as an appropriative permit authorizing the continued
20 illegal diversion of water because the specific requirements regarding the issuance of a
21 permit to appropriate water have not been satisfied. Water Code section 1225 states that
22 no right to appropriate or use water subject to appropriation shall be initiated or acquired
23 except upon compliance with the provisions of Division 2 of the Water Code. (Wat. Code,
24 § 1225.) Beginning in 1914, a statutory scheme has provided the exclusive method of
25 acquiring appropriation rights. (*United States v. State Water Resources Control Board*
26 (1986) 182 Cal.App.3d 82, 102 citing *People v. Shirokow* (1980) 26 Cal.3d 301, 308.) An
27 application for appropriative rights must now be made to the State Water Board for a
28 permit authorizing constructions of necessary water works and the taking and use of a

1 specified quantity of water. (Wat. Code, § 1201 et seq.; *United States v. State Water*
2 *Resources Control Board*, 182 Cal.App.3d at 102.) Water Code section 1375 establishes
3 a specific process for obtaining a water rights permit. Cal-Am is aware of the specific
4 procedures in place to obtain additional appropriative rights as it has previously applied
5 for additional water right permits. Cal-Am cannot reasonably believe or credibly contend
6 that Order 95-10 substitutes for this statutorily-required process.

7 Furthermore, the State Water Board intended to preserve its discretion to pursue
8 enforcement in the future should Cal-Am fail to take appropriate action. Section 8.0 of
9 Order 95-10 explains the enforcement options the State Water Board could have chosen
10 in lieu of adopting Order 95-10. Since the proceeding was not noticed under the
11 enforcement provisions of Water Code, the State Water Board could not proceed directly
12 to an administrative civil liability or cease and desist order. (Order 95-10, pp. 36-37.) The
13 State Water Board, however, has always retained its ability to request the Attorney
14 General to enforce violations of Water Code section 1052. At the time of Order 95-10's
15 adoption, enforcement was suspended in favor of adopting Order 95-10 as an interim
16 measure requiring Cal-Am to minimize diversions, mitigate environmental effects, and
17 develop a plan to obtain a legal supply of water because Cal-Am expected the New
18 Los Padres Dam Project to come to fruition in the near future. (*Id.* at 38.)

19 The time for suspending enforcement under Water Code section 1052 has come
20 to an end. Order 95-10 was intended to provide Cal-Am with interim relief until a reliable
21 and legal water supply came online in the form of the New Los Padres Dam. Order 95-10
22 is no longer relevant to the situation on the Monterey Peninsula because it does not
23 contain adequate long-term mitigation measures or diversion reduction requirements
24 beyond the 20 percent reduction imposed in 1997.

25
26 **b. Cal-Am has not satisfied the requirements of Condition 2 of Order 95-10**
27 **and therefore the Draft CDO should be issued.**

28 Throughout the Draft CDO hearing, Cal-Am contended that it could not be held

1 liable under Water Code section 1052 so long as its actions complied with Condition 2 of
2 Order 95-10. Specifically, Cal-Am stated "Order 95-10 requires a finding of liability in this
3 case only if the Prosecution Team demonstrates a violation of Condition 2 of Order 95-10.
4 To make that showing, the Prosecution Team must show that California American Water
5 has not been diligent in its pursuit of an alternate water supply." (Hearing Transcript,
6 Phase I Friday June 20, 2008, p. 359, lines 15-20.) This contention misstates the
7 requirements of Condition 2 of Order 95-10.

8
9 Condition 2 of Order 95-10 states "Cal-Am shall diligently *implement* one or more
10 of the following actions to *terminate* its unlawful diversions from the Carmel River:
11 (1) obtain appropriative permits for water being unlawfully diverted from the Carmel River;
12 (2) obtain water from other sources of supply and make one-for-one reductions in
13 unlawful diversion from the Carmel River, provided that water pumped from the Seaside
14 aquifer shall be governed by condition 4 of this Order not this condition; and/or (3)
15 contract with another agency having appropriative rights to divert and use water from the
16 Carmel River." (Order 95-10, p. 40, emphasis added.) The State Water Board clearly
17 intended Cal-Am to *terminate* its unlawful diversions through one or more of the specified
18 actions, not merely diligent pursue of alternate water supplies or diligently pursue a plan
19 to obtain alternate water supplies.
20

21 Since the issuance of Order 95-10, Cal-Am has not perfected additional
22 appropriative rights over its previously recognized rights of 3,376 afa. (Hearing
23 Transcript, Phase I Thursday June 19, 2008, p. 46, lines 3-13.) Cal-Am has not
24 submitted any contracts to the Division of Water Rights indicating that it purchased other
25 existing rights to divert from the Carmel River. (*Id.* at p. 47, line 25.) Finally, while the
26 Prosecution Team acknowledges that Cal-Am has implemented Phase I of the Aquifer
27 Storage and Recovery project as a new source of water, the yield from this new source of
28

1 water is not sufficient to terminate Cal-Am's unlawful diversions. As such, the water being
2 diverted by Cal-Am since the issuance of Order 95-10 must be recognized as an unlawful
3 diversion constituting a trespass.

4 **c. Cal-Am's argument that it has complied with Condition 2 of Order 95-10**
5 **does not preclude the State Water Board from issuing a Cease and Desist Order for**
6 **a violation of Water Code section 1052.**

7 In its May 29, 2008 decision regarding the scope of the issues for Phase I of the
8 Draft CDO Hearing, the Hearing Officers indicated that a cease and desist order could be
9 issued on several theories of liability; (1) for a violation of Water Code section 1052, or
10 (2) for a violation of Order 95-10, or (3) on both theories of liability. (Procedural Issues
11 Involving Consideration of a Cease and Desist Order Against California American Water
12 Company: Request By The California American Water Company For Clarification And
13 Motion For Temporary Postponement Of Proceedings, May 29, 2008, p. 2.) In reference
14 to finding liability based on a violation of Order 95-10, the scope of the this theory of
15 liability was narrowed to consider violations of Condition 2 of Order 95-10 while still
16 recognizing that violations of conditions other than or in addition to Condition 2 remain
17 relevant to support issuing a CDO on either basis of liability. (*Ibid.*)

18 Under Water Code section 1831, the State Water Board may issue a cease and
19 desist order in response to a violation or threatened violation of Water Code section 1052
20 regarding the unauthorized diversion or use of water. (Wat. Code, § 1831.) Cal-Am's
21 compliance with Order 95-10 is not dispositive of whether the CDO may be issued
22 pursuant to Water Code section 1831. The proposed CDO is warranted because of Cal-
23 Am's unlawful diversion of water is a continuing violation of Water Code section 1052.
24 Cal-Am's compliance or good faith efforts to comply with Condition 2 of Order 95-10 do
25 not preclude issuance of the proposed CDO or any other enforcement action based on
26 the continued unlawful diversion of water from the Carmel River. Order 95-10 was not
27
28

1 adopted to the exclusion of other and future remedies, such as those provided for in the
2 Draft CDO, so long as the unlawful diversion constituting a trespass under Water Code
3 section 1052 continued.

4 **IV. THE DRAFT CDO APPROPRIATELY ADDRESSES THE ADVERSE IMPACTS**
5 **THAT CAL-AM'S DIVERSIONS HAVE CAUSED ON PUBLIC TRUST RESOURCES**
6 **AND BENEFICIAL USES OF THE CARMEL RIVER.**

7 Order 95-10 previously identified the effects of Cal-Am's diversions from the
8 Carmel River on instream beneficial uses. The effects identified in 1995 included the loss
9 of riparian habitat in the lower river and the near extinction of the steelhead run. (Order
10 95-10, p. 25.) Thirteen years later, Cal-Am's diversions are still causing similar impacts
11 on instream beneficial uses and public trust resources. The purpose of the remedy
12 proposed in the Draft CDO is to ultimately terminate Cal-Am's unlawful diversions from
13 the Carmel River. However, the reductions in diversions will also serve to benefit Carmel
14 River resources, particularly the productivity of the steelhead population.

15 **a. Adverse impacts to steelhead and riparian habitat resulted from the illegal**
16 **diversions.**

17 The Carmel River provides essential habitat during the life cycle of steelhead.
18 While adult steelhead migrate into the Carmel River to spawn in the winter months and
19 either die or return to the ocean, juvenile steelhead are present and rear in the river year-
20 round. (PT – 39, p. 4.) Decreases in surface flows have significant adverse effects on
21 the steelhead and its critical habitat. Overcrowding in areas where stream flow still
22 remains occurs due to the decreasing availability of habitat for juvenile rearing. (*Ibid.*)
23 Increased predation takes place because the steelhead become stranded and trapped in
24 isolated pools as the stream channel dries back. (*Ibid.*) Although fish rescue activities
25 arguably save some steelhead that would otherwise die from stranding, the stress from
26 the rescue and crowded conditions in the upper river segments or at the Sleepy Hollow
27 Steelhead Rearing Facility also cause fish mortality. Up to fifty percent of the steelhead
28 that are actually rescued and brought to the facility die for a variety of reasons from high

1 water temperatures and disease to predation. (*Id.* at 5.) Additionally, the riparian habitat
2 along the Carmel River has been impacted due to Cal-Am's unlawful diversions. Riparian
3 vegetation is an essential component of maintaining the steelheads' spawning and
4 rearing habitat. The vegetation serves multiple functions and provides a food source as
5 well as shade to keep water temperatures lower. (Hearing Transcript, Phase II
6 Wednesday July 23, 2008, p. 86, lines 19-23.) Due to Cal-Am's diversions, the riparian
7 vegetation has died off and caused bank erosion resulting in increased sedimentation of
8 the River. (*Id.* p. 45, lines 8-9.) As a result, landowners along the river have hardened
9 the banks with rip-rap to prevent bank erosion while simultaneously preventing the re-
10 growth of vegetation along the river. (*Id.* p. 45, lines 3-7.)

11 **b. Order 95-10 and subsequent amendments to Order 95-10 are**
12 **insufficient to protect the beneficial uses of the Carmel River at this time.**

13 Since the issuance of Order 95-10, subsequent measures regarding adjustments
14 in diversion practices have been developed to assist in mitigating the impacts to
15 steelhead habitat caused by Cal-Am's diversions. These subsequent measures have
16 adjusted diversions in order to keep portions of the river wetted during critical rearing
17 times during the steelhead's lifecycle. Most notably, the 2001 Conservation Agreement
18 signed by Cal-Am and the National Marine Fisheries Service (NMFS) modified Cal-Am's
19 pumping operations by requiring Cal-Am to pump from the most downstream wells to
20 maintain surface stream flow in the Carmel River as far downstream as possible during
21 the low flow season. (PT - 47.) Portions of the Conservation Agreement were also
22 adopted in State Water Board Order WQO 2002-002. (State Water Board Order WQO
23 2002-002, p. 18-19.) Both the Conservation Agreement and State Water Board Order
24 WQO 2002-002 responded to issues raised in Condition 6 of Order 95-10 by requiring
25 Cal-Am to conduct a study and evaluate whether its then existing diversions to the
26 Carmel Valley Filter Plant could be changed in order to maintain more surface flow for
27 fish habitat maintenance. (Order 95-10, p. 41.)

28 Despite the adjustments in diversions, the steelhead population in the Carmel

1 River has seen a 49 percent to 79 percent decline in numbers from 2001 to 2008. (PT –
2 39, p. 4.) In 2004, 2005, and 2006, the adult steelhead returns to the dam totaled only in
3 the mid-300's (388, 328, 368 fish, respectively). (*Ibid.*) In 2007 and 2008, the total
4 counts at the dam were only 222 and 412 adults respectively. (*Ibid.*)

5 During Phase II of the Draft Cease and Desist Order hearing, Monterey Peninsula
6 Water Management District (MPWMD) provided testimony indicating that the number of
7 juvenile steelhead has increased since the issuance of Order 95-10, the Conservation
8 Agreement, and Order 2002-002. (MPWMD KU-1, p. 4, lines 13-21.) However, the
9 increase of juvenile steelhead has necessarily resulted in a potential record number of
10 juvenile steelhead rescued from the river due to a lack of surface flow in the steelhead's
11 natural habitat. (*Id.* at p. 4, lines 10-12.) As previously mentioned, a percentage of fish
12 that are rescued are either killed during capture or experience high mortality rates once
13 they are placed in the rearing facility. (PT - 39, p. 5.) Although arguably juvenile
14 steelhead production has increased, an insufficient amount of surface flow in the river
15 could potentially cancel out progress in productivity of the species because the factors
16 associated with pumping will affect the habitat and will result in the death of a large
17 percentage of the juvenile steelhead prior to adulthood. Further adjustments in the form
18 of cutbacks in diversions are needed in order to protect the beneficial uses of the Carmel
19 River and to improve the critical habitat of juvenile steelhead that spawn and rear in the
20 river year-round.

21
22 **c. Increasing the amount of surface flow in the Carmel River by**
23 **terminating Cal-Am's unlawful diversions will benefit steelhead and aid steelhead**
24 **productivity.**

25 Although decreasing and ultimately terminating Cal-Am's unlawful diversions would
26 allow for the water to remain in the river, data does not exist to show the exact number of
27 fish that decreasing diversions will yield. However, decreasing and terminating diversions
28 will significantly benefit steelhead habitat, which play a crucial role in survival and
development of the species. This assertion is based on the basic premise that the fish

1 need water not only to survive in their habitat but also to ensure productivity and
2 ultimately recover the species. In his testimony during Phase II of the hearing, MPWMD
3 biologist Kevan Urquhart stated that “additional measures are needed to recover the
4 steelhead population to a long-term stable level that does not pose any risk of extinction,
5 and additional measures are needed to reduce any existing risk of extinction.” (Hearing
6 Transcript, Phase II Friday July 25, 2008, p. 781, lines 16-20.)

7 One of the additional measures discussed during Phase II of the hearing included
8 surface flow enhancement to rewater portions of the Carmel River further downstream in
9 the critical spawning and rearing habitat. Cessation of diversions is the most obvious
10 additional measure to enhance surface flow and rewater habitat. (Hearing Transcript,
11 Phase II Friday July 25, 2008, p. 909, lines 12-19.) To the extent that the final CDO could
12 keep any significant amount of additional stream habitat wetted throughout the summer
13 and fall, it would likely result in additional fall production of juvenile steelhead for the
14 watershed as a whole. (MPWMD KU-1, p. 11, lines 12-17.)

15 The proposed reductions in diversions in the Draft CDO accomplish the goal of
16 surface flow enhancement in order to rewater critical portions of the Carmel River.
17 Particularly, the proposed reductions of 35 percent and 50 percent will likely have the
18 most measurable impact on the fishery. (Hearing Transcript, Phase II Friday July 25,
19 2008, p. 907, lines 5-10.) To the degree that a reduction in diversions caused rewatering
20 farther downstream, it would result in additional smolt production which could be assumed
21 to result in additional adult production. (*Id.* at p. 785, lines 3-8.)

22 Concerns were raised by Cal-Am during Phase II of the Draft CDO Hearing
23 regarding increased surface and subsurface water extractions by other water right holders
24 and the extractions’ potential affects on steelhead. (Hearing Transcript, Phase II
25 Wednesday July 23, 2008, pp. 148-149.) The State Water Board recognized in
26 Decision 1632 that there are other individuals and entities that hold water rights to take
27 and use water from the Carmel River. The water rights of these individuals and entities
28 include riparian, overlying, and pre-1914 appropriative rights and are collectively referred

1 to as "Table 13" rights. (Decision 1632, p. 44.)

2 While the State Water Board in Decision 1632 recognized that the diversions of
3 Cal-Am and other Table 13 water right holders are not the sole cause of public trust
4 resource depletion, the State Water Board concluded that Cal-Am's combined diversions
5 from the Carmel River constitute the largest single impact to instream beneficial uses of
6 the river. (Decision 1632, p. 93-94.) Additionally, NMFS identified Cal-Am as
7 "responsible for approximately 85% of the total water diversions from the Carmel River
8 system and its associated subterranean flow." (PT – 45, p. 1.) Therefore, reducing and
9 ultimately terminating total water diversions of the largest diverter on the Carmel River
10 would benefit steelhead by making more water available to allow the steelhead to survive
11 in their natural habitat.

12 **V. NEITHER CAL-AM NOR ANY DESIGNATED PARTY PROVIDED EVIDENCE**
13 **THAT THE DRAFT CDO WOULD ADVERSELY IMPACT THE PUBLIC HEALTH AND**
14 **SAFETY OF THOSE WITHIN THE CAL-AM SERVICE AREA.**

15 As discussed above, generally, the burden of proof is on the party asserting the
16 affirmative of an issue before an administrative agency. (*McCoy v. Board of Retirement*,
17 183 Cal.App.3d at 1051.) As applied to this hearing, the burden of proof is on the
18 Prosecution Team to establish by a preponderance of the evidence that (1) Cal-Am is in
19 violation of Water Code section 1052 and (2) that the reductions in diversions from the
20 Carmel River laid out in the Draft CDO is a reasonable remedy to address a violation of
21 section 1052. However as elaborated below, the burden of proof is shifted to a party's
22 adversary in certain circumstances. Where the evidence is necessary to establish a fact
23 essential to a claim lies peculiarly within the knowledge and competence of one of the
24 parties, that party has the burden of going forward with the evidence on the issue. (*In re*
25 *Estate of Jones* (2004) 18 Cal.Rptr.3d 637.)

26 The Prosecution Team has met its burden of proof by offering testimony to
27 establish by a preponderance of the evidence addressing both issues. Throughout
28 Phase II of the Draft CDO hearing, all parties emphasized that any proposed reduction
schedule adopted by the State Water Board should not impact public health and safety in

1 the Monterey Peninsula area. In preparing the reduction schedule in the Draft CDO,
2 health and safety concerns were taken into account. However, a specific standard
3 articulating the requisite amount of water needed to protect public health and safety does
4 not exist. The Division of Water Rights staff attempted to take into account past and
5 current water use on the Monterey Peninsula and factor in additional conservation
6 measures that could amount to additional water savings.

7 Specifically, Mark Stretars provided testimony explaining that staff used the
8 guideline of 75 gallons per person per day as the amount of water necessary for
9 residential use for Cal-Am customers in the Monterey area. (Hearing Transcript, Phase II
10 Wednesday July 23, 2008, p. 55, lines 22-25.) During Phase I of the hearing, Darby
11 Fuerst testified that current per capita per day residential use consumption amounts to
12 70 gallons per person. (Hearing Transcript, Phase II Friday July 25, 2008, p. 758, lines 7-
13 9.) The average per capita per day consumption, taking into account all uses of water
14 within the Monterey Peninsula, is approximately 99 gallons per person per day. (*Id.* at
15 p. 807, line 25.) The total urban water demand for all water uses served by Cal-Am was
16 12,375 acre-feet in Water Year 2007 (Sand City – 1, Exhibit A). The average per capita
17 consumptive rate of 99 gallons per person per day can be reliably calculated by dividing
18 the total urban water demand of 12, 375 AFA by the total population served of 111,500
19 persons (12,375 AFA/111,500 x 325,851 gal/af/365 days= 99 gpppd).

20 Mr. Stretars relied on the California Code of Regulations, title 23, section 697 to
21 establish an average consumptive use rate for reasonable potable water use. This
22 regulation was promulgated and implemented to carry out the State Water Board's
23 powers and duties under the Water Code. (Wat. Code, § 1058.) These powers and
24 duties include issuing appropriative permits to divert and use water and ensuing that the
25 water is being put to beneficial use. (Wat. Code, §§ 1240, 1252.) Section 697 provides
26 guidance on how to carry out the mandates identified in Water Code sections 1240 and
27 1252. Section 697 provides guidance on estimating reasonable domestic use in the
28 amount of 75 gallons per day for a fully plumbed residence for the purpose of applying for

1 an appropriative permit. (Cal. Code Regs., tit. 23, § 697(b).) In the absence of a specific
2 standard articulating the requisite amount of water necessary for the maintenance of
3 public health and safety, it is reasonable to rely on administrative guidance on reasonable
4 domestic use as this section was promulgated by the State Water Board, the entity
5 possessing the technical skills and expertise on water use and regulation.

6 Considering existing information on the average per capita consumption ranging
7 from 70 to 99 gallons per person per day and regulatory guidance on the amount of water
8 considered reasonable for domestic use, the Prosecution Team contends that 75 gallons
9 per person per day is a reasonable estimate of water quantity necessary to protect public
10 health and safety. Evidence that Cal-Am was able to reduce its per capita demand to 50
11 gallons per person per day and still maintain the health and safety of the community
12 during the 1977-1978 drought supports the Prosecution Team's assertion that 75 gallon
13 per person per day is a reasonable estimate of total water use necessary to protect public
14 health and safety. (MPWMD-DF9A, p. 6, lines 3-12.) The Prosecution Team also
15 recognizes that achieving this level of daily per capita water use could require reductions
16 in outside watering and other uses of water. Regardless, as discussed in detail in Section
17 VI below, the reduction schedule in the Draft CDO will not necessarily require
18 implementing such stringent reductions.

19 Although evidence exists on the average daily per capita water use is available,
20 data on the overall percentage breakdown of indoor versus outdoor water use was not
21 presented by Cal-Am during these proceedings. This information would be particularly
22 useful in determining the amount of outside watering and other uses of water that could
23 reasonably be conserved without jeopardizing public health and safety.

24 Data quantifying and comparing indoor water use with outdoor use is peculiarly
25 within the knowledge and competence of Cal-Am and is essential in supporting Cal-Am's
26 argument that achieving the reduction schedule in the Draft CDO is unreasonable.
27 During Phase II of the hearing, Cal-Am contended that although it was generally aware of
28 this data through metered use and customer information, it was working with the Public

1 Utilities Commission on confidentiality issues regarding customer data. (Hearing
2 Transcript, Phase II Friday August 8, 2008, p. 1299, lines 2-6.) Under this circumstance,
3 the burden of going forward with evidence on the issue of public health and safety should
4 be shifted to Cal-Am to (1) show that the general guideline of 75 gallons per person per
5 day as the estimated amount of water necessary for maintaining public health and safety
6 is not reasonable and (2) provide data on indoor verses outdoor water use to demonstrate
7 why compliance with the Draft CDO reduction schedule is not achievable with reductions
8 in uses of water other than domestic use.

9 The Prosecution Team has met its burden of proof explaining why 75 gallons per
10 person per day is a reasonable amount of water to protect public health and safety in the
11 absence of a fact specific standard articulating a minimum amount of water required. If
12 Cal-Am contends that this level of use cannot be achieved through reductions in other
13 uses of water including outside watering, then Cal-Am has the burden of going forward
14 with evidence to support this contention since the data that would support this argument
15 is peculiarly within its knowledge.

16 **VI. THE REDUCTION SCHEDULE PROPOSED IN THE DRAFT CDO IS**
17 **REASONABLE AND SHOULD NOT BE MATERIALLY MODIFIED**

18 The Prosecution Team recommends that the reduction schedule proposed in the
19 Draft CDO be adopted with the minor modification that required reductions not begin until
20 water year 2009-2010 because the 2008-2009 water year has begun prior to the
21 conclusion of these proceedings and the adoption of the Draft CDO. The revised
22 reduction schedule is recommended as follows:

<u>Water</u>		<u>Allowable Diversion</u>
<u>Year*</u>	<u>Percent Reduction**</u>	<u>Amount from Carmel River</u>
2008 – 09	0 percent	0 AFA
2009 – 10	15 percent	9,592 AFA
2010 – 11	15 percent	9,592 AFA
2011 – 12	20 percent	9,028 AFA
2012 – 13	20 percent	9,028 AFA

2013 – 14	35 percent	7,335 AFA
2014 – 15	35 percent	7,335 AFA
2015 --16	50 percent	5,642 AFA

There have been court proceedings adjudicating the Seaside Groundwater Basin. (*California American Water v. City of Seaside et al.*, (CAW-5); referred to hereafter as “Seaside Basin Adjudication.”) The Seaside Basin Adjudication does not require any material changes to the proposed reduction schedule because: (1) the percentage reduction in pumping imposed by that decision are avoidable in some instances; and (2) assuming that the pumping reduction from the Seaside Basin Adjudication are imposed, the proposed reduction schedule in the Draft CDO is still reasonable.

The Seaside Basin Adjudication imposes progressive percentage reductions in the amount of water that can be taken from the Seaside groundwater basin unless one of the following conditions is met:

- a. The Watermaster has secured and is adding an equivalent amount of Non-Native water to the Basin on an annual basis; or
- b. The Watermaster has secured reclaimed water in an equivalent amount and has contracted with one or more of the Producers to utilize said water in lieu of their production Allocation, with the Producer agreeing to forego their right to claim a Stored Water Credit for such forbearance; or
- c. Any combination of a and b which results in the decrease in Production of Native Water required by this decision; or
- d. The Watermaster has determined that Groundwater levels within the Santa Margarita and Paso Robles aquifers are at sufficient levels to ensure a positive offshore gradient to prevent seawater intrusion.

(Seaside Basin Adjudication, CAW-5, p. 18.)

Accordingly, there are circumstances under which the Seaside Basin Adjudication would not require Cal-Am to reduce its pumping from the Seaside groundwater basin and that water would be available for use by Cal-Am customers in the Carmel River service area. (*Ibid.*) In years where a reduction in yield from the Seaside groundwater basin is

1 required, the Draft CDO reduction schedule as revised herein, is still reasonable.

2 The table attached here to as Exhibit A is a summary of Cal-Am reductions
3 required by the Draft CDO and the Seaside Basin Adjudication as compared to new yield
4 from alternative sources. The last column of Exhibit A adjusts any yield deficit to take into
5 account that Cal-Am has not had to maximize withdrawals from those two sources to
6 meet customer demand in over 10 years. (MPWMD DF-3.)

7 Exhibit A demonstrates that the total reductions required by the Seaside Basin
8 Adjudication and revised Draft CDO schedule combined can be substantially
9 compensated for by estimated new yield from additional sources and improved efficiency
10 of the Cal-Am distribution system until 2014 when the reductions from the Carmel River
11 increase to 35 percent. Cal-Am can off-set the initial reduction requirements by obtaining
12 alternative water supplies and improving its system efficiencies. Cal-Am's current
13 unaccounted for water losses are 12 percent (approx. 1716 AFA) of its annual yield.
14 (Hearing Transcript, Phase I Friday June 20, 2008, p. 443, lines 1-5.) Approximately 60
15 percent or 1024 AFA of Cal-Am's unaccounted for water losses are real water losses.
16 (PT – 54 (subject to granting of Prosecution Team request for judicial notice submitted
17 concurrently), pp. 4-10.) Exhibit A assumes that Cal-Am will implement an aggressive
18 plan to reduce unaccounted for water losses and that such losses can be minimized by
19 2012.

20 Exhibit A shows a yield deficit for water years 2012 through 2014. The yield deficit
21 for water years 2012 and 2013 are under 100 AFA. This level of deficit should be
22 reasonably attainable through implementation of water conservation measures similar to
23 those required in Stage 3 of MPWMD's Rule 164. (PT - 52E, p. 1 (“[f]ifteen percent
24 reduction in the Cal-Am system are achieved through Stage 3 Water Conservation.”).) At
25 35 percent reduction of diversion in water year 2014 the yield deficit is just under
26 2,000 AFA until the Coastal Water Project is completed. The Coastal Water Project is
27 currently scheduled to supply additional water beginning in 2015. (CAW-044.)
28 Accordingly, 2014 may be the only water year with a yield deficit that would require water

1 conservation measures such as rationing by user category, per-capita water rations,
2 and/or a moratorium on water permits that intensify water use. There may be additional
3 water supply sources outside of those accounted for in Exhibit A that could be developed
4 in the interim between now and when the 20 percent and 50 percent reductions are
5 required. For example, one potential source discussed during the hearing but not
6 considered in Exhibit A is water that is dedicated to, but not being used by Fort Ord.
7 (Hearing Transcript, Phase II Thursday July 24, 2008, pp. 401-403, 452.)

8 Even if additional sources not considered in Exhibit A are not developed, the
9 currently projected yield deficits in water years 2012 through 2014 should be obtainable
10 through conservation measures. Water Year 2014 has the largest potential deficit and
11 could require Cal-Am and MPWMD to impose stringent short- term conservation
12 measures. Regardless, the level of conservation necessary to meet the reductions
13 required in 2014 should be obtainable for a short period considering that in the past
14 residential water users in the same service area were required to limit use to 50 gallons
15 per capita per day during the severe 1976-1977 drought period. (MPWMD-DF9A, pp. 5-
16 6.)

17 It is impossible to develop a reduction schedule that accounts for every possible
18 contingency. Accordingly, if circumstances beyond Cal-Am's control change and
19 compliance with the reduction schedule proposed herein become unattainable without
20 endangering the health and safety of Cal-Am's customers, then Cal-Am can seek relief
21 from the Division of Water Rights. Section VI.a. below discusses in greater detail the
22 circumstances under which the revised Draft CDO would permit the Deputy Director of
23 the Division to alter the reduction schedule.

24 **a. The Draft CDO provides for modifications in the schedule for reduction**
25 **of diversions if such a reduction could not reasonably be met by Cal-Am.**

26 The Prosecution Team has met its burden of proof establishing that the reduction
27 schedule in the Draft CDO is reasonable. One of the factors in assessing the
28 reasonableness of the Draft CDO was the consideration of the amount of water needed

1 for reasonable use to protect public health and safety. However, if circumstances arise
2 beyond Cal-Am's control that make compliance with the proposed reduction schedule
3 unattainable without impacting public health and safety, then Cal-Am may seek a
4 modification in the reduction schedule from the Division of Water Rights. (Draft CDO,
5 p. 6.) The Draft CDO provides "[t]he State Water Board Deputy Director for Water Rights
6 (Deputy Director) shall have the authority to modify the above reduction diversion
7 schedule upon a showing by Cal-Am or MPWMD that such a reduction would have
8 adverse impacts on health and safety."

9 In addition to this provision, the Prosecution Team proposes the inclusion of
10 additional consideration factors to assist the Deputy Director of the Division of Water
11 Rights in making a determination that would modify the reduction schedule. The
12 additional consideration factors would require Cal-Am to demonstrate (1) an urgent need
13 for water; (2) water can be diverted without injury to any lawful user of water; (3) water
14 may be diverted and used without unreasonable effect upon fish, wildlife, or other
15 instream beneficial uses; and (4) the proposed diversion and use are in the public
16 interest. An "urgent need" for water would be defined as a sudden, unexpected
17 occurrence, involving a clear and imminent danger, demanding immediate action to
18 prevent or mitigate loss of, or damage to life, health, property, or essential public services.
19 While the purpose of the Draft CDO is to terminate Cal-Am's unlawful diversions from the
20 Carmel River in a timely manner, the Prosecution Team recognizes that an uncontrollable
21 event, like a critically dry water year, would warrant a modification in the reduction time
22 schedule.

23 **VII. ALLEGED ECONOMIC IMPACTS FROM THE DRAFT CDO ARE SPECULATIVE.**

24 The cities of Monterey, Seaside, and Carmel (referred to collectively hereafter as
25 "Cities") submitted testimony alleging that the Draft CDO would have serious economic
26 impacts. (Monterey-1; Seaside-4; Carmel-1.) The Cities' conclusions concerning
27 potential economic impacts are based on the general assumption that the Draft CDO will
28 result in a moratorium on new connections and water rationing that would limit or prohibit

1 the replacement or remodeling of existing homes or businesses, and new development
2 for an extended period of time. (Monterey-1, pp. 2-3; Seaside-4, p.4; Carmel-1, pp. 2-3.)

3 The City of Seaside is the only city that actually conducted an economic analysis in
4 an attempt to determine the potential economic impacts of the Draft CDO. (Seaside-9
5 (hereafter "Seaside's Economic Analysis.") Seaside's Economic Analysis, however, is
6 an unrealistic worst case scenario.

7 Specifically, Seaside's Economic Analysis assumes that adoption of the Draft CDO
8 "will cause a moratorium on new or expanded water service connections within Cal-Am's
9 service areas, which, in turn, will cause a delay or absence of real property development
10 in the City over a 7-year period (2009 through 2016)." (Seaside-9, p. 1.) In addition to
11 assuming an absolute prohibition on development for the entire period of the proposed
12 reduction schedule, Seaside's Economic Analysis also assumes that every development
13 project currently proposed would otherwise be completed and constructed within the
14 same seven-year period if the Draft CDO is not adopted. (Seaside-9, p. 4.)

15 The assumptions upon which Seaside's Economic Analysis are based on the worst
16 case scenario and results in an exaggerated estimate for the Draft CDO's potential for
17 economic impact. The Cities were unable to provide information on what level of
18 reduction of illegal diversions would result in the alleged economic impacts. (Hearing
19 Transcript, Phase II Thursday July 24, 2008, pp. 362-363, 386-387, 390-393.)

20 Similarly, testimony submitted by the Monterey County Hospitality Association
21 ("Hospitality Association") assumes that the Draft CDO will cause economic impact
22 because it will require the closing of hotel rooms to conserve water. (MCHA-003, p. 3.)
23 The economic impacts alleged by the Hospitality Association and the assumption used to
24 derive those impacts are purely speculative.

25 The Draft CDO does not mandate the specific manner in which Cal-Am must
26 comply with the reduction schedule. Under the terms of the Draft CDO Cal-Am has
27 90 days to develop a plan for meeting the required reduction in Carmel River diversions.
28 Accordingly, Cal-Am and MPWMD should work with other concerned parties to develop a

1 plan that minimizes the economic impacts of complying with the Draft CDO.

2 **a. The potential for harsh economic impacts does not make the draft**
3 **CDO legally improper.**

4 The potential for harsh economic impacts as a result of adopting the Draft CDO is
5 not legal grounds for finding the order improper. To the contrary, federal district courts
6 have refused to balance economic and social utility concerns against the competing
7 interests of protecting endangered species, because "Congress has decided that under
8 the ESA, the balance of hardships always tips sharply in favor of the endangered or
9 threatened species." (*Washington Toxics Coal. v. EPA* (2005) 413 F.3d 1024, 1035; see
10 also *United States v. Glenn-Colusa Irrigation Dist.* (1992) 788 F.Supp. 1126, 1132
11 [Declining to consider the "social utility" of ordering defendant to cease operation of a
12 pumping facility that was taking listed salmonids without a take permit].)

13 As discussed in greater detail in Section IV.a. above, Cal-Am's illegal diversions
14 have an adverse impact on steelhead and critical habitat. The steelhead population in
15 the Carmel River has been designated a federally listed threatened species under the
16 Endangered Species Act and the entire Carmel River is designated critical habitat for that
17 species. (PT - 39, pp. 1-2.) The Draft CDO requires Cal-Am to reduce its illegal
18 diversions from the Carmel River over a seven-year period. Adopting and implementing
19 the Draft CDO will restore critical habitat and prevent the taking of listed species.
20 (Hearing Transcript, Phase II Friday July 25, 2008, p. 909, lines 12-19.) Accordingly,
21 even if the SWRCB finds that the Draft CDO has the potential to cause harsh economic
22 impacts, that finding is not proper legal grounds for declining to adopt the Draft CDO.

23 **b. Harsh economic impacts from draft CDO can be avoided.**

24 The potential for harsh economic impact from the Draft CDO can be avoided by
25 Cal-Am's development of alternative water supplies and facility improvements that will
26 reduce unaccounted for water loss. As discussed in Section VI, the reduction schedule in
27 the Draft CDO could initially be met by a combination of alternative water sources and
28 increases in Cal-Am system efficiency and some moderate amount of water conservation

1 until water year 2014 when more substantial conservation measures would be necessary.
2 Furthermore, in Section VI.a., the Deputy Director can modify the reduction schedule
3 upon request from Cal-Am if the reductions cannot be met without endangering public
4 health and safety.

5 **VIII. CAL-AM HAS THE ABILITY TO COMPEL EXISTING CUSTOMERS TO REDUCE**
6 **WATER USE AND IMPOSE A CONNECTION BAN ON NEW USERS.**

7 Cal-Am references Public Utilities Code section 451 as imposing a duty to provide
8 water to customers within Cal-Am's service area. (Cal-Am Pre-Hearing Brief, p.3,
9 lines14-16.) Cal-Am's duty to provide water service, however, is not absolute. Public
10 Utility Code section 2711 recognizes that there could be circumstances in which a water
11 provider's supply is inadequate to meet the demands of all its existing customers and
12 requires that limited supplies must be apportioned ratably among customers.

13 Furthermore, Cal-Am's duty to serve does not extend to all potential water users
14 within Cal-Am's service area when water is limited to the point where adding additional
15 connections to the water system would impair Cal-Am's ability to serve current customers.
16 (Pub. Util. Code, § 2708.) A public utility's refusal to extend service to new customers
17 within a service area is reasonable when the resource demanded becomes limited.
18 (*Swanson v. Marin Municipal Water District* (1976), 56 Cal.App.3d 512.)

19 Water Code sections 350 through 358 provides the procedure and necessary
20 findings by which Cal-Am can adopt regulations restricting use by existing customers
21 and/or adopting a moratorium on new connections. Prior to implementing restrictions on
22 water users or imposing a moratorium on new connections, Cal-Am must declare a water
23 shortage emergency, develop water supply priorities, and draft regulations and
24 restrictions on water use for the Carmel River service area. (Water Code, §§ 350–358.)

25 Cal-Am must then obtain approval from the California Public Utilities Commission
26 (CPUC) to impose restriction on use and/or a moratorium on connections. (Wat. Code, §
27 2701.) Presumably, Cal-Am is familiar with this process and has already declared a
28 water shortage emergency for the Carmel River service area because Cal-Am has

1 applied to the CPUC in the past for approval of water conservation plans and connection
2 bans.

3 Public Utility Code section 2708 authorizes the CPUC to approve a moratorium on
4 new connections. Specifically, section 2708 provides in part:

5 Whenever the commission . . . finds that any water company which is a
6 public utility operating within this State has reached the limit of its capacity
7 to supply water and that no further consumers of water can be supplied from
8 the system of such utility without injuriously withdrawing the supply wholly or
9 in part from those who have theretofore been supplied by the corporation,
10 the commission may order and require that no such corporation shall furnish
11 water to any new or additional consumers until the order is vacated or
12 modified by the commission. . .

13 Cal-Am has filed applications with the CPUC in the past seeking approval of water
14 rationing plans and moratoriums on certain new connections in order to comply with State
15 Water Board Order 95-10. (In Re California American Water Company (1998) 81 CPUC
16 2d 648; Cal. P.U.C. Dec. No. 05-04-005.) Cal-Am's most recent application to impose a
17 new connection ban was rejected by the CPUC on various grounds including; (1) that
18 MPWMD has the statutory authority to impose a moratorium or other restriction on water
19 use if necessary and already limits new and expanded water uses; and (2) that
20 compliance with Order 95-10 is obtainable through conservation rates and other
21 incentives being employed by Cal-Am and MPWMD. (California American Water
22 Company (2005) Cal. P.U.C. Dec. No. 05-04-005, pp. 4-5.) If Cal-Am can demonstrate to
23 the CPUC that its available water supply is inadequate to meet the demands of new
24 and/or existing customers and that additional conservation incentives, connection
25 restrictions and/or curtailments are necessary to meet the terms of a State Water Board
26 imposed CDO, then the CPUC should approve such measures.

27 MPWMD also has authority through its authorization act to declare a water emergency
28 and restrict water use. (Wat. Code, Appen. 118-332.) MPWMD has in fact exercised this
authority in the past and has already established an Expanded Water Conservation and
Standby Water Rationing Plan. (PT - 52A-52H.)

1 **IX. ANY FUTURE ENFORCEMENT OF THE DRAFT CDO THROUGH THE**
2 **ASSESSMENT OF LIABILITY SHOULD NOT RESULT IN THAT LIABILITY BEING**
3 **PASSED ON TO THE RATE PAYERS.**

4 In the past, the CPUC has stated that passing fines through to the ratepayers will
5 only be done under extraordinary circumstances when Cal-Am does not have reasonable
6 means to comply with a State Water Board reduction requirement. (81 CPUC 2d 648,
7 p. 9.) Specifically, the CPUC allowed Cal-Am to establish a memorandum account for
8 water years ending September 30, 1998 and September 30, 1999, to record any liability
9 imposed by the State Water Board for failure to meet the cutback requirements
10 established in Order 95-10. (*Id.* at p. 8.) The CPUC ruled that recovery of any such
11 liability would be subject to the CPUC's review of Cal-Am's system management
12 (including its implementation of conservation program and minimization of system losses)
13 and a finding that Cal-Am took all reasonable steps to avoid over-pumping. (*Id.* at pp. 8-
14 9.) Assuming the CPUC found that Cal-Am exercised all reasonable means available to it
15 to attempt to achieve compliance, then the CPUC intended that recovery of some portion
16 of that liability from ratepayers would be authorized. (*Id.* at p. 9.) The CPUC allowed Cal-
17 Am to establish the memorandum account as a stop gap measure for what the CPUC
18 envisioned would be a brief amount of time it would take Cal-Am and MPWMD to get a
19 rationing plan and other measures in place so that Cal-Am could assume full
20 responsibility for managing the water supply in compliance with Order 95-10. (*Ibid.*)

21 A subsequent request by Cal-Am to reestablish a memorandum account for State
22 Water Board fines was denied. (CAW 031B; California American Water Company (2006)
23 Cal. P.U.C. Dec. No. 06-11-050, p. 32.) The CPUC denied Cal-Am's request on the
24 grounds that Cal-Am now has the necessary water conservation and rationing tools to
25 avoid over-pumping and that Cal-Am, therefore, should be held responsible for operating
26 its water system in a manner that avoids any State Water Board liability. (*Ibid.*)

27 **X. ALTERNATIVES TO THE DRAFT CDO SUGGESTED BY OTHER DESIGNATED**
28 **PARTIES DO NOT PROVIDE CAL-AM WITH ANY INCENTIVE TO REDUCE ITS**
ILLEGAL DIVERSIONS FROM THE CARMEL RIVER BASIN.

1 MPWMD and the Public Trust Alliance recommended that the Proposed Order not
2 impose a specific reduction schedule, but instead use an adaptive management approach
3 that ties reduction to the completion and implementation of alternative water supply
4 projects. (MPWMD-DF9, p. 6; PTA-4, p. 2.) A reduction schedule that is dependent upon
5 the completion and implementation of alternative water supply projects will not provide an
6 incentive to reduce illegal diversions and does not provide for any meaningful
7 enforcement if sufficient progress toward developing alternative supplies is not obtained.

8 NMFS and the Sierra Club advocate for adjusting the reduction schedule in the
9 Draft CDO so that reductions in diversion occur at times that would provide the greatest
10 benefit to fisheries. (PT - 39, p.10; SC-1, p. 27.) As an example, NMFS recommends
11 that in addition to the annual reductions in diversions that during the months of April
12 through October, Cal-Am must reduce its mean daily diversion by the same percentage
13 as the annual diversion reduction during this critical low flow period. (PT - 39, p. 10.)
14 NMFS believes that shaping the annual diversion reductions in this manner will help
15 ensure that most of the water diversion reduction occurs during times of the year when
16 flows in the river are low. (*Ibid.*) The Draft CDO does not mandate the specific manner in
17 which Cal-Am must comply with the reduction schedule and would not preclude
18 adjustments maximizing fishery benefits from reductions in the manner proposed by
19 these parties.

20 **XI. CONCLUSION**

21 For the reasons provided above, the Prosecution Team request that the Draft CDO
22 be adopted with the revisions recommended herein.

23
24 Respectfully submitted,

25 
26 _____
27 Yvonne West
28 Attorney for the Water Rights Prosecution Team

Exhibit A
Required Reductions Compared to Potential New Yield

Water Year	Required Reductions			Estimated New Yield ¹						Yield Deficit from 10 Yr Average of 14298 AFA ⁶		
	Carmel River Draft CDO (AFA) ²	Carmel River Draft CDO (Percent)	Seaside Groundwater Reductions (AFA) ³	Total Reductions	Sand City Desal	ASR Plant	Pebble Beach & RUWAP Reclaim	Cal Am System Efficiency Savings ⁴	Coastal Water Project ⁵		Total AFA from New Sources	Yield Deficit from max of 14789 AFA
2009	0	0%	313	313	300	310	150	0		760	0	0
2010	1,693	15%	417	2,110	300	920	450	221		1,891	219	0
2011	1,693	15%	417	2,110	300	920	450	442		2,112	0	0
2012	2,257	20%	835	3,092	300	920	450	885		2,555	537	46
2013	2,257	20%	835	3,092	300	920	450	885		2,555	537	46
2014	3,950	35%	835	4,785	300	920	450	885		2,555	2,230	1,739
2015	3,950	35%	1,253	5,203	300	920	450	885	8,400+	10,955	0	
2016	5,643	50%	1,253	6,896	300	920	450	885	8,400+	10,955	0	
2017	5,643	50%	1,253	6,896	300	920	450	885	8,400+	10,955	0	
2018	5,643	50%	1,684	7,327	300	1,920	450	885	8,400+	11,955	0	
2019	5,643	50%	1,684	7,327	94	1,920	450	885	8,400+	11,749	0	

¹ Estimates of new yield are from MPMD-HS14-B, unless otherwise noted.

² Annual percent reductions and associated acre-foot reductions for Cal Am from Draft CDO delayed by one water year as proposed herein in Section VI.

³ Annual percent reductions and associated acre-foot reductions for Cal Am from California American Water v. City of Seaside et al., Case No. M66343 (CAW-5).

⁴ Assumes a reduction in Cal Am's 12% (approx. 1716 AFA) of unaccounted for water to the maximum extent feasible by 2012. Estimates that Cal-Am can achieve maximum of 885 AFA savings from reduction of real water losses through implementing aggressive leak detection and repair and the development and implementation of a pressure management program based on Division of Ratepayer Advocates, CPUC Report on the Results of Operations, California American Water Company Monterey District, Application 08-01-027 (PT- 54 (subject to request for judicial notice submitted concurrently).) Assumes that 25% of those savings will be attained in 2010, 50% in 2011 and 100% beginning in 2012.

⁵ CAW-044

⁶ Average use for 10 year period of Water Year 1997 through Water Year 2007 from MPWMD DF-3.