

Preliminary Staff Recommendation
to Modify Cease and Desist Order WR 2009-0060
California-American Water Company
June 17, 2016

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

1. This Order shall supersede the requirements in State Water Board Order WR 2009-0060, 95-10 and any other State Water Board orders affecting Cal-Am's diversions from the Carmel River, to the extent stated herein, or to the extent that there is an irreconcilable conflict between the requirements here and those orders. All other requirements in State Water Board orders affecting Cal-Am's diversions from the Carmel River remain in effect until terminated by operation of law or action of the State Water Board.
2. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2021. This date supersedes the December 31, 2016 date in State Water Board Order WR 2009-0060, ordering paragraph 1.
3. For the purposes of interpreting State Water Board Order WR 2009-0060, ordering paragraph 2, a change in zoning or use is a change made by a local government agency or the Monterey Peninsula Water Management District (MPWMD). For determining an increase in use of water, for past water use, Cal-Am shall use the lesser of the actual average annual metered water use for the five-year period from WY 2008-2009 to WY 2012-2013¹, or the amount calculated using MPWMD's fixture-unit count method.
4. At a minimum, Cal-Am shall adjust its diversions from the Carmel River in accordance with the following terms and conditions. These terms and conditions supersede the annual reductions in Order 2009-0060, ordering paragraph 3.a.(2), after the effective date of this Order:
 - a. **Effective Diversion Limit.** The limit set forth in this Condition 3.a., as may be further reduced or increased pursuant to the terms and conditions of this Order, is referred to as the "Effective Diversion Limit."
 - i. **Immediate Reduction:** Commencing on October 1, 2015 (Water Year 2015-2016) the Effective Diversion Limit shall be 7,990 acre-feet per

¹ This five-year period was identified in the Deputy Director's letters dated April 9, 2012 and May 31, 2013.

annum (afa). This Effective Diversion Limit shall not be exceeded through December 31, 2021 except as provided in condition 4.b.(2)(ii) or 4.c. of this Order. This limit supersedes the reduction limit required under Order 2009-0060 for Water Year 2015-2016.

b. Adjustments to the Effective Diversion Limit:

i. **Pure Water Monterey Groundwater Replenishment Project Offset.**

In any year that Cal-Am delivers water stored in the Seaside Groundwater Basin as part of the Pure Water Monterey Groundwater Replenishment Project to its customers for use, the Effective Diversion Limit shall be reduced by one acre foot for every acre foot of Pure Water Monterey Groundwater Replenishment Project Water so delivered. If this reduction will result in the Effective Diversion Limit for that year being lower than Cal-Am's available lawful diversions from the Carmel River in that year, Cal-Am may apply to the Deputy Director for a limitation of this condition such that the provision will not limit lawful diversions.

ii. **Seaside Groundwater Basin Limitations.** The Board may adjust the Effective Diversion Limit if an unexpected reduction in Cal-Am's production allocation from the Seaside Groundwater Basin, or access to water pumped makes the supply unavailable. The Applicants² may request such relief whenever they can establish that access to water in the Seaside Groundwater Basin is limited due to unexpected mitigation measures imposed pursuant to the Seaside Basin Watermaster's Seawater Intrusion Response Plan, or by the court pursuant to the Seaside Groundwater Basin Judgment in response to a detection of seawater intrusion within the Seaside Groundwater Basin. Any such adjustment is subject to the overall cap on diversions in Paragraph 4.a.(2)(i), above.

iii. **Carryover:** After October 1, 2015 if Cal-Am's diversions from the Carmel River during a given Water Year are less than the Effective Diversion Limit for that Water Year, Cal-Am will accumulate credit for the difference between the Effective Diversion Limit and Cal-Am's actual diversions. Any such credit may be carried over to offset an exceedance of the Effective Diversion Limit prior to December 31, 2021, subject to the restriction in Paragraph 4.b.(iv) below, and subject to the overall cap on diversions in Paragraph 4.a.(1), above.

iv. **Cap on Carryover:** The amount of carryover water accumulated under Paragraph 4.a.(2)(iii) that may be credited in any one Water

² "Applicants" refers to the joint applicants for the request to modify State Water Board Order WR 2009-0060: Cal-Am, the Monterey Peninsula Regional Water Authority, the Monterey Peninsula Water Management District, the Pebble Beach Company, and the City of Pacific Grove.

Year shall not exceed 750 afa.

- v. **Milestones:** For purposes of calculating a reduction to the Effective Diversion Limit, the following Milestones and Deadlines will apply:

Water Year	Milestone³	Deadline
2015-2016	CPUC approval of (1) the Water Purchase Agreement for Cal-Am's purchase of Pure Water Monterrey water, and of (2) construction of the Cal-Am components of the Pure Water Monterrey conveyance facilities, ⁴ including the Monterrey	September 30, 2016
2016-2017	Start of construction of the Cal-Am components of the Pure Water Monterey project, meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work.	September 30, 2017
2017-2018	Issuance of a Certificate of Public Convenience and Necessity to Construct the Monterey Peninsula Water Supply Project ("MPWSP") by the	September 30, 2018
2018-2019	Start of construction for any of the Cal-Am Components of the MPWSP ⁵ , meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work. ⁶	September 30, 2019

³ If the CPUC issues a Certificate of Public Convenience and Necessity to a desalination facility at Moss Landing at any point prior to completion of any of the facilities discussed herein, then Cal-Am shall submit to the Executive Director within 60 days a revised set of milestones taking this water supply source into account. If the proponents of the Moss Landing desalination project are unable to reach concurrence with Cal-Am on revised milestones to propose, the proponents may also submit revised milestones within that time period. The Executive Director shall determine whether to bring forward a recommendation to the State Water Board regarding amendment of the milestones.

⁴ "Cal-Am components" of the Pure Water Monterey Project refers to the pump station and pipeline within or leading to Cal-Am's Service Area needed to transmit water to Cal-Am's service area.

⁵ For purposes of this proposal the Cal-Am Components of the MPWSP include: source water production wells; desalination plant; brine disposal system; and transmission pipelines

⁶ Such work may include, among other things, any of the following: desalination plant site grading and preparation; electric utility installation; yard piping; subsurface excavation for structural foundations; and transmission pipeline installation.

2019-2020	(1) Drilling activity for at least one MPWSP source water production well ⁷ complete; (2) foundation and structural framing complete for MPWSP pretreatment seawater reverse osmosis, and administration buildings at desalination plant; (3) excavation complete for MPWSP brine and backwash storage basins; and (4) 25% of MPWSP transmission pipelines installed based on total length, including 100%	September 30, 2020
2020-2021	(1) 50% of drilling activity complete for MPWSP source water production wells based on total number of wells required; (2) mechanical systems for MPWSP brine and backwash storage basins complete; (3) construction of MPW SP filtered water tanks and finished water tanks complete; (4) 50% of MPWSP transmission pipelines installed	September 30, 2021
2021-2022 and beyond	Substantial completion of the Cal-Am Components of the MPWSP, meaning the Cal-Am Components are sufficiently complete and appropriately permitted to allow delivery of MPWSP produced potable water to Cal-Am's Monterey Main system, eliminating further Cal-Am diversions of Carmel River water without valid basis of right	December 31, 2021

- vi. **Reductions to the Effective Diversion Limit Based on Missed Milestones:** The following reductions to the Effective Diversion Limit shall apply if an applicable Milestone Deadline is not met:

Water Year	Milestone Missed	Reduction in Effective Diversion Limit	Date Reductio
2016- 2017	1	1000 AFA	Oct. 1, 2016
2017- 2018	2	1000 AFA	Oct. 1, 2017
2018- 2019	3	1000 AFA	Oct. 1, 2018
2019- 2020	4	1000 AFA	Oct. 1, 2019
2020—2021	5	1000 AFA	Oct. 1, 2020

⁷ Not including construction of the MPWSP Test Well completed in 2015.

Oct. 1, 2021 – December 31, 2021	6	1000 AFA	Oct. 1, 2021
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If a Milestone is not achieved by its Deadline but is subsequently achieved, the 1000 afa reduction to the Effective Diversion Limit shall be amended on the first day of the Water Year following achievement of the Milestone, as follows. For Milestones achieved within the first month following the Deadline, the reduction shall be 250 afa. For Milestones achieved between one and six months after the Deadline, the reduction shall be 500 afa. For Milestones achieved between six and nine months after the Deadline, the reduction shall be 750 afa. The 1000 afa reduction to the Effective Diversion Limit shall remain for milestones achieved 9 months after the Deadline or later.

If the reductions required under this subparagraph will result in the Effective Diversion Limit for that year being lower than Cal-Am’s available lawful diversions from the Carmel River in that year, Cal-Am may apply to the Deputy Director for the Division of Water Rights for a limitation of this section such that the provision will not limit lawful diversions.

- vii. Illustration: The following table illustrates the effect of the reduction in the Effective Diversion Limit over the term of this Order, and assumes no Deadlines have been met and no carryover credits have been applied under Paragraph 4.b.(iii), and no additional water rights have been obtained or other adjustments made to the Effective Diversion Limit. The result is an elimination of unauthorized diversions from the Carmel River on October 31, 2020 if no Deadlines are met.

Water Year	EDL if All Milestones Missed, No Other EDL Adjustments
2015-2016	7,990 AFA
2016- 2017	6,990 AFA
2017- 2018	5,990 AFA
2018-2019	4,990 AFA
2019-2020	3,990 AFA
2020–2021	Legal limit
Thereafter	Legal limit

- viii. **Joint Annual Report.** At least 120 days prior to each Milestone

Deadline described in Condition 3.a.(2)(v), Cal-Am, in coordination with Applicants, shall submit a joint report to the Deputy Director, Division of Water Rights, describing progress towards that Milestone, whether Applicants expect the Milestone to be achieved by its Deadline and, if not, whether the Milestone will be missed for reasons beyond Applicants' control. Sufficient evidence supporting the reasons that missing a milestone is beyond the control of Applicants shall be included for any further action related to such a claim. If requested, Cal-Am, in coordination with Applicants, shall present written and/or oral comments on the progress towards Milestones at a regularly scheduled State Water Board meeting that falls at least 60 days after submission of the report. If the report indicates that a Milestone is likely to be missed for reasons beyond Applicants' control, the State Water Board may make a determination during that meeting or at a subsequent meeting whether the cause for delay is beyond Applicants' control. If the State Water Board determines that the cause is beyond Applicants' control, it may suspend any corresponding reductions under Condition 4.b.(vi) until such time as the Applicants can reasonably control progress towards the Milestone.

- ix. **ASR Project:** Commencing for Water Year 2015-2016, only the first 600 afa of the amount of any water diverted to underground storage under State Water Board Permits 20808A and 20808C as of May 31 of each water year shall be included in determining compliance with the Effective Diversion Limit: Diversions greater than 600 afa in a single Water Year shall not count as annual production of Carmel River water for the Effective Diversion Limit calculation. This section supersedes State Water Board Order WR 2009-0060, ordering paragraph 3.a.(3).
- x. **Sand City Desalination Plant:** Any volume of water that is produced by the Sand City Desalination Plant and not served to persons residing within the City of Sand City shall be subtracted from the Effective Diversion Limit for the Water Year in which it is produced.
- xi. **Pebble Beach:** PBC shall continue to annually submit, on September 30, a report to the Deputy Director for Water Rights accounting for any additional water that is diverted from the Carmel River as the result of an increased use of its remaining MPWMD water entitlement. Any diversions from the river by Cal-Am to satisfy PBC remaining entitlements from MPWMD shall not be considered in calculating compliance with the Effective Diversion Limit. After December 31, 2021, Cal-Am shall not illegally divert water from the river to supply the holders of PBC entitlements. This order supersedes the last sentence of paragraph 3.a.(6) of State Water Board Order WR 2009-0060.

- xii. **Supplemental Water Rights and Acquisitions:** Provided Cal-Am is able to identify suitable and willing transacting parties, Cal-Am will acquire supplemental Carmel River water rights, and/or will pursue other Carmel River water acquisitions and water right changes in order to increase flows in the Carmel River and decrease Cal-Am's unauthorized Carmel River diversions ("Carmel River Flow Enhancement Program"). Cal-Am will implement the Carmel River Flow Enhancement Program to the extent it can negotiate agreements with water right holders. Such acquisitions or water right changes may include forbearance agreements, leases and/or purchases of water rights along the Carmel River on a temporary or permanent basis, and may include water right change approvals or permits (permanent or temporary) from the State Water Board. The acquisitions may increase the proportion of Cal-Am's diversions that are made under lawful right, or increase Carmel River instream flows during periods of lower flow on the Carmel River.
 - xiii. **Malpaso Water Company:** Water provided on an interim basis by the Malpaso Water Company LLC to Cal-Am under State Water Board License No. 13868A shall be not be counted towards calculation of the Effective Diversion Limit for the Water Year in which the water is provided to Cal-Am to the extent that Cal-Am is merely transporting the water on behalf of Malpaso Water Company to serve Malpaso Water Company's contracts with water users. To the extent such water is used by Cal-Am as a general source of delivery to its customers, this water will be counted towards calculation of the Effective Diversion Limit, and shall serve to increase the portion of such diversion that are made under lawful rights. Any use of the Malpaso Water Company's diversions shall be consistent with the terms of License No. 13868A and State Water Board Division of Water Rights, Division Decision 2015-0001.
- c. Either Cal-Am or the MPWMD may petition the State Water Board Deputy Director for Water Rights for relief from reductions imposed under this Order. No relief shall be granted unless all of the following conditions are met: (1) Cal-Am and the MPWMD continue the moratorium on new service connections; (2) the demand for potable water by Cal-Am customers meets all applicable conservation standards and requirements; and (3) a showing is made that public health and safety will be threatened if relief is not granted. Any relief granted shall remain in effect only as long as a prohibition on new service connections remains in effect, and compliance with applicable conservation standards and requirements remains in effect. This section supersedes ordering paragraph 3.b. of WRO 2009-0060.
5. **Status of Steelhead Fishery Report.** During the extension period CAW will provide funding in an amount up to \$175,000 per year for the preparation of an annual report that evaluates the status of the threatened South-Central

California Coast Steelhead Distinct Population Segment ("SCCC Steelhead DPS") in the Carmel River ("Status of Steelhead Fishery Report"). If possible, the annual Status of the Steelhead Fishery Report will be prepared by the National Marine Fisheries Science ("NMFS") Southwest Fisheries Science Center ("SWFSC"). If NMFS West Coast Region finds a significant change in the status of the SCCC Steelhead DPS since the previous report (or, in the case of the first report, since the effective date of this Order), NMFS West Coast Region may provide recommendations for additional adaptive management measures to be taken with respect to the SCCC Steelhead DPS in the Carmel River. If SWFSC cannot complete the Status of the Steelhead Fishery Report for any or all years during the extension period, Cal-Am will designate another individual or entity, in consultation with the other Applicants and other stakeholders, with requisite expertise to complete the report. If NMFS objects to the choice, Cal-Am shall designate a different individual or entity. If the NMFS West Coast Region cannot review the Status of the Steelhead Fishery report in any or all years, Applicants and other stakeholders may develop an alternative system for making adaptive management recommendations. Cal-Am will deliver the report in a cost effective and efficient manner, and will work with Applicants, stakeholders, and the preparer of the Status of the Steelhead Fishery Report to share resources, and to avoid duplication of effort to lower the cost of the report to the extent practicable. The Status of the Steelhead Fishery Report and any adaptive management recommendations shall be submitted to the State Water Board by Cal-Am each year with the corresponding joint annual report.

6. Additional Conservation Measures: Cal-Am has stated that it will implement an additional \$2.5 million of projects to improve fish passage and habitat during the four years following adoption of this Order, as follows: improvements to the existing upstream fish passage ladder and trap at Los Padres Dam (\$0.2 million); installation of a fish screen at the lower outlet pipe on Los Padres Dam (\$0.8 million); a pit tagging program (\$1.0 million); and a through-reservoir survival study for Los Padres Reservoir (\$0.5 million). If the above projects are not implemented according to plans developed in coordination with the California Department of Fish and Wildlife and the National Oceanic and Atmospheric Administration, the State Water Board may revisit this Order to determine whether to make further adjustments to protect public trust resources in the Carmel River.
7. Carmel River Volitional Fish Passage. Cal-Am has substantially completed downstream fish passage facilities at Los Padres Dam. If Cal-Am fails to remove the Old Carmel River Dam and the Sleepy Hollow Ford before September 30, 2017, the State Water Board may reopen this order to determine whether to make further adjustments to improve fish passage in the Carmel River or otherwise restore public trust resources.

8. On June 1 of each year, Cal-Am shall submit an operating plan to the Deputy Director for Water Rights specifying the quantity of water it will supply from the ASR Project for its customers after May 31 of each year. This plan shall provide for use of the water between June 1 and September 30 of the water year the water was pumped from the Carmel River, unless otherwise authorized by the fishery agencies. Cal-Am shall reduce its illegal diversions from the Carmel River at the same rate ASR water is recovered from the groundwater basin. ASR diversions remain subject to State Water Board Order WRO 2009-0060, ordering paragraph 3.c. This section supersedes ordering paragraph 4 of WRO 2009-0060.

9. In addition to the reporting required elsewhere in this order or required under WRO 2009-0060 ordering paragraph 6, except as specified, Cal-Am shall provide and post on its website the following information in quarterly reports:
 - a. Monthly summaries of the total quantity of water produced from the Carmel River, and other separate sources of water used by Cal-Am within the service area.
 - b. Monthly summaries of the total quantity of ASR project water diverted from the river under State Water Board Permits 20808A and 20808C and stored in the Seaside Groundwater Basin, including the separate accounting of the amounts pumped in excess of 600 afa. The monthly reporting shall also state the quantity of ASR water recovered from aquifer storage and beneficially used, and the current balance of ASR water remaining in storage in the Seaside Groundwater basin. This paragraph supersedes WRO 2009-0060, ordering paragraph 6.(b).
 - c. Monthly summaries of the quantity of water being supplied by the Malpas Water Company to Cal-Am and to Malpas customers supplied using Cal-Am facilities. The reporting shall identify the amount of water used at Cal-Am's existing meter connections and within the Cal-Am service area, and the amounts used at new service connections served by Malpas Water Company. The monthly reports shall specify the quantity of water used to reduce diversions from the river during the reporting period.
 - d. Monthly summaries of the quantity of water produced by the City of Pacific Grove, and the quantity of water used to reduce diversions from the river during the reporting period. Cal-Am shall not deliver water produced by the City of Pacific Grove unless such use is consistent with Resolution 2015-0070, paragraph 4.
 - e. For the final quarter of each water year, the report shall include the quantification and basis of any credits earned and of any amount being carried over for future years.
 - f. An accounting of the progress towards completion of the MWSP and Pure Water Monterey Project that identifies all progressive steps completed during the previous 12 months and the following 12 month's anticipated progress, and discussion of potential setbacks that may be beyond the petitioner's control.

10. Each report submitted by Cal-Am shall be certified under penalty of perjury and shall include the following declaration: "I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this report and any accompanying documents are true and correct, with full knowledge that all statements made in this report are subject to investigation and that any false or dishonest statement may be grounds for prosecution."

11. Cal-Am shall file quarterly reports of its diversions under Paragraph 5 (small project) of WRO 2009-0060. This section corrects an error in WRO 2009-0060 ordering paragraph 7, which incorrectly identified the relevant paragraph as State Water Board Order WRO 2009-0060 ordering paragraph 3.

12. The Deputy Director for Water Rights is authorized to modify the timing and the content of the reporting required by all of the provisions of this Order to more effectively carry out the intent of this Order.

13. Cal-Am shall comply with all requirements of State Water Board Order 95-10, except as provided in State Water Board Order WR 2009-0060, ordering paragraph 9, or except as inconsistent with this Order.

14. The Deputy Director for Water Rights is directed to closely monitor Cal-Am's compliance with State Water Board Order 95-10, State Water Board Order WR 2009-0060, and this Order. Appropriate action shall be taken to insure compliance with these Orders including the issuance of additional cease and desist orders under Water Code section 1831, the imposition of administrative civil liability under Water Code section 1055, and referral to the Attorney General under Water Code section 1845 for injunctive relief and for civil liability. If additional enforcement action becomes necessary, the Deputy Director is directed to consider including in such actions all Cal-Am's violations of Water Code section 1052 since the adoption of Order 95-10.

15. The conditions of this Order, State Water Board Order WR 2009-0060 and State Water Board Order 95-10 shall remain in effect until (a) Cal-Am certifies, with supporting documentation, that it has obtained a permanent supply of water that has been substituted for the water illegally diverted from the Carmel River and (b) the Deputy Director for Water Rights concurs, in writing, with the certification.