

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : May 6, 2016

**To : The Commission
(Meeting of May 12, 2016)**

**From : Rami Kahlon
Director, Division of Water and Audits**

**Jonathan Koltz
Public Utilities Counsel**

Subject: Commission Comments in Support of California-American Water Company's (CAW) Amended Application to the State Water Resources Control Board (Board) Requesting Order Modifying Board Order WRO 2009-060 (Cease and Desist Order) to Extend the Deadline for CAW to Terminate All Unauthorized Diversions from the Carmel River until December 31, 2021 to Allow Additional Time to Complete Development of Replacement Water Supplies

RECOMMENDATION: The Commission should file comments in support of CAW's April 28, 2016 amended application to the Board requesting a Board order modifying the Cease and Desist Order. In summary, CAW requests an order from the Board that would extend the deadline for CAW to terminate unauthorized diversions from the Carmel River until December 31, 2021 to allow additional time to complete development of replacement water supplies. Staff recommends that the Commission support CAW's request to extend the deadline in the Cease and Desist Order from December 31, 2016 until December 31, 2021. An extension will allow sufficient time for the Commission to consider and review proposed replacement water supply projects that are before the Commission in Application (A.)12-04-019 and, if approved based on existing Commission schedule, provide sufficient time for project development and construction to occur before the December 31, 2021 deadline is reached.

Staff also recommends the Commission file comments with the Board in support of CAW's amended application along the lines discussed below prior to the Board's consideration of this matter in June.

BACKGROUND: In 1995, the Board found that CAW was drawing about 10,000 acre-feet per year from the Carmel River in excess of its legal rights (Board Order 95-10). CAW was required to secure replacement water supply that would reduce its demand from the Carmel River to its legal allotment.

In September 2004, CAW filed A.04-09-019 with the Commission to build and operate a desalination project referred to as the Coastal Water Project to address the need for replacement water supply. That project, with a few modifications, later became known as the Regional Desalination Project (RDP). Portions of the RDP were to be owned and operated by CAW, portions by the Monterey County Water Resources Agency, and portions by Marina Coast Water District.

In 2009, the Board issued a Cease and Desist Order (Board Order 2009-060) to CAW. The Board found that CAW was drawing 7,000 acre-feet per year from the Carmel River above its legal annual allotment of 3,376 acre-feet. The Board ordered CAW to cease drawing water from the Carmel River in excess of its legal allotment by the end of 2016, or be subject to steep financial penalties.

In 2009, the Commission certified the Final Environmental Impact Report (EIR) for the RDP (D.09-12-017) in its role as the Lead Agency under the California Environmental Quality Act (CEQA). In December 2010, the Commission granted a Certificate of Public Convenience and Necessity (CPCN) for the RDP (D.10-12-016).

In late 2011 and early 2012, for a variety of reasons the RDP project was no longer viable. In response, CAW filed a new application for the Monterey Peninsula Water Supply Project (MPWSP) (A.12-04-019). The MPWSP is similar in many respects to the RDP. However, the project will be wholly-owned and operated by CAW. Portions of the MPWSP are federal jurisdictional and require certification under the National Environmental Policy Act (NEPA), which is the federal analog to CEQA. The Monterey Bay National Marine Sanctuary (Sanctuary) is the lead agency under NEPA.

In April 2015, the Commission published a Draft EIR on the MPWSP for comment. In September 2015, the Commission notified parties to A.12-04-019 that based on comments it decided to revise and recirculate the Draft EIR as a joint EIR/Environmental Impact Statement (EIS) in coordination with the Sanctuary to satisfy both CEQA and NEPA.

In March 2016, the Commission announced an updated schedule for the CEQA/NEPA portion of A.12-04-019. The schedule includes a draft EIR/EIS by December 2016, a final EIR/EIS by September 2017, and a proposed decision on the EIR/CPCN in November 2017.

Also in March 2016, CAW submitted an Amended Application with the Commission in A.12-04-019 with a revised project description which will be included in the revised and recirculated Draft EIR/EIS. Of particular note, the preferred project has changed from a 9.6 million gallons per day desalination plant to a 6.4 million gallon per day desalination plant in conjunction with the Pure Water Monterey Groundwater Replenishment Project (GWR) owned and operated by Monterey Regional Water Pollution Control Agency (MRWPCA). The GWR project is an advanced treatment recycled water project that will inject up to 3,500 acre-feet per year of treated potable water into the Seaside Basin aquifer for later extraction by CAW for its customers' needs. The GWR project received final EIR certification in October 2015 and is awaiting financing and the Commission's decision about the proposed Water Purchase Agreement (WPA) from CAW before proceeding with construction. MRWPCA stated at the Commission's April Workshop on the GWR that a WPA from CAW is essential to the financial viability and construction of the GWR project.

On April 25, 2016 an Assigned Commissioner and Administrative Law Judge Ruling conditionally granted a joint motion for a separate Phase 2 decision in A.12-04-019. A separate Phase 2 decision has been determined to be reasonable given that the schedule for the final EIR/EIS has been extended, thereby delaying the Commission's final determination on the MPWSP. Issues to be addressed in this decision include: (1) a proposed water purchase agreement between CAW, Monterey Peninsula Water Management District, and Monterey Regional Water Pollution Control Agency for water supplies from the GWR project that will be required for project financing to proceed; (2) CAW's construction of the Monterey pipeline and pump station for the MPWSP to provide conveyance of water supplies from the GWR project; and (3) financing and ratemaking related to the Monterey pipeline and pump station facilities. Taken together a resolution of these issues with a decision scheduled for August 2016 would provide for replacement water supplies of up to 3,500 acre-feet annually as early as 2018 to reduce CAW's unauthorized diversions from the Carmel River.

CAW's Application for Modification of the Board's Cease and Desist Order

On November 20, 2015, CAW, Monterey Peninsula Regional Water Authority and Monterey Peninsula Water Management District, the Pebble Beach Company, and the City of Pacific Grove (collectively Petitioners) filed an application with the Board requesting modification of the Board's Cease and Desist Order to extend the deadline for CAW to cease all unauthorized diversions from the Carmel River until December 31, 2020 to allow additional time to complete development of replacement water supplies.

On April 28, 2016, the Petitioners filed an amended application with the Board. The amended application requests an additional one-year extension to December 31, 2021 for CAW to cease all unauthorized diversions from the Carmel River. The additional one-year extension is attributed to the revised CEQA/NEPA schedule noticed by the Commission in March 2016 as it impacts the issuance of a Commission CPCN decision.

CAW's application as amended is scheduled to be considered by the Board at its June 21, 2016 public meeting.

DISCUSSION AND RECOMMENDATIONS: Staff recommends that the Commission file comments in support of CAW's April 28, 2016 amended application to the Board requesting modification of the Cease and Desist Order to extend the deadline for CAW to terminate all unauthorized diversions from the Carmel River until December 31, 2021 to allow additional time to complete development of replacement water supply. Staff recommends that Commission adoption of this Memorandum include authorization for staff to draft of the comments, which will be signed on behalf of the Commission by the Executive Director and served on the Board in time for the Board's consideration of this matter in June 2016. The Commission's comments should specify the following two issues in support of its recommendation:

It is reasonable and in the public interest to modify the Cease and Desist Order as requested in the Amended Application.

If the Board were not to extend the December 31, 2016 effective date for the Cease and Desist Order, severe water rationing on the Monterey Peninsula will be required. CAW's demand for Carmel River water has averaged 7,656 acre-feet per year over the last four years. Given CAW's legally permitted Carmel River diversions of 3,376 acre-feet per year, the current effective date for the Cease and Desist Order will require severe rationing to achieve at further 4,280 acre-feet per year of supply reductions beginning January 2017. This would represent a 43% reduction in demand for an area with some of the lowest per capita water use in California. The level of reduced water demand needed to meet the December 2016 deadline will have direct public health and safety implications for the Monterey Peninsula. A 43% reduction in water demand will also have an adverse economic impact, whether directly through customer monetary fines/penalties to enforce mandatory water rationing or indirectly through a downturn in economic activity because of a lack of adequate water supplies.

Commission comments should note the adverse public health and safety, and economic impacts associated with the current effective date for the Cease and Desist Order.

Sufficient Progress has and will occur in reducing unauthorized diversions from the Carmel River to justify extending the effective date of the Cease and Desist Order.

The Petitioners in the Amended Application outline in Section IV the various efforts that have occurred that have significantly reduced water demand and thus reduce Carmel River diversions, including: (1) a moratorium on new construction and increased uses at existing connections; (2) a revised conservation and rationing; (3) water conservation programs, (4) infrastructure and operational improvements to reduce system losses and customer leaks and; (5) an April 25, 2016 forbearance agreement with The Trust for the

Public Land to reduce pumping from the Carmel River and to retire irrigation of the two Rancho Canada golf courses using Carmel River water. The April 25, 2016 forbearance agreement is pending before the Commission, and the Assigned Commissioner and ALJ will develop a schedule to consider in 2016 the impact of this request on CAW ratepayers.

Petitioners have also developed and implemented various supplemental water supply projects to reduce unauthorized Carmel River diversions, including: (1) use of Table 13 water rights;¹ (2) Pebble Beach wastewater reclamation project; (3) additional aquifer storage and recovery capacity; (4) temporary water use rights from Eastwood Trust; (5) Carmel River instream flow enhancement program; and (6) City of Pacific Grove recycled water project.

In addition, CAW and Petitioners have implemented and propose additional measures to enhance and improve conditions for fish and wildlife resources in the Carmel River watershed, including: (1) funding for Carmel River mitigation project; (2) Carmel River reroute and San Clemente Dam removal project, authorized by the Commission in 2012; (3) Los Padres Dam downstream fish passage facilities; (4) Los Padres Dam long term planning study; and (5) commitment to fund and implement additional mitigation projects.

Finally, in an effort to bring forward significant supplemental water supplies, an Assigned Commissioner and Administrative Law Judge Ruling was issued on April 25, 2016. The Ruling provides for a Commission decision scheduled in August 2016 that will address the water supply agreement between CAW and the GWR project developers that is necessary to obtain project financing that will allow the GWR project to provide supplemental water supplies of up to 3,500 acre-feet per year by early 2018. The Commission decision will also address the construction, financing, and ratemaking for the conveyance pipeline (Monterey pipeline) to supply GWR supplemental water supplies to CAW's customers. Taken together, addressing these will make supplemental water supplies available to significantly reduce CAW unauthorized diversions from the Carmel River in the near future. Based on the recent four-year average CAW's diversions from the Carmel River, the GWR supplemental supplies will reduce unauthorized diversions by approximately 82%.

¹ Board Decision 1632, Condition 10, provides an opportunity for entities named in Table 13 of Decision 1632 to obtain a water right permit with a priority superior to the Monterey Peninsula Water Management District's Permit 20808. As a named entity in Table 13, CAW pursued and satisfied requirements under Decision 1632 to obtain additional appropriate water rights under Board Permit 21330 from the Carmel River. In Water Year 2014-2015, CAW was able to divert 42.2 acre-feet pursuant to Permit 21330, and reduce unauthorized diversions by an equal amount.

Commission comments should highlight these past and ongoing efforts to reduce CAW's unauthorized diversions to show that *sufficient progress* has been made and are scheduled to be made that justifies the Board approving an extension of the effective date of the Cease and Desist Order to December 31, 2021 as requested by Petitioners.

Commission comments also provide an opportunity to update the Board on the progress in reviewing the MPWSP and other applications that will eliminate CAW's unauthorized diversions from the Carmel River.

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