

EXHIBIT B

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WRO 2002 – 0002**

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In the Matter of Reconsideration of WR Order 2001-04-DWR  
Implementing Condition 6 of Order WR 95-10 as Modified by  
Order WR 98-04 Regarding Diversions by  
California-American Water Company

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SOURCE: Carmel River

COUNTY: Monterey

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**ORDER RECONSIDERING WR ORDER 2001-04-DWR**

**BY THE BOARD:**

**1.0 BACKGROUND**

On July 6, 1995, the State Water Resources Control Board (SWRCB) adopted Order WR 95-10 regarding complaints filed against the California-American Water Company (Cal-Am) concerning Cal-Am's operations on the Carmel River in Monterey County. Petitions for Writ of Mandate were filed challenging Order 95-10. As part of the settlement of the litigation, on February 19, 1998, the SWRCB adopted Order WR 98-04, which amended Order WR 95-10. Condition 6 of Order WR 95-10, as modified by Order WR 98-04, (Condition 6) requires Cal-Am to evaluate whether its existing diversions to the Carmel Valley Filter Plant (CVFP) can be changed to maintain more surface flow in the Carmel River.

Condition 6 states:

“Cal-Am shall conduct a study of the feasibility, benefits and estimated costs of supplying water to the areas now served by the CVFP from its more nearby wells downstream of the plant and shall also conduct a similar study of utilizing the existing or expanded Begonia Treatment Plant or other facilities located further downstream in lieu of the Carmel Valley Filter Plant. This latter study shall be completed within one year of the date of entry of this Order. Petitioners shall have an opportunity to comment on the scope of the study. The study shall be

Am's diversions from the Carmel River. The consultation requirements are sufficient to accomplish the objectives of the order without causing undue delay in implementation of the order. To wait for an advisory group to determine solutions to recommend for adoption by the SWRCB, as recommended by the Sierra Club, is not acceptable although the parties are free to form their own advisory group and provide recommendations to the SWRCB for its consideration.

Finally, the SWRCB notes that CRSA was one of four complainants alleging the unauthorized diversion of water from the Carmel River by Cal-Am that resulted in Orders WR 95-10 and WR 98-04 and years of proceedings that include this one. To now recommend that the SWRCB "make legal all water diverted from below river mile 1 as motivation for Cal-Am to divert water from that location" is inappropriate and contrary to law. The diversion is still without a legal basis of right. Moving unlawful diversions to a different location on the Carmel River does not create a legal basis of right. The SWRCB has no authority to grant a legal basis of right when the facts clearly show that the diversion of water is without a legal basis. If Cal-Am submits applications to divert water below river mile 1, the SWRCB will process them in accordance with the provisions of Part 2 of Division 2 of the Water Code.

### **3.9 Phase II of the Conservation Agreement**

DFG and CRSA recommend that the SWRCB include Phase II of the Conservation Agreement in the SWRCB's order. Phase II addresses issues of concern to NMFS while long-term solutions to the issues involving the Carmel River are being developed. The SWRCB finds that Phase II is premature to include in this order because it involves experiments, evaluations, and development of solutions to the Carmel River issues by Cal-Am in consultation with NMFS and others. NMFS has the ability to enforce Phase II and it is not necessary to require the SWRCB to enforce it also. Phase II ultimately will require Cal-Am to apply to the SWRCB for the necessary permits and change orders to implement Phase II, so the SWRCB maintains oversight over the implementation of Phase II.

### **ORDER**

IT IS HEREBY ORDERED that WR Order 2001-04-DWR is rescinded.

IT IS FURTHER ORDERED that Cal-Am shall comply with Condition 6 of Order WR 95-10, as modified by Order WR 98-04 as follows:

1. Cal-Am shall immediately upon issuance of this order cease withdrawal of water from the San Clemente Dam during low flow periods except during an emergency. "Emergency" means a system failure such as a pump failure, main breaks or fires, that jeopardizes the public health and safety. Hot weather demand alone shall not *per se* be an "emergency," but it is recognized that after taking appropriate conservation measures, if levels in the Clear Well fall below nine feet from the bottom of the tank, an emergency may exist and diversions at San Clemente or the utilization of other facilities may be necessary. Nine feet from the bottom of the tank is a minimum requirement established by California Department of Health Services regulations. In all cases, diversions at San Clemente Dam or the utilization of other facilities shall be undertaken in a manner that is least damaging to the fishery resources, and these emergency operations shall be for the shortest practicable time. Cal-Am shall notify and consult with NMFS, FWS, DFG, and the District prior to implementation of emergency operations. If there is no time for consultation, Cal-Am shall notify NMFS, FWS, DFG, and the District of its emergency operation as early as practicable within eight (8) hours after Cal-Am first becomes aware of the emergency. Cal-Am shall notify, by telephone or telefax, the Chief of the Division of Water Rights within 24 hours of the emergency or by noon of the first business day following the incident. For the purpose of this Order, "low flow periods" are defined as times when stream flow in the Carmel River at the Don Juan Bridge (RM 10.8) gage is less than 20 cfs for five consecutive days. Pursuant to its continuing authority over the public trust, the SWRCB may amend this order to modify the definition of "low flow periods" or to add additional flow requirements to protect steelhead in the Carmel River. The Chief of the Division of Water Rights (Chief) is delegated the authority to modify the definition of "low flow periods" and the authority to add flow requirements based on new information, after finding that any proposed change to the order would better protect steelhead in the Carmel River. The Chief is also delegated the authority to modify the flow requirements of this order, in response to any changes in the requirements imposed under the Endangered Species Act, as necessary to prevent this order from being in violation of the Endangered Species Act or unreasonably interfering with efforts to comply with the Endangered Species Act. Prior to making the finding and prior to making any change to the order, the Chief shall provide notice to the parties to this hearing and give them an opportunity to comment on the proposed change.
2. Upon the issuance of this order, Cal-Am shall reduce diversions during low flow periods, from Garzas Wells Nos. 3 and 4, Panetta Wells, the Robles Well, the Scarlett 8 Well, and Los Laureles Wells Nos. 5 and 6. Current diversions are 1-7 days per month at each well. Diversions at these wells shall be reduced to a maximum of two eight-hour days per month except that those wells that currently operate only one eight-hour day per month shall continue to operate at not more than one eight-hour day per month. This reduction shall be undertaken in stages to enable Cal-Am to monitor water quality to ensure that this reduction can be maintained. Monitoring to ensure compliance with California Department of Health Services

requirements and mechanical reliability shall be completed within 15 days of the adoption of this order. To the maximum degree practicable, Cal-Am shall operate these wells at night. In consultation with NMFS, FWS, DFG and the District, Cal-Am can operate the Scarlett 8 well incrementally to meet maximum daily demand after using all other available sources at maximum capacity.

3. Cal-Am shall install, not later than March 31, 2002, a pump that delivers water from the Begonia Zone to the Carmel Valley Village Zone. The "Begonia Zone" is defined to include water well production facilities in AQ3, AQ4 and the Seaside Groundwater Basin. The "Carmel Valley Village Zone" is defined to include all Cal-Am users upstream from the Del Monte Regulating Station. The pump size shall have the capacity, in conjunction with the operation of the Clear Well and the 0.5 cfs flow to be pumped from the Russell Wells, to meet the maximum daily demand of the Carmel Valley Village Zone. This shall minimize the emergency conditions described in Paragraph 1 above. The pump shall be sized within the physical constraints of the vault. Cal-Am shall make arrangements, not later than March 31, 2002, with appropriate contractor(s) to provide and have operational within twenty-four hours of the time that it is needed necessary back-up equipment to insure continued operations in the case of an outage associated with the Del Monte booster station facility.
4. The Russell Wells shall be limited to a combined total instantaneous diversion rate of not more than 0.5 cfs during low flow periods. These actions at the Russell Wells and the modifications at the Del Monte facility shall be evaluated by Cal-Am in consultation with NMFS, FWS, DFG, and the District during the period of January through December 2002. The evaluation shall address and focus on the adequacy of Cal-Am's plumbing system and the Del Monte facility to accommodate (pump) the water supply needs of the Carmel Valley Village Zone from the Begonia Zone (except 0.5 cfs from the Russell Wells).
5. During the low flow periods, except for 0.5 cfs, all water diverted to Carmel Valley Village Zone shall be water that originates from the Begonia Zone (as defined in Paragraph 3 above).
6. If the evaluation provided for in Paragraph 4 above indicates that Cal-Am's plumbing system cannot accommodate (pump) the water supply needs of the Carmel Valley Village Zone from the Begonia Zone, and the Chief of the Division of Water Rights of the SWRCB concurs, Cal-Am shall take all necessary actions to achieve the Phase I Objective by June 1, 2003. Necessary actions for meeting the Carmel Valley Village Zone water needs shall be developed in consultation with the Agencies identified in paragraph 1, and an implementation plan shall be completed by December 31, 2002, to achieve the Phase I Objective by June 1, 2003. The implementation plan shall be submitted to the Chief, Division of Water Rights, by December 31, 2002. The Chief shall review and modify, if necessary, the

implementation plan within 45 days following receipt of the plan. Upon approval of the implementation plan by the Chief, Cal-Am shall take all steps identified in the plan.

### CERTIFICATION

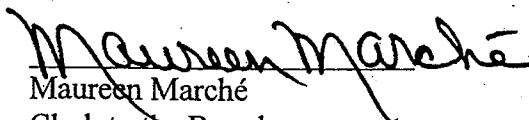
The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 21, 2002.

AYE: Arthur G. Baggett, Jr.  
Peter S. Silva  
Richard Katz

NO: None

ABSENT: None

ABSTAIN: None

  
Maureen Marché  
Clerk to the Board

Maintenance & Water Quality Pumping Schedule\*  
2003

Wells	January	February	March	April	May	June	July	Aug	September	October	November	December
Scarlett Well No. 8	20	17	17	14	19	16	7	18	8	6	17	15
Los Laureles Well No. 5	21	18	18	15	20	17	8	19	9	7	18	16
Los Laureles Well No. 6	22	19	19	16	21	18	9	20	10	8	19	17
Garzas Well No. 3	13 & 14	10 & 11	10 & 11	7 & 8	12 & 13	9 & 10	7 & 8	11 & 12	8 & 9	20 & 21	10 & 11	8 & 9
Garzas Well No. 4	15 & 16	12 & 13	12 & 13	9 & 10	14 & 15	11 & 12	9 & 10	13 & 14	10 & 11	22 & 23	12 & 13	10 & 11
Panetta Well No. 1	6 & 7	3 & 4	3 & 4	7 & 8	5 & 6	2 & 3	14 & 15	4 & 5	15 & 16	6 & 7	3 & 4	1 & 2
Panetta Well No. 2	8 & 9	5 & 6	5 & 6	9 & 10	7 & 8	4 & 5	16 & 17	6 & 7	17 & 18	8 & 9	5 & 6	3 & 4
Panetta Well No. 3	7/14/21/28	4/11/18/25	4/11/18/25	1/8/15/22	6/13/20/27	3/10/17/24	1/8/15/22	5/12/19/26	2/9/16/23	7/14/21/28	4/11/18/25	2/9/16/23

Scarlett Well No. 8, Los Laureles Well No. 5 and Well No. 6 will be pumped one day per month for 8 hours (4:00 p.m. - 12:00 a.m.)  
 Garzas Wells No. 3 and No. 4 and Panetta Wells No. 1 and No. 2 will be pumped 2 days per week, one week per month for 8 hours per day. (4:00 p.m. - 12:00 a.m.)  
 Robles Well No. 3 will be pumped two (2) hours per day, one (1) day per week, four (4) weeks per month. (10:00 a.m. - 12:00 p.m.)

Well sampling for Water Quality purposes may be in addition to above schedules and will be conducted after 10:30 a.m. and before 2:00 p.m. on a quarterly basis.  
 The wells need to run for approximately 20 min for this sampling.

\*During normal operating flow periods (> 20 cfs for 5 consecutive days at the San Juan gauging station), the Company may pump any of the above wells. During low flows (< 20 cfs for 5 consecutive days at the San Juan gauging station) or non-usage, the above schedule will be utilized.