



State Water Resources Control Board



Division of Water Rights
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 Fax: 916.341.5400 ♦ www.waterrights.ca.gov

Linda S. Adams
 Secretary for
 Environmental Protection

Arnold Schwarzenegger
 Governor

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Laurens H. Silver, Esq.
 P.O. Box 667
 Mill Valley, CA 94942

MPWMD

Dear Mr. Silver:

APPLICATION OF CALIFORNIA AMERICAN WATER COMPANY FOR WATER DISTRIBUTION PERMIT TO SERVE MONTEREY BAY SHORES ECORESORT

This letter is in response to your letter dated January 15, 2009 to Victoria Whitney, State Water Resources Control Board (State Water Board) Deputy Director for Water Rights, asking for a determination whether the one-for-one reduction of Condition 2 of State Water Board Order 95-10 applies to the 90 acre-feet per year (AFY) that will be pumped by the California American Water Company (Cal-Am) for the benefit of the Monterey Bay Shores Ecoresort in Sand City. We are also in receipt of your letter to Ms. Whitney dated January 26, 2009 providing your position on this matter in greater detail. Because the State Water Board is currently considering evidence presented at a recent water right hearing with regard to compliance with Order 95-10 and Ms. Whitney is advising the Board on that matter, she has asked me to respond to your request in my capacity as the Chief Enforcement Officer for the Division of Water Rights.

Conditions 2 and 4 of Order 95-10 state:

2. Cal-Am shall diligently implement one or more of the following actions to terminate its unlawful diversions from the Carmel River: (1) obtain appropriate permits for water being unlawfully diverted from the Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed by condition 4 of this Order not this condition, and/or (3) contract with another agency having appropriate rights to divert and use water from the Carmel River.
4. Cal-Am shall maximize production from the Seaside aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest extent. The long-term yield of the basin shall be maintained by using the practical rate of withdrawal method.

I have reviewed the description of this project on the website of the Monterey Peninsula Water Management District (District) and have discussed the project with District staff. The water supply for this project will be up to 90 AFY from the Seaside Goundwater Basin. The Seaside Groundwater Basin Adjudication Judgment of March 27, 2006 allocated 149 AFY to Security National Guaranty, Inc. (SNG) for use on the property of this project. The judgment does not restrict the production of water to the subject parcel through SNG's onsite wells. Water may also be produced from another offsite well owned by another entity and delivered to the SNG parcel so long as the well is within the Seaside Groundwater Basin. For this project, Cal-Am

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will be using its water distribution system to deliver water to this project from Seaside Groundwater Basin wells offsite of this project parcel. Because of the inter-related nature of Cal-Am's water delivery system, it is my understanding that there is a possibility that Cal-Am could supply this project with Carmel River water.

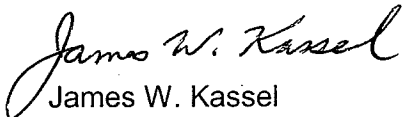
Because the supply of water being supplied from the Seaside Groundwater Basin has been allocated to SNG by the Seaside Groundwater Adjudication, it is my opinion that Order 95-10 does not require Cal-Am to make a one-for-one reduction in its unlawful diversion from the Carmel River. However, Cal-Am should not in any case supply this project with Carmel River water. This would only exacerbate Cal-Am's illegal diversion of water from the Carmel River.

If the District decides to approve this application, I recommend that the District require Cal-Am to implement strict water accounting methods to ensure that any use of Carmel River water does not serve this project. Furthermore, it would be in Cal-Am's interest to include such accounting in its quarterly reports to the State Water Board in order to demonstrate that service to this project does not violate Order 95-10.

I also note that SNG will only be using up to 90 AFY for this project and will have 59 AFY of its groundwater allocation remaining. Cal-Am should consider obtaining the rights to any unused portions of the water allocations from the Seaside Basin groundwater adjudication from SNG and other entities in order to minimize its use of water from the Carmel River. It is my opinion that Cal-Am should undergo these efforts at least in an interim time frame to reduce its unauthorized diversion from the Carmel River until it secures an alternate long term water supply.

Please call me at (916) 341-5446 if you have any questions regarding this matter.

Sincerely,



James W. Kassel
Assistant Deputy Director for Water Rights

cc: Darby Fuerst, General Manager
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Victoria Whitney, State Water Board Deputy Director for Water Rights

John O'Hagan, Manager, Division of Water Rights Enforcement Section

Reed Sato, Director, State Water Board Office of Enforcement