

Submitted on 8/16/2011
Comments made under
item 16.

Marc Beique

1209 Harrison St., Monterey, CA 93940 Tel (831) 373-0922 E-mail: marc@beique.com

August 15, 2011

**COMMENTARY TO MPWMD
CONCERNING SWRCB COD Order 2009-06
AND
PROPOSAL TO PURCHASE CALIFORNIA AMERICAN WATER CO.**

1. **BENEFICIAL HUMAN USE OF WATER:** It is clear with respect to the SWRCB, Cal-Am, and the Carmel River that our government has clearly discounted the needs of the human population in favor of the fish. It is well within the rights of the SWRCB to award the "public trust resources" of the Carmel River water rights to us (MPWMD), instead of to the fish. Article X, section 2 of California's 1928 Constitution provides, in part:

"The right to water or to the use of flow of water in or from a natural stream or water course in this state is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable method of use or unreasonable method of diversion of water."

- a. Incredibly, SWRCB essentially dismisses all but the absolute minimum water required for public health and safety with the following statement:

"The quantity of water required to protect public health and safety will vary from system to system and will vary, over time, within a particular system depending upon how the water supply system is built, modified and operated, and upon measures taken by the end users of water to conserve the use of water. Fourteen years have passed since Order 95-10 was adopted, making it appropriate to consider requiring Cal-Am to further reduce its illegal diversions from the river, even without a substitute supply."

Is this minimum survival quantity of water the United Nations recognizes to sustain life? 50 liters per day? This is about 2,500 AF for the 44,000 Cal-Am customers, about the same amount as Cal-Am's legal water rights. Why, exactly, has SWRCB taken this position with us? Will we allow ourselves to be pushed back to the status of a third-world country by our own government? Why does MPWMD allow this position to go unchallenged?

2. **GROWTH:** This is the area of greatest double-speak by SWRCB (and MPWMD, with a long history of involvement in population planning-and not water supply development.) For example:
"Accordingly, we conclude that water should not be diverted from the river for growth and that the quantity of water that is illegally diverted by Cal-Am should be reduced over a period of years until illegal diversion from the river is ended."
AND
"Further, we conclude that Cal-Am should be prohibited from increasing diversions from the river and should be required to reduce the quantity of water diverted from the river for existing service connections."

August 15, 2011

Comments on SWRCB COD Order 2009-06 and Cal-Am Purchase Proposal

Page 2 of 5

The State is essentially saying in these paragraphs that Carmel River water is not OK for beneficial uses, and that all beneficial human uses related to existing service connections shall be subordinated to the higher purpose of the "public trust". This is patently unfair, and flies in the face of civilized behavior... This two-faced representation comes at the request of non-governmental and quasi-governmental organizations and special-interest groups listed as "Interested Parties" on the face of the Cease and Desist Order:

Public Trust Alliance.
Carmel River Steelhead Association.
Ventana Chapter of the Sierra Club.
California Sportfishing Protection Alliance.
Planning and Conservation League
California Salmon and Steelhead Association
National Marine Fisheries Service

Remember, "growth" is the wedge that was used to sway the misinformed populace to vote "no" to a bond measure for a new dam. This bond measure never required an election by law; this was merely a convenient way for the nay-sayers to have their way.

3. **FISH:** SWRCB recognizes that Cal-Am supports the New Los Padres Project proposed by the District as one means for providing a reliable and legal supply of water for its customers. Finally, Cal-Am has cooperated with the District, Department of Fish and Game, and others to develop and implement measures to mitigate the effect of its diversions on the instream resources of the river. Nonetheless, the SWRCB has the audacity to state:

"We find that Cal-Am's illegal diversions continue to have an adverse impact on fish, wildlife and the riparian habitat of the Carmel River, centered on the argument that several miles of the threatened steelhead's critical habitat, the river, is dry five to six months of the year."

- a. Not stated clearly by the SWRCB in this statement is they have determined that well water is actually pumped from a subterranean stream. This portion of the Carmel River is the first and only river in CA to have this distinction. Why?
- b. Not stated in the SWRCB argument is that the dry river miles are generally downstream from both existing dams, in the area of highest underground pumping. Not stated by SWRCB is the fact that the fish generally do not swim around either of the two dams, the lower of which is scheduled for removal. No fish swim around the upper Los Padres dam, as there is no fish ladder.
- c. Also not stated by SWRCB is that there are other remedies to this situation in addition to a "cease-and-desist order". The most obvious of these is the construction of the New Los Padres Reservoir, ¼ mile downstream of the existing dam (which the fish cannot swim over). This new dam would provide consistent year-round stream flows for the fish and the rest of the riparian environment, especially during critical spawning times. Together with the planned removal of the San Clemente Dam, another quarter of the entire Carmel River watershed would be naturally re-opened to the fish, along with a much better

August 15, 2011

Comments on SWRCB COD Order 2009-06 and Cal-Am Purchase Proposal

Page 3 of 5

guarantee of stream flows required by them. This is something that no desal project, no ASR project, not any other project, except for a dam, can do.

- i. Why don't we (MPWMD) do this?
- ii. Where is the State's continued support of the New Los Padres Reservoir? The SWRCB is as fickle as the arguments proposed by the special interest groups.
- iii. Why doesn't the environmental community support this option, since it is in the best interests of the fish?
- iv. Why are we going to spend \$400 million dollars on a solution that will be a perpetual drain on our economic resources, and hugely increase our carbon footprint, when we can accomplish the same legal water, with better ecological results, at half the cost? Can you say GROWTH?

4. **STANDING UP FOR WHAT IS RIGHTFULLY OURS:** There are three course of action we can take, highlighted in yellow:

- a. The SWRCB COD states that all conditions of SWRCB Order 95-10 remain in effect, except as modified by COD. This includes the following enforcement options:
 - i. Trespass: \$500/day.
 - ii. Failure to comply with COD: \$1,000/day.
 - iii. Injunctive relief.
- b. Maximum Penalty per COD: \$1,500/day=\$550,000 year=\$13 year per each of Cal-Am's 44,000 customers. Compare this to the minimum \$23 month increase in proposed desal water bills (per CPUC Ratepayer Advocate) for the minimum 4 ccf (400 cubic feet) month customer. **LET'S PAY SWRCB AND BE DONE WITH IT.**
- c. Additional Penalties, EPA: Threatened species, up to \$50,000, with one year in prison, and civil penalties of up to \$25,000 per taking. Given 20,000 hatchlings in the river each year, this could be a large number (\$500,000,000 per year).
 - i. **HOWEVER**, the EPA cannot impose fines for **ACTIONS TAKEN IN SELF DEFENSE**. Cal-Am and we, the customers of Cal-Am, need to state immediately that all of our future actions in this community involving end-use of Cal-Am produced water, including drinking, bathing, eating, sanitation, sewerage, irrigation, gardening, industrial processes, recreation, cooling and dust control, are done in **SELF DEFENSE** of those certain unalienable rights of life, liberty and the pursuit of happiness.

It is long overdue that our government begins to service the majority of the people in this matter, not the privileged, wealthy few of the special-interest groups directing the directors of the MPWMD.

Since the public trust resources of the Carmel River cannot be awarded to Cal-Am (a private company), why not assign those rights to the MPWMD, and give that step-child a purpose? We should no longer tolerate this nonsensical situation. It is time that we take back our government. This is a call to civil disobedience. Go home and turn your taps on and let the water run. Let's see if OUR government will turn it into blood.

5. **MPWMD AND THE PURCHASE OF CAL-AM:**

1. MPWMD has not done their job in over 30 years. Why and when was the District chartered? The answer to that question has been turned on its head by the many special interests groups controlling the Board. Any answer to this question that suggests anything

August 15, 2011

Comments on SWRCB COD Order 2009-06 and Cal-Am Purchase Proposal

Page 4 of 5

other than the creation of an adequate water supply is simply false rhetoric—lies repeated over and over to the point that you think it the truth. MPWMD has spent \$150 million dollars, but have not created any new water. Only Cal-Am has functioned as a true utility in these 30 years—only they have provided us with water.

2. The MPWMD house is not in order; what assurances do we have that MPWMD's actions with respect to Cal-Am actions are going to be helpful? We have no assurances.
3. Where is MPWMD's sworn behavior to act in the public best interests? Why are you picking this \$750 million??? fight with Cal-Am, when the problem and its solutions are clear?
4. Not clear you say? Why isn't; MPWMD fighting for the people that pay your bills? All we ever get back from MPWMD is study this and study that and, oh, by the way, Fish!
5. Let's talk fish. Do the fish currently swim over the existing Los Padres Dam? NO. Will they ever? NO. Can they swim over a new larger dam ¼ mile downstream? NO? What exactly, then, is NOAA's point? Why hasn't this water district gone to bat for us? Removal of the San Clemente Dam will open 1/4 or more of the Carmel river watersheds to the fish. A new dam could provide supplemental water for the habitat, especially in dry years. Why aren't you fighting NOAA and the SWRCB instead of yet another hare-brained tactic "Let's buy Cal-Am?????" Why are the special interests, including the environmentalist nay-sayers and the fish, more important than us? Is it their money and the power they give you?
6. Why aren't the other 15% of the Carmel river users being hounded for their fair share of the river's maintenance? Why is it only us Cal-Am customers that are forced to pay for work that benefits not just us, but all of Carmel Valley and all of California?
7. Speaking of protection of the public interest, California's 1928 Constitution provides, in part:
"The right to water or to the use of flow of water in or from a natural stream or water course in this state is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable method of use or unreasonable method of diversion of water."
Why isn't this district working in our interest to extend our Constitutional right to the use of the Carmel River?
8. Why isn't MPWMD demanding that the desal project be put to the public vote, just as the dam was? It's not your project? Why isn't it your project? How is it that water can be imported into the District? What about your rules and regulations? Where is your backbone?
9. MPWMD knows that the public was "convinced" not to pay \$100 million for a "GROWTH-INDUCING" dam. Why should we pay \$450 million for a white elephant of a desal plant (ask Santa Barbara) that will not allow growth, or development of lots of record, or children, or grandchildren? This desal plant will be run by electricity generated at Moss Landing, using Canadian natural gas imported through 2 huge 36" high pressure gas pipelines (go look). Talk about a carbon footprint-and forever. Where is the smug environmentalism in this? Where are the no-growthers now? Where is the sustainability? Where is the responsible action on the part of MPWMD? (Oh, that's right, you already have effectively stopped growth—re latest census—and that was your true goal all along.)

August 15, 2011

Comments on SWRCB COD Order 2009-06 and Cal-Am Purchase Proposal

Page 5 of 5

10. So—the MPWMD is not paying to help remove the San Clement Dam. But we Cal-Am rate payers are. We are also paying for the upkeep of the Carmel River. We are also being asked to spend another \$400 million for desal. That's at least one-half billion dollars. And now MPWMD is entertaining the thought of purchasing Cal-Am for \$750 million? We can't allow this to happen: we simply cannot afford these exorbitant costs.
11. We need some 20,000 AF annually for our community. This year 100,000 AF have poured through the Carmel River. Average years, maybe a third of that. And we have to allocate all to the fish? This is not at all responsible. The MPWMD is not working for we the people. I will not support your unreasonable special interests efforts to waste more of our money. Get off the let's buy Cal-Am wagon.
12. Government that does not work for the people is not government. Get us some water—and more than the 50 liters per day that the UN says is enough. Enough studies have been done. Decide and do—but make it reasonable.

Marc