

STAFF PRELIMINARY WORKING DRAFT FOR INTERNAL USE ONLY  
PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 6254(a)  
DRAFT 3/10/2015 10:40 AM

**Proposal to Amend  
SWRCB Order WR 2009-0060 (Carmel River CDO)**

- A. Good Cause Exists to Modify WRO 2009-0060: California American Water (“CAW”) and other Parties have diligently and aggressively implemented measures to comply with WRO 2009-0060 (“CDO”). CAW and other Parties have: (1) implemented efficiency and conservation measures to control and reduce customer demand and system losses within CAW’s Monterey district, such that the community is currently outperforming targets for production of Carmel River water set in the CDO; (2) diligently pursued the Monterey Peninsula Water Supply Project (“MPWSP”), which will supply the replacement water supply necessary to eliminate all unauthorized diversions from the Carmel River; (3) developed, permitted and implemented projects to replace and supplement Carmel River diversions subject to the CDO<sup>1</sup>; and (4) permitted and implemented measures to enhance and improve conditions for fish and wildlife resources in the Carmel River watershed, and to minimize or avoid impacts to fish and wildlife that could result from extension of WRO 2009-0060 timelines. In consideration of these activities and the further commitments described below, CAW and other Parties support the State Water Resources Control Board’s (“SWRCB’s”) finding of good cause to modify the CDO as requested.
- B. Modifications to WRO 2009-0060: CAW is currently meeting or has met all of the conditions of the CDO, but factors beyond CAW’s control make it unlikely that several future conditions can be met. Therefore, in coordination with other Parties, CAW will submit a request for the following modifications to the CDO:
1. A four-year extension of the deadline set forth in ordering Condition no. 1, from December 31, 2016 to December 31, 2020.
  2. Add a process to Condition no. 1 delegating to the Executive Director authority to administratively extend the time for compliance with Condition no. 1, for good cause shown.
  3. Amend Condition no 3.a.(2) to state that, effective Water Year 2015-2016, CAW shall further reduce unlawful diversions from the river by an additional 1,000 acre feet annually (“afa”) from the existing cumulative reduction level in place for Water Year 2013-2014 under Table 1 of the CDO. *See* Attachment 1. For good cause shown, the Executive Director may exercise discretion to relax this diversion reduction to address circumstances that may arise in future years. A showing of good cause to justify a modification of this diversion reduction shall include, but shall not be limited to, circumstances in which CAW, MPWMD, and/or MPRWA submit credible evidence that: (1) the existing demand or projected demand within the CAW system is likely to exceed the cumulative reduction levels in effect, or projected cumulative

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<sup>1</sup>These projects include: Seaside Middle School Aquifer Storage and Recovery (“ASR”) Well #3 (completed up to an additional 500 acre feet per annum); Acquisition of additional rights to legally appropriate Carmel River water via Permit 21330 (up to 1488 acre feet per annum); Seaside Middle School ASR Well #4 (in process, up to 500 acre feet per annum).

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reduction levels to take effect, as set forth in Table 1 of the CDO; and (2) CAW has exercised all reasonable care, and the MPRWA and MPWMD have provided all reasonable cooperation and support, to meet the milestones set forth in Condition no. 3.a.(2)(i). CAW, MPRWA and/or MPWMD shall have the right to request the full SWRCB to reconsider any determination by the Executive Director under this Condition no 3.a.(2).

4. Replace Attachment 1 to the CDO with Attachment 1 to this Proposal to Amend.
5. Add a Condition no. 3.a.(2)(i) stating that the reduced diversion level set forth in amended Condition no 3.a.(2) will be maintained, i.e., no additional annual reduction in diversions will be required under the CDO, if CAW meets the following milestones as they accrue:

	<b>Milestone</b>	<b>Deadline</b>
a.	Substantial completion of downstream fish passage facilities at the Los Padres Dam <sup>2</sup> , meaning facilities are sufficiently complete and appropriately permitted to allow for their operation as intended	September 30, 2016
b.	Start of construction for any of the CAW Components <sup>3</sup> of the MPWSP, meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work <sup>4</sup>	September 30, 2017
c.	(1) Drilling activity for at least one MPWSP source water production well <sup>5</sup> 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 <sup>6</sup>	September 30, 2018
d.	(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	September 30, 2019

<sup>2</sup>CAW owns and operates Los Padres Dam at approximately River Mile 24.8 on the Carmel River. CAW has made various improvements to accommodate upstream fish passage over Los Padres Dam. Currently, when the lake elevation falls below the dam’s spillway crest, no downstream fish passage corridor exists. To improve downstream fish passage opportunity, CAW and various stakeholders have agreed that the following downstream fish passage facilities should be constructed: behavioral guidance system; floating weir surface collector; fish bypass conduit; bypass access portals; and bypass outfall.

<sup>3</sup>For purposes of this proposal the CAW Components of the MPWSP include: source water production wells; desalination plant; brine disposal system; and transmission pipelines.

<sup>4</sup>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; transmission pipeline installation; and/or presence of source water well drilling equipment on-site.

<sup>5</sup>Not including the MPWSP Test Well completed in 2015.

<sup>6</sup>For transmission pipeline installation CAW will prioritize installation of the “Monterey Pipeline and other ASR related improvements,” which will facilitate increased ASR diversion during high flows and other improved operations that will increase the amount of water in the Carmel River during dry months. See Paragraph C.1., below.

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	basins complete; (3) Construction of MPWSP filtered water tanks and finished water tanks complete; (4) 50% of MPWSP transmission pipelines installed based on total length, including 100% installation of the “Monterey Pipeline and other ASR related improvements” described in Footnote 6 and Paragraph C.1., below	
e.	Substantial completion of the CAW Components of the MPWSP, meaning the CAW Components are sufficiently complete and appropriately permitted to allow delivery of MPWSP produced, potable water to CAW’s Monterey Main system, no further CAW diversions of Carmel River water without valid basis of right	December 31, 2020

6. Add a Condition no. 3.a.(2)(ii) stating that, should CAW fail to meet any milestone described in new Condition no. 3.a.(2)(i) by its corresponding deadline, the reduced diversion level set forth in amended Condition no 3.a.(2) shall be further reduced by 1,000 afa. Any further reduction(s) required under this new Condition no. 3.a.(2)(ii) shall remain in force until the corresponding milestone is achieved. If a milestone is not achieved by its original deadline, but is subsequently achieved, the further reduction required in the water year in which the milestone is achieved shall be prorated and assessed at the end of that water year, and shall no longer be required for subsequent water years.<sup>7</sup>
  
7. Add a Condition no. 3.a.(2)(iii) stating that, if CAW fails to meet any milestone described in Condition no. 3.a.(2)(i), the corresponding further reduction described in new Condition no. 3.a.(2)(ii) shall be suspended if CAW, the Monterey Peninsula Regional Water Authority (“MPRWA”) and the Monterey Peninsula Water Management District (“MPWMD”):
  - a. Make a written joint notice to the Executive Director, with copies to counsel for the Sierra Club and the Carmel River Steelhead Association, no later than 60 days after the associated milestone deadline; and
    - i. The notice includes credible information demonstrating that CAW has exercised all reasonable care, and the MPRWA and MPWMD have provided all reasonable cooperation and support to meet the milestone, and the milestone deadline was missed due to circumstances beyond the control of CAW, MPRWA and/or MPWMD;
    - ii. If CAW, MPRWA, and MPWMD cannot agree on a joint notice, then any of these entities may submit an individual notice or notices following the procedure and form described in this Paragraph B.7. If such individual notice(s) are submitted, or the Executive Director does not agree with a joint notice submitted under this Paragraph B.7, the SWRCB shall determine whether to suspend the

<sup>7</sup>For example, if CAW failed to complete construction of downstream fish passage facilities at the Los Padres Dam by September 30, 2016, but completed these facilities by June, 2017, 75% (9/12<sup>ths</sup>) of the corresponding 1,000 afa reduction (i.e., 750 afa) would be required as a reduction for water year 2016-2017. No reduction based on missing this milestone would be required for water year 2017-2018 or any future water years.

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reduction that corresponds to the missed milestone. If any notice(s) are submitted following the form and process described in this Paragraph B.7, further reductions described in Condition no. 3.a.(2)(i) shall be tolled pending determination by the SWRCB or the Executive Director.

8. Amend Condition 3.a.(5) to state: "Water produced from new sources developed pursuant to Condition 5 of this order shall be subtracted from the base" (currently includes incorrect cross-reference to Condition no. 4 rather than Condition no. 5).
  9. Amend the last sentence of Condition no. 3.a.(6) to state as follows: "After December 31, 2020, CAW shall divert water from the river to supply the holders of PBC's water entitlement only from CAW's legal water rights."
  10. Add a Condition 3.a.(7) stating that, should CAW be able to identify suitable and willing transacting parties, CAW will use reasonable additional efforts to acquire supplemental water rights at acceptable costs, and/or will pursue other water acquisition and water right changes in order to increase flows in the Carmel River, and/or to decrease CAW's unauthorized diversions. Such acquisitions or water right changes may include leases and purchases of water rights along the Carmel River on a temporary or permanent basis, and/or water right change approvals or permits (permanent or temporary) from the SWRCB to increase opportunities to increase lawful diversions in order to reduce unauthorized diversions during periods of lower flow on the Carmel River. CAW shall quantify supplemental water supplies and increased flows developed pursuant to this Condition and such supplemental water and/or increased flows will be credited towards any further reduction required under new Condition no. 3.a.(2)(ii) (excepting supplies developed to satisfy Conditions 5 and 3.a.(5)).
  11. Amend Condition no. 3.c. to add the following sentence after the last sentence: "Any ASR water stored in and recovered from the Seaside Groundwater Basin in excess of the (a) Estimated ASR Project Operational Yield and (b) the Estimated Small Project Output, as set forth in Table 1, shall be credited towards any further reduction required under new Condition no. 3.a.(2)(ii)." In addition, Condition no. 3.c. should be modified to extend the deadline for written submissions to recover ASR water to "not later than May 31 of each year", to allow CAW and the fisheries agencies appropriate time to consider information made available at agency meetings that occur after May 1 of each year.
- C. Requests for Assistance by SWRCB. Additionally, CAW and other Parties request that the SWRCB commit to use reasonable efforts to assist with the following items:
1. Upon issuances of a Certificate of Public Convenience and Necessity ("CPCN") from the CPUC, provision of support for CAW's request(s) to the California Coastal Commission and other agencies with permitting jurisdiction for expedited permit issuance for the "Monterey Pipeline and other ASR related improvements," which will facilitate increased ASR diversion during high flows and other improved operations that will increase the amount of water in the Carmel River during dry months;

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2. Provision of support in connection with an application by the MPWMD and the Monterey Regional Water Pollution Control Authority (“MRWPCA”) to place the groundwater replenishment (“GWR”) component of the MPWSP on the State Revolving Fund financing priority list;
  3. Provision of support in connection with a request that the SWRCB Division of Financial Assistance award one percent (1.000%), thirty-year loan proceeds from the program announced March 19, 2014 for water recycling projects for the MPWMD/MRWPCA groundwater replenishment project, provided an application is submitted by December 2, 2015;
  4. Provision of support and prioritization in connection with the MPWMD/MRWPCA GWR receipt of grant funds pursuant to Chapter 9 of AB 1471 (2014 Proposition 1); and
  5. Provision of support , including expedited review, in connection with water rights Application 32263 of Monterey County Water Resources Agency, and any amendments thereto, in order to facilitate the MPWMD/MRWPCA groundwater replenishment project
- D. In consideration of the foregoing, CAW and other Parties commit to implement, or have implemented, the following measures –
1. **Efficiency and Conservation Measures** - CAW and other Parties have implemented the following measures to control and reduce water demand and system losses within CAW’s service area:
    - a. CAW has implemented, and will continue during the CDO period, the current moratorium on new service connections within its Monterey district (see Revised C.P.U.C. SHEET NO.6509-W);
    - b. CAW and the MPWMD will continue customer water conservation and efficiency programs, including:
      - i. programs targeting high use commercial customers such as laundries, hotels and car washes;
      - ii. programs targeting reductions in outdoor irrigation including replacement of irrigated turf with drought tolerant landscaping or artificial turf, incentives for installation of weather-based irrigation controllers, and mandatory installation of rain sensors on irrigation systems<sup>8</sup>; and

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<sup>8</sup>MPWMD Regulation XIV.

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- iii. mandatory water efficiency requirements for all non-residential customers and certain residential customers.<sup>9</sup>
  - c. CAW will continue programs to detect and reduce non-revenue system losses, including:
    - i. replacement of older water mains and service lines in areas shown to be more leak prone;
    - ii. water meter replacement;
    - iii. active leak detection;
    - iv. technological solutions to manage lost water; and
    - v. operational fixes such as pressure reduction.
  - d. CAW will submit an application to modify revised Rule No. 14.1.1, Water Conservation and Rationing Plan for the Monterey District to the California Public Utilities Commission (“CPUC”) for approval<sup>10</sup>.
- 2. Alternative and Supplemental Water Supplies** – CAW and other Parties have developed and/or are implementing projects to provide replacement and supplemental water supplies to CAW’s Carmel River water supplies subject to the CDO:
- a. CAW has submitted an application to the CPUC for approval of the MPWSP, which will allow CAW to eliminate all unauthorized diversions from the Carmel River in full compliance with the CDO. In September 2014 Governor Jerry Brown signed SB 936, authored by Senators Bill Monning and Anthony Cannella, with Assemblymen Mark Stone and Luis Alejo. This legislation will allow the MPWSP to utilize partial public financing if it is available at a lower rate than conventional, private project financing. The MPWSP includes the following components:
    - i. Desalination Plant and associated source wells and conveyance system, which will produce up to 9,752 acre feet per annum for system demand;
    - ii. ASR of water lawfully diverted from the Carmel River and stored in the Seaside Groundwater Basin, which may allow for an annual average storage of 1,300 acre feet; and

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<sup>9</sup>MPWMD Regulation XIV.

<sup>10</sup>Rule 14.1.1 was reviewed by the CPUC in its “Decision Authorizing Modifications to the Rationing Plan in Rule 14.1 (D.09-07-023)” of 2007. Rule 14.1.1 has been implemented by CAW in coordination with MPWMD, though its Ordinance 137. CAW and MPWMD are developing further refinements to this plan.

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- iii. GWR, which is a project that could produce up to 3,500 acre feet per annum. CAW is pursuing GWR as an option in conjunction with, and with significant effort on funding and other aspects of the project by, MPWMD and MRWPCA.
  - b. CAW has also pursued various smaller projects to make use of lawful diversions from the Carmel River, including pursuing a permit for diversion under Table 13 of SWRCB D. 1632 (July 6, 1995), and supporting and facilitating changes to other water rights to permit beneficial uses within CAW's service area; and
  - c. CAW and other Parties have supported additional water development projects within the CAW service area, including:
    - i. Efforts by Pacific Grove to recycle and reuse municipal wastewater on city-owned golf course and cemetery; and
    - ii. Efforts by Pacific Grove to capture and use storm water for non-potable uses.
3. **Fish and Wildlife Protection and Enhancement Measures** – CAW and other Parties have developed and implemented measures to protect and enhance fish and wildlife resources in the Carmel River watershed, and to avoid or minimize effects to fish and wildlife associated with extension of the CDO deadline:
- a. Pursuant to a 2009 agreement between CAW, the National Oceanic and Atmospheric Administration (“NOAA”) and the California Department of Fish and Wildlife (“CDFW”), as amended in 2014, CAW made a one-time payment of \$3.5MM in 2009, annual payments of \$1.1MM per year for 2010 through 2013, and has committed to make annual payments of \$1.1MM per year through 2016 to the California Coastal Conservancy (“CCC”) for environmental protection and enhancement projects in the Carmel River watershed;
  - b. Provided that NOAA and CAW mutually agree to terms for extending the 2009 agreement described in Paragraph 3.a., above, CAW is committed to making additional annual payments of \$1.1MM, to be pro-rated for any partial years until unpermitted diversions of water from the Carmel River are replaced by legal sources of water, for use on projects during the period of the requested extension of the CDO deadline;
    - i. Funding and administrative efforts will focus, with the support of CAW and other Parties, on projects that can be implemented during the extension period to mitigate potential effects of the extension;
    - ii. To the extent MPWMD receives funding to carry out or implement mitigation measures that arise out of the 2009 agreement described in 3.a. above, MPWMD will use best efforts, including by fully cooperating with NOAA, CDFW, CCC, and the Carmel River Steelhead Association, to identify, develop, then implement

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projects that will convey mitigation benefits for the Carmel River before December 31, 2020.

- c. CAW has permitted, initiated construction and is currently over half way done with construction activities to reroute the Carmel River and remove the San Clemente Dam. Status of the various construction activities include complete excavation of the reroute cut, nearly complete installation of the diversion dike and the moving of over one million cubic yards of rock and sediment;
- d. Subject to final approval from CDFW, NOAA, and any other agencies with permitting jurisdiction, CAW is committed to implementing up to \$2.5MM in other projects on the Carmel River to improve fish passage and habitat. These include, in order of priority and estimated costs: additional spawning gravel injections below San Clemente Dam using excess gravel from the San Clemente Dam removal project or from Los Padres reservoir should there be an insufficient quantity or type at San Clemente (\$0.2MM); improvements to the existing upstream fish passage ladder and trap at Los Padres Dam (\$0.2MM); installation of a fish screen at the lower outlet pipe on Los Padres Dam (\$0.8MM); a pit tagging program (\$0.8MM); and a through-reservoir survival study for Los Padres Reservoir (\$0.5MM). Should the higher priority projects exceed the estimated amounts, funding will be pulled from the lower priority projects until the entire \$2.5MM is utilized. Additionally, the estimated cost from the above projects may be used to supplement other related projects occurring on the Carmel River (i.e., pit tagging work being contemplated by MPWMD).
- e. In July 2013 CAW requested the CPUC's approval to fund a study to determine the ultimate disposition of the Los Padres Dam and Carmel River;
  1. If the CPUC approves expenditure of these funds before the close of the second quarter of 2015, CAW expects to:
  2. Fund MPWMD to continue independently studying the fate of the Los Padres Dam. CAW will contribute up to \$1.0MM minus CAW staff time of \$24K per year to assist MPWMD. Studies will include evaluating upstream steelhead passage at Los Padres Dam, whether the public trust resources of the Carmel River will be adversely affected or enhanced by removal or alteration of Los Padres Dam, what options exist to maintain physical existing surface storage in Los Padres Reservoir, and analysis of the potential geomorphic effects of a resumption or increase of the natural flow of sediment;
  3. Work with MPWMD to Develop the scope of work and award the feasibility study to a qualified environmental consultant by the close of the third quarter of 2015; and
  4. Complete the study during 2018.



**EXHIBIT 16-A**

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- f. CAW will continue to fund mitigation measures pursuant to MPWMD's current mitigation program through December 31, 2020.

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**EXHIBIT 16-A**

**ATTACHMENT 1**

<b>TABLE 1</b>										
<b>PROJECTED REDUCTIONS IN ILLEGAL DIVERSIONS FROM THE CARMEL RIVER (AF)</b>										
<b>Water Year (Oct - Sep)</b>	<b>Base Amount</b>	<b>Mandatory Cumulative Annual Reduction</b>	<b>Potential Additional Rampdown if Condition 3 a.(2)(i)</b>	<b>Estimated ASR Project Operational Yield</b>	<b>Estimated Sand City Desal Plant</b>	<b>Estimated Small Project Output</b>	<b>Estimated Water Supply Project Output</b>	<b>Total to Base Amount</b>	<b>Total Estimated Amount Diverted from Carmel River</b>	<b>Estimated Amount Diverted w/o Valid Basis of Right</b>
2009-2010	10,978	549	0	145	75	0	0	769	10,209	6,833
2010-2011	10,978	549	0	145	290	0	0	984	9,994	6,618
2011-2012	10,978	670	0	145	280	0	0	1,095	9,883	6,507
2012-2013	10,978	791	0	145	270	0	0	1,206	9,772	6,396
2013-2014	10,978	912	0	145	260	0	0	1,317	9,661	6,285
2014-2015	10,978	1,912	0	145	250	0	0	2,307	8,671	5,295
2015-2016	10,978	1,912	0	145	240	0	0	2,297	8,671	5,295
2016-2017	10,978	1,912	1,000	145	230	0	0	2,287	8,671	5,295
2017-2018	10,978	1,912	1,000	145	230	0	0	2,287	8,671	5,295
2018-2019	10,978	1,912	1,000	145	230	0	0	2,287	8,671	5,295
2019-2020	10,978	1,912	1,000	145	230	0	0	2,287	8,671	5,295
2020-2021	10,978	1,912	1,000	145	230	0	2,688	2,287	4,705	1,329
2021-2022	10,978	n/a	n/a	145	230	0	10,753	2,287	3,376	0