

## EXHIBIT 16-B

### Attachment 1 to Application to Modify Order WR 2009-0060

DRAFT – 06/19/15

#### ORDER

**NOW, THEREFORE, IT IS ORDERED THAT** Cal-Am shall cease and desist from the unauthorized diversion of water from the Carmel River in accordance with the following schedule and conditions.<sup>1</sup>

1. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2016. The Executive Director is authorized to administratively extend this deadline for good cause shown.
2. Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.<sup>2</sup>
3. At a minimum, Cal-Am shall adjust its diversions from the Carmel River in accordance with the following:
  - a. Commencing on October 1, 2009,<sup>3</sup> Cal-Am shall not divert more water from the river than the base of 10,978 afa,<sup>4</sup> as adjusted by the following:
    - (1) Immediate Reduction: Commencing on October 1, 2009, Cal-Am shall reduce diversions from the river by 5 percent, or 549 afa.
    - (2) Annual Reductions: Commencing on October 1, 2011, the base shall be further reduced by 121 afa per year through savings that will accrue from reduced system losses, the retrofit program, the reduction of potable water used for outdoor irrigation, demand reduction and similar measures. The 121 af reduction shall be cumulative. For example, 121 af shall be reduced in the first year and 242 af shall be reduced in the second year. Commencing ~~on October 1, in Water Year 2015-2016, the annual cumulative~~ reductions level shall increase by an additional to 2421,000 af per year. The 242 1,000 af per year reduction shall also be from the cumulative reduction level in place as of October 1, 2015, and this cumulative reduction shall be maintained through December 31, 2020, subject to the conditions in this order. Annual reductions shall continue until all unlawful Cal-Am diversions from the river have been terminated.

For good cause shown, the Executive Director may exercise discretion to modify required diversion reductions under this condition 3.a.(2) 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 Cal-Am, Monterey Peninsula Water Management District (MPWMD), and/or Monterey Peninsula Regional Water Authority (MPRWA) submit credible evidence that: (i) the existing demand or projected demand within the Cal-Am system is likely to exceed the cumulative reduction level in effect, or a projected cumulative reduction level to take effect, as set forth in Revised Table 1; and (ii) Cal-Am has exercised all reasonable care, and the MPWMD and MPRWA have provided all reasonable cooperation and support, to meet the milestones set forth in Condition no. 3.a.(2)(i). Cal-Am, MPRWA and/or

<sup>1</sup> Attachment 1 to this order, "Revised Table 1, Projected Reductions in Illegal Diversions from the Carmel River," shows the reductions in illegal diversions from the Carmel River that should result from conditions 1, 2 and 3 of this order.

<sup>2</sup> Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use. Metering each unit of a multiunit building tends to increase accountability in the use of water and the effectiveness of water conservation requirements.

<sup>3</sup> Each water year runs from October 1 to September 30 of the following year.

<sup>4</sup> Cal-Am diverts 3,376 afa under legal rights and, on average, 7,602 afa without a basis of right. (3,376 + 7,602 = 10,978 afa).

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MPWMD shall have the right to request the full SWRCB to reconsider any determination by the Executive Director under this Condition 3.a.(2).

(i) \_\_\_\_\_ The cumulative diversion reduction level set forth in this condition 3.a(2) shall be maintained, with no additional diversion reductions required under this Order, provided Cal-Am meets the following milestones as they accrue:

	<b><u>Milestone</u></b>	<b><u>Deadline</u></b>
<b><u>a.</u></b>	<u>Substantial completion of downstream fish passage facilities at the Los Padres Dam<sup>5</sup>, meaning facilities are sufficiently complete and appropriately permitted to allow for their operation as intended.</u>	<u>September 30, 2016</u>
<b><u>b.</u></b>	<u>Start of construction for any of the Cal-Am Components<sup>6</sup> of the MPWSP, meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work<sup>7</sup>.</u>	<u>September 30, 2017</u>
<b><u>c.</u></b>	<u>(1) Drilling activity for at least one MPWSP source water production well<sup>8</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>9</sup>.</u>	<u>September 30, 2018</u>
<b><u>d.</u></b>	<u>(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 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” (See Footnote 9.)</u>	<u>September 30, 2019</u>
<b><u>e.</u></b>	<u>Substantial completion of the Cal-Am Components of the MPWSP, meaning the Cal-Am Components are sufficiently complete and appropriately permitted to allow delivery of MPWSP produced, potable water to Cal-Am’s Monterey Main system, no further Cal-Am diversions of Carmel River water without valid basis of right</u>	<u>December 31, 2020</u>

<sup>5</sup> To improve downstream fish passage opportunity, Cal-Am and various stakeholders have agreed that the following downstream fish passage facilities should be constructed at Los Padres Dam: behavioral guidance system; floating weir surface collector; fish bypass conduit; bypass access portals; and bypass outfall.

<sup>6</sup> For purposes of this proposal the Cal-Am Components of the MPWSP include: source water production wells; desalination plant; brine disposal system; and transmission pipelines.

<sup>7</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>8</sup> Not including the MPWSP Test Well completed in 2015.

<sup>9</sup> For transmission pipeline installation Cal-Am 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.

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- (ii) In the event that Cal-Am fails to meet any milestones described in condition 3.a.(2)(i) by the corresponding deadline, the cumulative reduction level set forth in this condition 3.a.(2) shall be further reduced by an additional 1,000 af per year. Such additional diversion reductions shall continue 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 determined and prorated at the end of that water year, but shall not be required in subsequent water years.<sup>10</sup>
- (iii) In the event that Cal-Am fails to meet any milestone described in Condition no. 3.a.(2)(i), the additional diversion reduction required in Condition no. 3.a.(2)(ii) shall be suspended if Cal-Am, MPWMD, and MPRWA:
- a. Make a 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 milestone deadline; and
- i. The notice includes credible information demonstrating that Cal-Am has exercised all reasonable care, and MPWMD and MPRWA have provided all reasonable cooperation and support to meet the milestone, and the milestone deadline was missed due to circumstances beyond the control of Cal-Am, MPWMD and MPRWA;
- ii. If Cal-Am, MPWMD, and MPRWA cannot agree on a joint notice, then any of these entities may submit an individual notice or individual notices consistent with condition 3.a.(2)(iii)a.i.. If an individual notice or individual notices are submitted, or if the Executive Director does not agree with a joint notice submitted under condition 3.a.(2)(iii)a.i., the SWRCB shall determine whether to suspend the additional diversion reduction for the missed milestone. If a notice or notices are submitted under condition 3.a.(2)(iii)a., additional diversion reductions otherwise required under condition 3.a.(2)(i) shall be tolled pending determination by the SWRCB or the Executive Director.
- (3) ASR Project: The amount of water diverted to underground storage under Permit 20808A (Application 27614A) as of May 31 of each year and which will be supplied to Cal-Am customers after that date shall be subtracted from the base.<sup>11</sup> On June 1 of each year, Cal-Am shall submit an operating plan to the Deputy Director for Water Rights specifying the quantity of water it intends to supply from ASR Project for its customers after May 4 31 of each year. Water pumped from the project for delivery to customers should be consistent with the requirements of paragraph “c” below.
- (4) Sand City Desalination Plant: Once the Sand City Desalination Plant becomes operational, 94 af shall be subtracted from the base. In addition, based on actual production from the plant, any other water that is produced and not served to persons residing within the City of Sand City shall be subtracted from the base amount for each water year.

<sup>10</sup> For example, if Cal-Am 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% (9/12ths) 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.

<sup>11</sup> This condition shall apply to Phase I and Phase II of the ASR project.

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(5) Small Projects: Water produced from new sources developed pursuant to Condition 45 of this order shall be subtracted from the base.

(6) Pebble Beach: Within 90 days following adoption of the order, the Pebble Beach Company shall certify, under penalty of perjury, the total quantity of water annually used under its water entitlement from MPWMD (for the funding assurances provided for the construction and expansion of the CAWD-PBCSD wastewater reclamation project).<sup>12</sup> Ten percent (10%) of the amount reported shall be added to the adjusted base to allow Cal-Am to divert water from the river to supply water for PBC water entitlements initiated in the following 12 months. Thereafter, the PBC shall annually submit, on September 30, a report to the Deputy Director for Water Rights accounting for any additional water that is diverted from the Carmel River as the result of an increased use of its MPWMD water entitlement. Increased diversions from the river by Cal-Am to satisfy PBC entitlements from MPWMD shall be added to the adjusted base, and are not subject to section 2 of this order. Water diverted from the river by Cal-Am for PBC entitlements can only be served to properties that have received a PBC entitlement from MPWMD and which are located in the Cal-Am's service area. After December 31, 2020 Cal-Am shall not illegally divert water from the river to supply the holders of PBC entitlements.

(7) Provided Cal-Am is able to identify suitable and willing transacting parties, Cal-Am will exercise reasonable additional efforts to acquire supplemental water rights at acceptable costs, or will pursue other water acquisitions and water right changes in order to increase flows in the Carmel River or decrease Cal-Am'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, or may include water right change approvals or permits (permanent or temporary) from the SWRCB to increase opportunities to increase lawful diversions or reduce unauthorized diversions during periods of lower flow on the Carmel River. Cal-Am and the State Water Board will quantify the supplemental water and increased flows developed pursuant to this condition, and such supplemental water and increased flows will be credited towards any additional reduction required under condition no. 3.a.(2) (but will not be credited towards projects required to satisfy Conditions 5 and 3.a.(5)).

b. Either Cal-Am or the MPWMD may petition the State Water Board Deputy Director for Water Rights for relief from annual reductions imposed under condition 3.a (2). No relief shall be granted unless all of the following conditions are met: (a) Within 18 months of the adoption of this order, Cal-Am has imposed a moratorium on new service connections pursuant to Water Code section 350 or has obtained an order prohibiting new connections from the PUC pursuant to Public Utility Code section 2708 or MPWMD has imposed a moratorium on new service connections under its authority; (b) the demand for potable water by Cal-Am customers has been reduced by 13 percent;<sup>13</sup> and (c) a showing is made that public health and safety will be threatened if relief is not granted. Any relief granted shall remain in effect only as long as (a) a prohibition on new service connections remains in effect, and (b) the 13 percent conservation requirement remains in effect.

c. ASR project water stored in the Seaside groundwater basin under Permit 20808A (Application 27614A) should be used to mitigate the effect of Cal-Am's illegal diversions from the river.

<sup>12</sup> Water currently diverted from the river by Cal-Am to supply PBC entitlements is accounted for in the existing base.

<sup>13</sup> For purposes of measuring compliance, the 13 percent reduction shall be measured against the adjusted base required by this condition for the year in which the conservation requirement is imposed.

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ASR water should be supplied to Cal-Am customers only during months when water is most needed in the river to preserve steelhead.

Commencing no later than June 1 of each year, Cal-Am ~~should~~shall implement the agreed upon operating plan for use of stored groundwater to supply the needs of its customers and reduce diversions from the river. Consistent with Cal-Am's operating plan, water should be pumped from the groundwater basin at the maximum practicable rate for as long as possible. This condition shall apply to both Phase I and Phase II of the ASR project. The river's habitat and fish may receive greater benefits from a substitution regime that differs from that called for by this condition, a regime requiring that substitution commence at a different date, at a different rate or be coordinated with the level of flow in the river. In addition, it may be desirable to hold stored water from one year to the next to assure that more water is available for the steelhead and its habitat in years when the potential for steelhead survival may be greater. Several substitution trials may be necessary to determine which regime will have the greatest benefit. The National Marine Fisheries Service and the California Department of Fish and ~~Game~~ are encouraged to negotiate different substitution regimes with Cal-Am. The State Water Board will honor such agreements, provided Cal-Am submits the written operating plan agreement to the Deputy Director for Water Rights no later than May 31 of each year and the written ~~agreement~~operating plan is approved by the Deputy Director.

4. Cal-Am shall reduce its illegal diversions from the river at the same rate ASR Project water is pumped from the groundwater basin as long as stored water is available under the operating plan.

5. Cal-Am shall implement one or more small projects that, when taken together, total not less than 500 afa to reduce unlawful diversions from the river. Within 90 days of entry of this order, Cal-Am shall identify to the Deputy Director for Water Rights the projects that it will implement and shall implement the projects within 24 months of entry of this order. Cal-Am may petition the Deputy Director for additional time in which to implement the projects. However, no time extension shall be considered unless the petition is accompanied by detailed plans and time schedules for each project. Detailed justification shall be provided for additional time. Detailed justification shall be provided for any request for an extension to allow Cal-Am time to obtain prior approval from the PUC. To the maximum practicable extent, small projects shall be operated to reduce illegal diversions from the river during the months when surface flow in the river begins to go dry and through the months when surface flow in the river disappears below river mile 6.5.

6. Starting three months following adoption of this order, Cal-Am shall post quarterly reports on its website and file the quarterly reports with the Deputy Director for Water Rights.

The quarterly reports shall include the following:

- (a) Monthly summaries of the quantity of water it diverts from the river.
- (b) Monthly summaries of the quantity of ASR project water diverted from the river under Permit 20808A and stored in the Seaside ground water basin. The monthly reporting shall also state the quantity of water beneficially used under Permit 20808A and the current balance of water in storage.
- (c) Monthly summaries of the quantity of water being produced by the Sand City desalination plant. The reporting shall identify new service connections within Sand City and thereafter report the quantity of water being delivered to the new connections. The monthly reports shall specify the quantity of water used to reduce diversions from the river during the reporting period.

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- (d) Monthly summaries of the quantity of water saved by reducing system losses.
- (e) Monthly summaries of reductions in demand for potable water due to conservation actions such as increased water rates, MPWMD's retrofit program, efforts to reduce potable water for outdoor water use and demand reduction initiatives.
- (f) Monthly summaries identifying all new service connections. The report shall include the Cal-Am account number, the service address, the name of each authority granting any approval required for connecting to Cal-Am's system and the name of each authority granting any approval required before commencing construction; the issuer of the each approval and the date of each approval shall be separately listed for each service address.
- (g) Monthly summaries identifying existing service addresses that receive an increased supply of water due to a change in zoning or use. The report shall include Cal-Am account number, the service address and the name of each authority authorizing a change of use or of zoning and the date of such change.
- (h) Each quarterly report submitted by Cal-Am shall be certified under penalty of perjury and shall include the following declaration: *"I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this report and any accompanying documents are true and correct, with full knowledge that all statements made in this report are subject to investigation and that any false or dishonest statement may be grounds for prosecution."*

7. Starting six months after adoption of this order, Cal-Am shall file quarterly reports of its progress toward implementing Condition 3 (small project implementation) and note specifically any problems with its schedule of implementation.

8. The Deputy Director for Water Rights is authorized to modify the timing and the content of the reporting required by all of the provisions of this order to more effectively carry out the intent of this order.

9. Cal-Am shall comply with all requirements of Order 95-10, except as follows:

- (a) Condition 1 of Order 95-10 is superseded by Condition 2 of this order.
- (b) Condition 3(b) of Order 95-10 is superseded by Condition 2 of this order.
- (c) The last sentence of Condition 4 is deleted because the Seaside groundwater basin watermaster will determine the manner in which water may be withdrawn from the groundwater basin.
- (d) All other conditions of Order 95-10 shall remain in full force and effect until fully implemented.

10. The Deputy Director for Water Rights is directed to closely monitor Cal-Am's compliance with Order 95-10 and this order. Appropriate action shall be taken to insure compliance with these orders including the issuance of additional cease and desist orders under Water Code section 1831, the imposition of administrative civil liability under Water Code section 1055, and referral to the Attorney General under Water Code section 1845 for injunctive relief and for civil liability. If additional enforcement action becomes necessary, the Deputy Director is directed to consider including in such actions all Cal-Am's violations of Water Code section 1052 since the adoption of Order 95-10.

11. The conditions of this order and order 95-10 shall remain in effect until (a) Cal-Am certifies, with supporting documentation, that it has obtained a permanent supply of water that has been substituted for the water illegally diverted from the Carmel River and (b) the Deputy Director for Water Rights concurs, in writing, with the certification.