

CALIFORNIA ENVIRONMENTAL LAW PROJECT
A Non-Profit Legal Corporation



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Sent Via Electronic Mail & Facsimile

Arthur G. Baggett
Board Member and Hearing Officer
P.O. Box 2000
Sacramento, CA 95812-2000

Dear Hearing Officer Baggett:

This letter is in response to Cal-Am's pre-hearing Brief on Procedural Matters. In the interest of brevity Sierra Club will refer to its April 9, 2008 letter brief, which was filed simultaneously with Cal-Am's Brief.

Cal-Am argues that the scope of the hearing be limited to whether or not Cal-Am has violated Order 95-10. In Part I of its April 9 letter Sierra Club argued that the Board's Notice and accompanying cover letter made it clear that the hearing involves remediation of Cal-Am's continuing trespass. Cal-Am has been given what process is due -- it has had more than sufficient notice. See pages 1-4, April 9, 2008 Sierra Club letter.

The Sierra Club is not attempting to re-litigate or reopen Order 95-10. It is offering to present evidence as to what has happened to the steelhead population since 1995 and what is happening now. It will offer evidence of Cal-Am's continuing violation of the takings provisions of the Endangered Species Act, as well as continuing violations of Fish and Game Code §§ 5935 and 5937. This evidence goes to the appropriate relief, relating to water diversions and operation of San Clemente and Los Padres dams, that the Cease and Desist Order should encompass. See pages 4-6 of the April 9 Sierra Club letter brief.

Cal-Am seems to challenge the role of "non-party entities" to this proceeding. Ostensibly, Cal-Am seems to have doubts whether Sierra Club and Carmel River Steelhead Association should have "roles" in this proceeding. Since Sierra Club and CRSA were some of the original complainants who

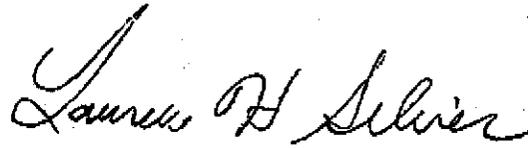
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brought Cal-Am's non-compliance to the attention of the Board in 1992-1994, it seems preposterous not to treat them as interested parties with full rights of participation in the scheduled hearing on the Draft CDO.

Sierra Club asks the Hearing Officer to order that evidence may be submitted at the hearing concerning continuing impacts to public trust resources caused by Cal-Am's unlawful diversions and that it may introduce evidence concerning appropriate revisions or modification to the proposed CDO to remediate the resource damage in the Carmel River and to reduce and minimize incidental take of the SCCC steelhead.

Sierra Club requests the Hearing Officer to entertain evidence pertaining to the implications of Cal Am's continued unlawful diversions with respect to the Board's duty to enforce the public trust and Fish and Game Code §§ 5935 and 5937.

Sierra Club additionally requests the Hearing Officer not to limit the scheduled hearing to questions concerning Cal-Am's compliance with conditions imposed by the Board in its various orders, and not to bifurcate the hearing as to "compliance" versus "enforcement" issues.



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See Additional Service List Attached