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EXHIBIT 9-I

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TO: Board of Directors; Fran Farina

FROM: David C. Laredo

RE: Cal Am Reimbursement Obligations for the Carmel River Dam.

The Monterey Peninsula Water Management District (MPWMD) has undertaken extensive efforts to review, analyze and process the application of the California-American Water Company (Cal-Am) to amend its Water Distribution System Permit (WDS) to add its proposed Carmel River Dam Project (CRD). At this time MPWMD has incurred significant unreimbursed costs relating to its activities examining the CRD. It is reported that the amount of costs that have not been reimbursed by Cal-Am approximate \$330,000 at this time. You ask for a review of issues pertaining to this circumstance.

FACTS

The Cal-Am WDS operates pursuant to a permit issued by MPWMD. MPWMD has set rules and regulations that establish the process by which WDS new sources of supply may be added to a WDS. Cal-Am cannot expand its WDS until or unless its WDS permit is amended.

Cal-Am submitted an application to MPWMD to amend its WDS by constructing the proposed 24,000 acre-foot (AF) Carmel River Dam and Reservoir Project.

On July 31, 1997, MPWMD and Cal-Am signed an agreement titled "Reimbursement of Expenses for Review and Processing of California-American Water Company's Application to Amend Its Water Distribution System Permit to Add the Carmel River Dam Project" (Reimbursement Agreement.) The Reimbursement Agreement was executed by Darby W. Fuerst, General Manager for MPWMD, and Lawrence D. Foy, Vice-President and Manager for Cal-Am. The original agreement has been subject to nine Task Orders based on the 1997 Reimbursement Agreement. The most recent was signed in May 2001.

The Reimbursement Agreement provides that Cal-Am is to reimburse MPWMD for necessary and reasonably incurred expenses associated with compliance with California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), federal Clean Water Act (Section 404, Permit #20364S09), Endangered Species Act (ESA), National Historic Preservation Act (Section 106), State Water Resources Control Board (SWRCB) Permit 20808 and 7130B, and MPWMD Law.

Cal-Am Reimbursement of CRD Costs

ANALYSIS

Cal-Am Operates its WDS Under Permit from MPWMD; This WDS Permit Requires Amendment for the CRD.

MPWMD was created by an act of the California Legislature (MPWMD Law, Statutes of 1977, Chapter 527, found at West's California Water Code Appendix, Section 118-1 et. seq., as amended.) The authority to regulate water distribution systems was explicitly conferred upon MPWMD by section 363.

This statutory provision also specifically authorizes MPWMD to adopt rules and regulations pertaining to the operation of any WDS. Section 308 of that enabling act also confers upon MPWMD "the power by resolution or ordinance to adopt regulations respecting the exercise of its powers and the carrying out of its purposes... ." An additional provision, found at section 256 of the enabling act, confers general authority upon MPWMD to adopt rules and regulations to carry out its powers. The authority granted the district is further augmented by the Legislative grant of general power set forth in section 325 to "do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district... ."

District rules provide that a WDS is not allowed to expand its system without first amending its WDS permit. District Rule 22 E states,

No owner or operator of a water distribution system shall modify, add to or change his source of supply, expand the system beyond the expansion capacity limit, or expand the service area unless that person first files an application to do so with the District and receives an amended creation/establishment permit. Such applications shall be made pursuant to Rule 21, and shall be investigated, considered, determined and acted upon on the same terms and conditions as provided for the approval, conditional approval, or denial of a permit, as provided in this rule.

Cal-Am Has Entered Into An Agreement to Pay for Analyses of its CRD Application.

Cal-Am's application to amend its WDS to add the proposed CRD required analysis under the California Environmental Quality Act (CEQA), as well as under the National Environmental Policy Act (NEPA), federal Clean Water Act, Endangered Species Act (ESA), National Historic

Preservation Act, and other provisions of state and federal law.

CEQA provides that an applicant may be required to pay reasonable costs associated with preparation of an environmental impact report (EIR). CEQA Guideline section 15045(a) states, "...the lead agency may charge and collect a reasonable fee from the [entity] proposing the project in order to recover the estimated costs incurred in preparing environmental documents and for procedures necessary to comply with CEQA on the project."

On July 31, 1997, MPWMD and Cal-Am signed an agreement titled "Reimbursement of Expenses for Review and Processing of California-American Water Company's Application to Amend Its Water Distribution System Permit to Add the Carmel River Dam Project" (Reimbursement Agreement.) The stated purpose for the Reimbursement Agreement "documents the obligation of Cal-Am to reimburse MPWMD for expenses necessarily and reasonably incurred by the District incident to tasks required for approval and administration of Cal-Am's [CRD] Application." The original agreement has been subject to nine Task Orders, with the most recent signed in May 2001.

Section 6.0 of the Reimbursement Agreement sets forth the process by which Cal-Am is authorized to terminate the District's activities on Cal-Am's CRD application. Paragraph 6.1 requires Cal-Am to give written notice at least thirty (30) days prior to the effective date of termination. In January 2002, the District provided Cal-Am the opportunity to voluntarily withdraw the Reservoir Project application and replace it with a mutually agreeable non-dam project. In a letter dated March 8, 2002, Cal-Am declined to withdraw the Reservoir Project application, effectively communicating that its application to amend its WDS permit to add the CRD was active.

MPWMD staff reports that it met with Cal-Am General Manager Steve Leonard on August 11, 2003, to provide the history, process and status of the EIR reimbursement issue. Mr. Leonard indicated that he will review the situation with Cal-Am management, now that he has a more concrete understanding, and will provide a response to the District's requests for payment. As of this date, Cal-Am has not provided written notice to MPWMD of its intent to terminate the Reimbursement Agreement.

MPWMD Rules Require Assessment of Fees for Unusually Complex Applications.

MPWMD Rule 60, most recently amended by MPWMD Ordinance No. 96 on March 19, 2001, requires permit applicants to pay to Expand/Extend a Water Distribution System. Rule 60 (B) (4) sets the fee for "unusually complex applications" at \$70.00 per hour of staff time for all

necessary efforts in excess of twenty (20) hours per application. Similarly, Rule 60 (H) (3) imposes an administrative fee for each amendment of a WDS creation permit at \$70.00 per hour for more than twenty (20) hours of staff time.

Cal-Am's Has an Obligation to Pay Reimbursable Costs Invoiced by MPWMD.

Payments by Cal-Am under the Reimbursement Agreement are to be based on monthly billings by MPWMD to Cal-Am. Payments are due and payable within forty-five (45) days of each invoice. Paragraph 2.2 of the Reimbursement Agreement affords Cal-Am a ten (10) calendar day period following receipt of each billing statement to dispute that work itemized in that statement as unsatisfactory or inconsistent with authorized tasks.

It is reported that Cal-Am has not reimbursed approximately \$330,000 in costs that have been invoiced at this time. Assuming that these costs have been accurately charged pursuant to the Reimbursement Agreement, or have been accurately charged pursuant to MPWMD Rule 60, these expenses are collectible by MPWMD if in arrears more than forty-five (45) days, provided Cal-Am has not tendered a dispute as to the item(s) billed.

Cal-Am is clearly aware of these unpaid invoices, as shown in David P. Stephenson's¹ testimony before Administrative Law Judge (ALJ) Michele Cooke for the California Public Utilities Commission (CPUC), at the May 14, 2003, evidentiary hearing on Application 97-03-052, Cal-Am's request to the CPUC for a Certificate of Public Convenience and Necessity for the CRD.

During questioning, Mr. Stephenson offered several comments pertaining to costs Cal-Am had incurred and would continue to incur for the CRD. Responding to the question, "I believe you stated in your testimony somewhere that there is still additional costs related to the Carmel River Dam project. Is that your memory?" Mr. Stephenson replied, "I don't know if I said there was additional costs on the Carmel River Dam project. I probably said there was (sic) additional allowances by the Commission for the Carmel River Dam project in the Monterey Division. As for additional costs itself, I know that we have two invoices that are still sitting there from Monterey Peninsula Water Management District that we have not paid at this point. And there

¹ At that proceeding, Mr. Stephenson, an employee of American Water Works Service Company, testified also as Director of Rates and Revenue for the Five Western States of American Water Works (California, Arizona, New Mexico, Texas, and Hawaii) and as Assistant Treasurer for California-American Water Company. In response to the question, "Are you the principal officer of California-American Water Company with regard to ratemaking?" he replied, "Yes, I am."

may be other costs from the management district that they have not billed us for at this point.”

Pressing further on this point, Mr. Stephenson was asked, “Do you have an idea of what the two invoices that are currently with Cal-Am that have not been paid amount to?” He replied, “Approximately \$192,000, I believe.” Asked, “Is there a reason they have not been paid yet?” he answered, “I do not know.” Later Mr. Stephenson added that “Now, there might be some trailing costs with Carmel River Dam project. There may not. I don't know at this point.”

Dispute Resolution Relating to Cost Reimbursement.

The Reimbursement Agreement specifically addresses a process by which any disputes involving that instrument should be resolved. Section 7.0 provides that the aggrieved party in any dispute is to submit a statement of conflict to the other party. The parties are required thereafter to meet, but if the dispute cannot be resolved according to that process, the Reimbursement Agreement provides “the dispute may be resolved in a court of law competent to hear this matter.” The document calls for the Reimbursement Agreement to be construed in accord with California law and that the venue for any dispute shall be in the County of Monterey. The Agreement also provides that the prevailing party shall be awarded costs of suit and reasonable attorney’s fees.

Cal-Am is in arrears on the payment of costs incurred by MPWMD pursuant to the Reimbursement Agreement. Although MWPMD has already corresponded with Cal-Am, and met with its General Manager to request payment, a final effort should be made to unequivocally exhaust all administrative remedies provided by the Reimbursement Agreement. MWPMD should submit a statement of conflict to Cal-Am, and declare that Cal-Am’s failure to tender payment in satisfaction of the uncontested invoices from MPWMD constitutes a breach of Cal-Am’s obligations under the Reimbursement Agreement. If Cal-Am does not pay this amount in full, the District should then initiate action to collect this debt in a court of law.

Recommendation.

The Board of Directors should direct staff and counsel as to the means by which Cal-Am’s debt should be collected. Administrative remedies must first be exhausted. Thereafter, the Board should determine whether or not an action should be filed in court of law by reason of Cal-Am’s breach of its obligations under the Reimbursement Agreement.