

## EXHIBIT 11-C

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April 18, 2005

Via Facsimile #644-9560Larry Foy, Chair, and Members of the Board of Directors  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, CA 93942Re: Item 14, Consideration of Proposed Memorandum of Agreement with  
California American Water

Dear Chair Foy and Members of the Board:

I represent The Open Monterey Project. My client is concerned about the terms, including the language, scope and breadth, of the proposed Memorandum of Agreement.

**THE MOA COMMITS THE MPWMD FOR 20 YEARS  
TO SUPPORTING CAL AM'S COASTAL WATER PROJECT**

The fifth "whereas" clause of the proposed agreement commits the MPWMD to a position supporting accelerated implements of future ASR facilities planned as part of Cal Am's Coastal Water Project. The MPWMD Board has not adopted such a position, and has not had a public hearing considering this position. Up until now, the MPWMD has appeared to be open to various solutions, including a publicly-owned project at Moss Landing. This recital suggests to the contrary: that the MPWMD has selected Cal Am, a privately-owned utility, as the preferred operator of a desalination plant. This appears to be a decisive first step in committing the District to a particular project, and it is being taken without an adequate basis under CEQA.

My client is particularly concerned about MOA Paragraphs 9, 10, 11, and 12. They commit the MPWMD, a public agency, to take affirmative actions to support Cal Am's efforts to hold water rights and to acquire permits and approvals, including those for the Cal Am Coastal Water Project. This irrevocable commitment would last 20 years.

Paragraph 21 is an arbitration agreement which is described both as condition precedent to litigation and a binding arbitration clause. This clause should be deleted in its entirety. A public agency should not forfeit its right to pursue such essential public business in open court. It is hard to imagine why the District would want to go behind closed doors with Cal-Am on a matter this significant.

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### THIS ACTION IS A PROJECT UNDER CEQA

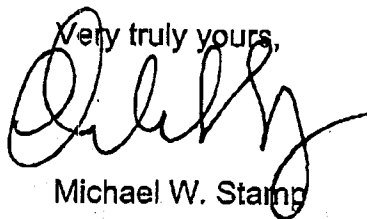
The proposed adoption of the MOA is the first significant step in an irrevocable 20-year course of action by a public agency. It would enable and require the commitment of public funds to future action to support and cooperate with Cal Am in Cal Am's Coastal Water Project efforts. By committing to a larger project now, the MPWMD action is subject to CEQA. See *City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229 (*Mission Ranch*). In that case, the County tried to rezone some property in anticipation of development, deferring environmental review until such time as a project was proposed. The Superior Court and the Court of Appeal held that the CEQA analysis must be made when the first definitive step in the project is taken by the public agency. In that case it was the rezoning; in this case, it is the proposed agreement.

Here, MPWMD is taking a very significant step on the Cal Am project. Adopting the MOA would require the MPWMD to support Cal-Am's development project for the next 20 years, and to cooperate with specific Cal Am development projects. My client strongly objects to the lack of CEQA review for this project. CEQA review is shown as "N/A" on the staff report, without explanation.

A project as defined under §§ 15378 is the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately. If, after preliminary review, the agency determines that the activity is exempt from CEQA, the agency may file a notice of exemption. Cal. Code Regs. tit. 14, §§ 15061(d), Cal. Code Regs. tit. 14, §§ 15062. If the activity is a project and is not otherwise exempt from California Environmental Quality Act, the agency must conduct an initial study to determine whether the project may have a significant effect on the environment. Cal. Code Regs. tit. 14, §§ 15002(d)(2), Cal. Code Regs. tit. 14, §§ 15063.

In short, the agreement proposed for adoption by the Water District is a very bad idea, and it is a direct violation of CEQA. The Board should table the matter until an appropriate agreement can be drafted and considered, and until the proper CEQA steps have been followed.

Very truly yours,



Michael W. Stamp