

**Aquifer Storage and Recovery (ASR)  
Management & Operations Agreement  
between  
California American Water  
and  
Monterey Peninsula Water Management District**

This Aquifer Storage and Recovery (ASR) Management & Operations Agreement (hereafter the "Agreement") between California American Water (hereafter "Cal-Am"), and Monterey Peninsula Water Management District (hereafter "Water Management District" or "District") is entered into as of the date last written below.

**RECITALS**

**WHEREAS**, Cal-Am is an investor owned, public utility providing water service to the Monterey Peninsula; and

**WHEREAS**, the Water Management District is a public agency, authorized in 1977 by the California Legislature (Chapter 527 of the Statutes of 1977, as amended, found at West's Water Law Appendix, Section 118-1, et seq.). The voters of the Monterey Peninsula ratified creation of the Water Management District in June 1978. The District holds comprehensive authority to integrate management of the ground and surface water resources in the Monterey Peninsula area; and

**WHEREAS**, the Monterey Peninsula has an insufficient supply of water supplies available to it, and whereas this lack of water supply has been exacerbated by the effects of State Water Resources Control Board (SWRCB) Order WR 95-10, and the listing of the California red-legged frog and steelhead as threatened species under the federal Endangered Species Act; and

**WHEREAS**, Cal-Am and the Water Management District desire to define and clarify means by which they may cooperate and operate Aquifer Storage and Recovery facilities to augment the supply of water available to the Monterey Peninsula for the benefit of Cal-Am's rate payers, and the constituents of the Water Management District; and

**WHEREAS**, Cal-Am and the Water Management District have a mutual desire to expand and clarify the operations of existing Aquifer Storage and Recovery facilities, and to accelerate implementation of future ASR facilities;

**WHEREAS**, the California Department of Health Services has requested that an Agreement between Cal-Am and the Water Management District clarify and define responsibilities relating to the long-term operation of the Santa Margarita Well;

**NOW, THEREFORE, BE IT RESOLVED** the parties hereby enter into this Aquifer Storage and Recovery (ASR) Management & Operations Agreement as follows:

1. **Purpose.** This Agreement is intended to set forth general facts and assumptions concerning Aquifer Storage and Recovery (ASR) facilities and operations. This Agreement clarifies areas of joint effort and cooperation between the parties to facilitate present and future actions. The Parties agree to cooperate in order to optimize operation of the Existing ASR Facilities for present use and benefit to the rate payers of Cal-Am, and the constituents of the Water Management District. The Parties agree to further cooperate to facilitate expansion of Existing ASR Facilities and to plan for the creation and operation of Future ASR Facilities.

2. **Parties.** The sole parties to this Agreement are California American Water (hereafter "Cal-Am") and Monterey Peninsula Water Management District (hereafter "Water Management District" or "District"). This Agreement does not confer upon any person or entity, other than the Parties, any rights or remedies, and shall not be enforceable by any third parties.

3. **ASR Facilities.** Any reference in this Agreement to ASR Facilities shall mean all pumps, motors, piping and appurtenant ASR equipment located outside the points of connection to the Cal-Am water distribution system piping. This reference shall include land and rights of way in the City of Seaside and upon former Fort Ord lands relating to existing ASR facilities. The Water Management District shall solely and exclusively own all ASR Facilities, which ownership shall be inclusive of any rights pertaining to permits issued in relation to those ASR facilities. The parties agree to meet and confer, and engage in joint decision-making with respect to any capital improvement, facility modification, and repair or maintenance effort for the ASR Facilities.

4. **Associated ASR Facilities.** The term "Associated ASR Facilities" shall refer to all pipeline modifications, regulating station modifications and booster pump modifications installed within the Cal-Am water distribution system (including all points of connection, but excluding ASR Facilities as defined above, located outside the points of connection) and operated in connection with the Existing ASR. Cal-Am shall solely and exclusively own all Associated ASR Facilities, which ownership shall be inclusive of any rights pertaining to permits issued in relation to those Associated ASR facilities. The parties agree to meet and confer, and engage in joint decision-making with respect to any capital improvement, facility modification, and repair or maintenance effort for the Associated ASR Facilities.

5. **ASR Operator.** Cal-Am shall be the sole operator for all ASR Facilities and all Associated ASR Facilities, except as described in the Santa Margarita Test Injection Well (SMTIW) Aquifer Storage and Recovery (ASR) System, Operation and Maintenance Manual, a copy of which is attached to this Agreement as Exhibit A. Operations shall conform to all requirements set by the California Public Utilities Commission (CPUC) and the Department of Health Services (DHS) to meet the needs of the Cal-Am service area. Operations shall further conform to the water supply budget set by the Water Management District.

6. **ASR Operations.** References in this Agreement to ASR Operations shall mean activities undertaken in accord with the Santa Margarita Test Injection Well (SMTIW) Aquifer Storage and Recovery (ASR) System, Operation and Maintenance Manual, a copy of which is attached to this Agreement as Exhibit A. The Operation and Maintenance Manual may be modified from time to time by the written agreement of the Parties. Any such modification shall be made an exhibit to this Agreement. The term ASR Operations shall refer to both injection and recovery activities, but shall distinguish both Existing ASR and Future ASR, shall distinguish both ASR

Facilities and Associated ASR Facilities, and shall distinguish both Future ASR Facilities and Future Associated ASR Facilities, as those terms are defined by this Agreement. The Operations and Maintenance Manual shall define and designate the sole operator for the SMTIW. With respect to Future ASR, the Operation and Maintenance Manual shall be jointly devised, and modified from time to time by the parties. Cal-Am shall timely and with due diligence repair and/or replace any ASR Facility or Associated ASR Facility, or component thereof, necessary for the full and effective function of either of those Facilities.

7. **Existing ASR.** The term "Existing ASR" shall refer to the existing Santa Margarita Test Injection Well ASR facility (SMTIW), existing appurtenant on-site and off-site facilities, and related lands held by the Water Management District and Cal-Am. Existing ASR shall constitute both ASR Facilities and Associated ASR Facilities as those terms are defined in this Agreement. Existing ASR shall not include any facilities defined as Future ASR, except as may be provided by an addendum or amendment to this Agreement.

8. **Future ASR.** The term "Future ASR" shall refer to Phase I and all other planned phases of Future ASR Facilities that will support the permanent future-expansion of ASR Operations by the Water Management District and Cal-Am. Future ASR shall be comprised of both Future ASR Facilities and Future Associated ASR Facilities, as those terms may be defined in an amendment or addendum to this Agreement.

9. **Water Rights.** Cal-Am and the Water Management District agree to cooperate and support the acquisition of water rights needed for the Water Management District Phase I ASR Operations. Cal-Am and the Water Management District shall jointly hold all relevant applications and water rights permits. Cal-Am and the Water Management District further agree to jointly cooperate and support each other's efforts to extract and use water associated with ASR Operations. Cal-Am agrees to withdraw and dismiss, with prejudice, any complaint or protest it has lodged with the State Water Resources Control Board in reference to any aspect of the Water Management District's request to obtain or use water rights associated with its Phase I ASR Operations. Cooperative efforts shall extend to both existing ASR, as well as Future ASR. This Agreement, however, shall not affect or define the right or interest of either Party to store water in the Seaside Groundwater Basin.

10. **Future Water Rights.** Cal-Am and the Water Management District shall enter into good faith negotiations to establish one or more Agreements pertaining to the acquisition and joint ownership of present and future water rights used or usable from any water source suitable to provide potable water for municipal supply for the benefit of the Monterey Peninsula area. Water sources affected by the Agreement(s) for present and future water rights shall include, but shall not be limited to, waters from the Carmel River or any other river, other waters subject to appropriation, waters deriving from desalination, storm waters, and recycled or reclaimed waters. The intent of the Agreement(s) shall be to enable cooperative use and acquisition of water rights, to prevent and extinguish any complaint or protest to the use or acquisition of water rights by one Party as against the other, and to set terms and conditions relating to the joint ownership and exercise of water rights.

11. **Permits.** Cal-Am and the Water Management District shall cooperate in the acquisition of all permits or approvals required for ASR Operations. The parties agree that they shall

mutually cooperate and support each other's efforts pursuant to this paragraph, as may relate to Existing ASR and Future ASR, as well as to ASR Facilities and Associated ASR Facilities.

12. **Planning & Construction.** Cal-Am shall be the lead entity related to the planning and construction of all Associated ASR Facilities. The Water Management District shall be the lead entity related to the planning and construction of all ASR Facilities. The parties agree to jointly investigate means to minimize expenses of both ASR Facilities and Associated ASR Facilities relating to property acquisition, ownership, construction, and debt issuance. Cal-Am agrees that it shall not treat any cost or expense Cal-Am may incur with respect to ASR Facilities as an investment in utility plant, and as such Cal-Am shall not seek approval of rates from the California Public Utilities Commission that include any profit or return on equity (ROE) that may apply to a capital facilities investment in ASR Facilities.

13. **Long Term License & Franchise.** The Parties intend that the Water Management District shall issue to Cal-Am a fifteen (15) year term license to operate all ASR Facilities. The license shall recognize Cal-Am as the ASR Operator, with operational control over all ASR Facilities and all Associated ASR Facilities, provided those operations conform to the water supply budget set by the Water Management District. This license shall be in the form of a franchise, and it shall be irrevocable during its term, provided Cal-Am fully complies with all terms and conditions of both this Agreement and the License & Franchise, and further provided that Cal-Am continues throughout that term to provide water for the benefit of its customers on the Monterey Peninsula.

14. **Water Charges.** The Parties shall not charge or impose any fee or other expense upon each other, except as otherwise provided for in this Agreement, for the use of the ASR Facilities or the Associated ASR Facilities.

15. **Water Use.** All water produced from storage by either the ASR Facilities or the Associated ASR Facilities shall be held exclusively for the benefit of customers of Cal-Am.

16. **ASR Expenses.** All costs associated with operation of the ASR Facilities or the Associated ASR Facilities, including but not limited to costs of administration, operation, maintenance, repair, replacement, and insurance shall be borne by Cal-Am. Cal-Am shall further reimburse the Water Management District actual and necessary costs it may incur related to the ASR Facilities or the Associated ASR Facilities.

17. **Extraordinary Use of ASR Facilities.** Where the ASR Facilities are utilized by Cal-Am in lieu of operating other water production facilities, and when this operation does not relate to the recovery of water as part of the ASR Operations, then Cal-Am shall pay to the Water Management District for any costs it may incur with respect to the in lieu operation, including but not limited to costs of administration, operation, maintenance, repair and replacement. Cal-Am may operate ASR Facilities for these purposes only upon the advance written consent of the Water Management District.

18. **Effective Date.** This Agreement shall take effect on \_\_\_\_\_, 2006.

19. **Renewal Option.** To the extent ASR Facilities or Associated ASR Facilities are constructed having a usable life that exceeds the term of the license and franchise set by Section

12 above, Cal-Am shall have the option to extend and renew this Agreement to coincide with the remaining usable life of those ASR Facilities or Associated ASR Facilities, whichever has the longer remaining usable life. Notice of Cal-Am's intent to exercise this Renewal Option shall be communicated to the Water Management District, in writing, no less than one hundred eighty (180) days prior to the date referenced in Section 12. Cal-Am shall include a statement as to the remaining usable life of those ASR Facilities or Associated ASR Facilities in that notice. The Parties agree to meet and confer, and engage in joint decision-making with respect to determining any question regarding the remaining usable life of either the ASR Facilities or Associated ASR Facilities. Nothing in this paragraph, however, shall be construed to limit the discretion of the Water Management District to cause the early termination of the License & Franchise, as set forth in Paragraphs 13 and/or Paragraph 21 of this Agreement, which provisions shall prevail over the renewal option set forth in this paragraph.

20. **Termination.** The term of this Agreement shall be co-terminus with the term of the License & Franchise set forth in accord with Paragraph 13, 19 and Paragraph 21.

21. **Limitation.** It is understood by the parties that all Agreements, obligations, debts and liabilities of Cal-Am do not constitute the Agreements, obligations, debts and/or liabilities of the Water Management District, its officers, agents and employees. Further, it is understood by the parties that all Agreements, obligations, debts and liabilities of the Water Management District do not constitute the Agreements, obligations, debts and/or liabilities of Cal-Am, its officers, agents and employees.

22. **Public Utilities Commission.** Cal-Am and the Water Management District recognize and acknowledge that Cal-Am is subject to certain regulatory practices and authority of the California Public Utilities Commission (CPUC), and that Cal-Am may require expenditure authorization from the CPUC in order to implement discrete aspects of this Agreement. The Parties agree to work cooperatively, and with due diligence, to obtain any CPUC approval necessary to implement this Agreement.

23. **Assignment.** This Agreement shall be assignable by either Party only upon the advance written consent of the other Party, which consent shall not be unreasonably withheld. The Water Management District may, in its sole discretion, terminate this Agreement, and any License or Franchise issued pursuant to this Agreement, in the event Cal-Am ceases to provide for the benefit of Cal-Am's customers on the Monterey Peninsula, whether by sale, purchase, eminent domain or other public acquisition.

24. **Arbitration.** In case any disagreement, difference, or controversy shall arise between Cal-Am and the Water Management District with respect to any matter in relation to or arising out of or under this Agreement, whether as to the construction or operation thereof, or the respective rights and liabilities of Cal-Am or the Water Management District, and the parties cannot mutually agree as to the resolution thereof, then such disagreement, difference, or controversy shall be determined by arbitration under the commercial arbitration rules of the American Arbitration Association or upon such other rules as the Parties may agree, provided that the arbitrator shall be a former judge of the Superior Court or the Court of Appeal. Any arbitration hearing shall be noticed and open to the public. The submission to arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any

action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrators, provided it shall not exceed the sum of fifty thousand dollars (\$50,000), shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the prevailing party shall be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees shall be considered costs recoverable in that proceeding, and be included in any award.

25. **Litigation.** In the event a dispute arises relating to performance under this Agreement or regarding the License & Agreement, where the amount or value relating to the controversy exceeds fifty thousand dollars (\$50,000), or for any arbitration award that exceeds fifty thousand dollars (\$50,000), then and in that event the parties may skip any arbitration requirement, and if already completed, that arbitration shall be deemed advisory. The dispute shall instead be resolved in a court of law competent to hear the matter. Venue for the matter shall be in the County of Monterey. The prevailing party shall be awarded costs of suit, and reasonable attorneys' fees and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs and attorney fees shall be considered costs recoverable in that proceeding, and be included in any award.

26. **Entire Agreement.** This document represents the entire Agreement between the parties, and supersedes any prior written or oral negotiations and representations between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

U/WMD/Gen 2005/ASR Management & Operations Agreement (1/5/06)-Draft #7(3)

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