

EXHIBIT 12-A

First Reading Draft

ORDINANCE NO. 174

**AN ORDINANCE OF
THE BOARD OF DIRECTORS OF
THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
SUSPENDING AUTHORITY TO ACCEPT WATER PERMIT APPLICATIONS
FOR NEW CONNECTIONS BASED UPON A JURISDICTION'S PARALTA
ALLOCATION, A JURISDICTION'S PRE-PARALTA CREDIT, THE WATER WEST
RESERVE, OR CALIFORNIA-AMERICAN WATER COMPANY'S SYSTEM
CAPACITY LIMITS FOR THE QUAIL MEADOWS SUBDIVISION ANNEXATION**

FINDINGS

1. The Monterey Peninsula Water Management District ("District" or "MPWMD") was 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.). Voters of the Monterey Peninsula ratified its creation in June 1978. The District holds comprehensive authority to integrate management of the ground and surface water resources in the Monterey Peninsula area. MPMWD governs the Allocation of limited water supplies distributed by California American Water ("Cal-Am").
2. The Monterey District of Cal-Am has a continuing water supply deficit. It relies on scarce water resources. A sizeable portion of water demand within the District is based upon water diverted from the Carmel River without any basis in right. State water rights orders limit Cal-Am's supply, and physically adequate supplies are available only due to deferred enforcement.
3. MPWMD conceived the Paralta Well in 1989, which was thereafter constructed by Cal-Am based on permits cooperatively acquired by the District and Cal-Am. This well provides water from the Seaside Coastal Groundwater Basin to create a new water supply in accord with District Resolutions 93-11 and 93-12.
4. On October 9, 1989, the District adopted Findings of Approval and Conditions of Approval of the Annexation of Quail Meadows (APN 157-121-17) into the

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California-American Water Company Service Area. This approval was based on the applicant's retrofitting the Irrigation Systems at the Carmel Valley Golf and Country Club Golf Course to demonstrate a permanent annual savings of at least 65 acre-feet (AF), as well as other conditions. The agreed-upon base amount (historical use) for the golf course was stipulated to be 318.55 AF/year. With the 65 AF savings, the new agreed-upon Production Limit for golf course irrigation was 253.55 AF/year. The estimated water production needed for the proposed subdivision was 35 AF/year (equivalent to 32.9 AF/year metered sales). The combined California American Water and non-California American Water production to serve the golf course and subdivision is 288.55 AF/year. As of September 13, 2016, 0.763 AF remains available for Water Permits in the subdivision.

5. MPWMD accounted for Water Use Capacity for construction projects and Changes of Use that received but did not complete Water Permits issued prior to the District's Water Allocation Program Environmental Impact Report in 1990. Water Use Capacity from abandoned or reduced Capacity projects was returned to the Jurisdiction for future use when the Paralta Well Allocations were released.
6. In 1993, the District accounted for water from the Paralta Well by enacting Ordinance No. 70 to modify Jurisdictional Water Allocations and to allow this supply to be used for new and expanded water uses. District Ordinance No. 70 ended the water Connection moratorium previously enacted by District Ordinance No. 52.
7. District Ordinance No. 70 effectively eliminated the previously recognized water use deficit of 230 Acre-Feet (calculated against water available under Supply Option V in the Water Allocation EIR) recognized by District Ordinance No. 52, and allocated 385 Acre Feet of additional Paralta Well production among the District Jurisdictions.
8. District Ordinance No. 70, confirmed in *Currier v. MPWMD* (Case No. M59299) established the Water West Adjustment Reserve (Water West Reserve). A special reserve was established to replenish the Monterey County Allocation for new water use which occurs within the boundaries of the former Water West Water Distribution System. Replenishment of Monterey County's Allocation from this special reserve shall occur upon the approval of water use for real property within the Water West boundary. The total quantity of water use to replenish Monterey County's Allocation was 12.76 acre feet (sales). As of September 13, 2016, 3.751 AF remains.

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9. In 1995, the State Water Resources Control Board (SWRCB) issued Order WR 95-10 to affirm Cal-Am held rights to divert only 3,376 Acre-Feet annually (“AFA”) from the Carmel River. This order required Cal-Am to reduce former river diversions of 14,106 AFA in 1995 to 11,285 AFA in 1997.
10. District Resolution No. 2004-11 noted Order WR 95-10 directed water production from the Seaside Basin be maximized to serve existing Connections, honor existing Allocation commitments, and to reduce diversions from the Carmel River. Resolution No. 2004-11 also recognized the use of pre-Paralta credits and public credits.
11. In 2007, the Monterey County Superior Court in *California-American Water Company v. City of Seaside*, et al. (Case No. M66343) issued a comprehensive order to adjudicate the Seaside Groundwater Basin and impose a declining pumping schedule from the Seaside Groundwater Basin for Cal-Am and others.
12. In 2009, SWRCB Order WR 2009-0060 issued a Cease and Desist Order (CDO) on Cal-Am that required Cal-Am to (a) reduce Carmel River diversions from 11,285 AFA to 10,429 AFA until 2017, (b) set 3,376 AFA as the Carmel River diversion limit beginning in 2017, and (c) required Cal-Am to impose a moratorium on new Connections.
13. In 2011, the California Public Utilities Commission (CPUC) issued Decision (D.) 11-03-048, entitled “Decision Directing Tariff Modifications to Recognize Moratorium Mandated by State Water Resources Control Board.” D.11-03-048 prohibits new Cal-Am Connections and certain increased uses of water be served by diversions from the Carmel River to the extent such service would violate the terms of Condition 2 of SWRCB Order WR 2009-0060.
14. Since adoption of SWRCB Order WR 2009-0060, Cal-Am’s diversions complied with limits set in that Order, but remained thousands of Acre-Feet per year above the amount available under Cal-Am’s lawful water rights.
15. SWRCB Order WR 2016-0016 superseded requirements of Orders WR 95-10, WR 2009-0060 and other SWRCB orders, and extended to December 31, 2021, the date by which Cal-Am must terminate unlawful diversions from the Carmel River. Order WR 2016-0016 also set an Effective Diversion Limit from the Carmel River of 8,310 AFA starting Water Year 2015-2016.

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16. This ordinance is adopted to enhance the District’s ability to prevent diminution of waters within the District, to protect environmental values, and is consistent with the District’s authority to reasonably regulate all water resources within District boundaries. The Board of Directors’ General Counsel finds it necessary to adopt this ordinance to protect the public health, welfare and safety of the District by ensuring the continuing water supply is physically adequate to meet demand. This measure is necessary to support moratorium requirements set by the CPUC in D. 11-03-048, and moratorium requirements set by the SWRCB in its Orders WR 2009-0060 and WR 2016-0016.

17. Enactment of this ordinance to suspend acceptance of applications for Water Permits for new Connections based upon a Jurisdiction’s Paralta Allocation, a Jurisdiction’s pre-Paralta credit, the Water West Reserve, or California-American Water Company’s system capacity limits for the Quail Meadows Subdivision Annexation does not constitute a “Project” as that term is defined under the California Environmental Quality Act (CEQA), CEQA Guideline Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in section 15378). Furthermore, the Board finds that there is no possibility that the adoption of this measure could have a significant effect on the environment; therefore, no further environmental review is necessary in accordance with Section 15061(b)(3) of the CEQA Guidelines.

18. This ordinance shall not amend the Rules and Regulations of the Water Management District.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the 2016 Monterey Peninsula Water Management District Water Permit Deferral Ordinance for New Connections Subject to the Cease and Desist Order Against California American Water.

Section Two: Purpose

This ordinance suspends authority of the District to accept any Water Permit application for a new Connection to the Main California-American Water Company Water Distribution System

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based upon a Jurisdiction's Paralta Allocation, a Jurisdiction's pre-Paralta credit, the Water West Reserve, or California-American Water Company's system capacity limits for the Quail Meadows Subdivision Annexation.

Section Three: **Publication and Application**

The provisions of this ordinance shall not cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District. During the period it has force and effect, however, the full text of this ordinance shall be bound together with those permanent Rules and Regulations, and a reference to this ordinance shall be annotated in each copy of the official set of those Rules and Regulations at Rule 20-B and Rule 21-B.

Section Four: **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. thirty (30) days after adoption.

This Ordinance shall become null and void, and cease to have any continuing effect on any of the following events, whichever may first occur: (a) removal of the SWRCB CDO issued in SWRCB Order WR 2009-0060 on Cal-Am, or (b) removal of the CPUC moratorium, or (c) the effective date of any District ordinance that explicitly rescinds or repeals this ordinance.

Section Five: **Severability**

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion of Director _____, and second by Director _____, the foregoing ordinance is adopted upon this ____ day of _____ 2016, by the following vote:

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AYES:

NAYS:

ABSENT:

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the ___ day of August 2016.

Witness my hand and seal of the Board of Directors this ____ day of _____, 2016.

David J. Stoldt, Secretary to the Board