



# Supplement to 11/18/2019 MPWMD Board Packet

Attached are copies of letters received between October 16, 2019 through November 12, 2019. These letters are listed in the November 21, 2019 Board packet under Letters Received.

<b>Author</b>	<b>Addressee</b>	<b>Date</b>	<b>Topic</b>
Duncan Joseph Moore	MPWMD Board	11/11/19	Monterey Peninsula Water Supply Project
W. Robert Patterson	David J Stoldt	11/7/29	Measure J – Public Water Feasibility Assessment
Jeff Davi and John Tilley	Dayna Boccho, copy to MPWMD Board	11/5/19	Report Titled Demand and Water Supply on the Monterey Peninsula
Arlene Hardenstein	MPWMD Public Outreach Committee	10/24/19	Information on Accessory Dwelling Units

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November 11, 2019

**VIA EMAIL**

Chair Stefani and Board of Directors  
Monterey One Water  
5 Harris Court, Building D  
Monterey, California 93940

Chair Evans and Board of Directors  
Monterey Peninsula Water Management District  
P.O. Box 85  
Monterey, California 93942-0085

Re: Monterey Peninsula Water Supply Project

On behalf of California American Water (“Cal-Am”), we write this letter to the respective Boards of Directors of Monterey One Water (“M1W”) and the Monterey Peninsula Water Management District (“MPWMD”) to inform you of recent material misrepresentations and omissions made by certain members of your respective staff concerning the Monterey Peninsula Water Supply Project, which are contrary to the public positions of M1W and MPWMD.<sup>1</sup>

M1W has recently confirmed that public release of an excerpt of a draft technical memorandum concerning the Pure Water Monterey (“PWM”) project was unauthorized. However, Cal-Am has become aware of additional information that appears to make the conduct of MPWMD and M1W staff even more egregious. We have learned that the released excerpt was manipulated to add information that was not part of the complete memorandum, apparently in order to bolster the claims made by MPWMD staff that an expansion of PWM would provide sufficient supplies to replace desalination. Further, a mere two days after the M1W Board adopted a resolution reiterating and confirming that any proposed expansion of PWM was being explored only as a backup to, and not a replacement for, desalination, M1W staff traveled to Sacramento to meet with Lieutenant Governor Kounalakis and conveyed, or allowed to be conveyed, the position that Expanded PWM would obviate the need for the desalination plant. Cal-Am demands that the distribution of such misinformation immediately cease, and affirmative steps be taken now to correct the record.

<sup>1</sup> This letter follows Cal-Am’s November 3, 2019, letter to the Chair of M1W Board of Directors advising that additional delivery assurances and guarantees would be needed from M1W if desalinated water is not available and instead recycled water becomes the primary water source for Cal-Am’s service territory.

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Each of these issues is addressed in more detail below.

**Manipulation and Unauthorized Distribution of Purported Excerpts from a Draft Technical Memorandum**

At the September 16, 2019, MPWMD Board Meeting, General Manager David Stoldt presented a memorandum he had prepared that purported to examine water supply and demand on the Monterey Peninsula (the “Stoldt Memo”). Despite the California Public Utilities Commission’s (“CPUC”) September 2018 decision finding that Cal-Am needed adequate water supplies and facilities to satisfy CPUC-determined customer demand of 14,000 acre-feet per year, Mr. Stoldt claimed that expected demand would be much lower, and that the proposed expansion of the PWM Project would be sufficient to meet this demand without desalination. The conclusions of the Stoldt Memo contradict the public position of MPWMD concerning the Water Supply Project,<sup>2</sup> and MPWMD’s Board took no action concerning the Stoldt Memo. Nevertheless, at or about the same time, the Stoldt Memo was delivered to Coastal Commission staff.

On October 15, 2019, Cal-Am provided MPWMD with a detailed response to the Stoldt Memo, noting that the memo raised claims substantially identical to those that had been raised before the CPUC and rejected, ignored existing water supply constraints, failed to comply with the requirements for determining demand under California law, and placed the Peninsula’s future water supply in jeopardy.

Mr. Stoldt responded on October 31, 2019 by letter to Cal-Am and also copying Tom Luster at the Coastal Commission and Paul Sciuto at M1W. Attached to the letter were two appendices:

- Appendix A: Pure Water Monterey Expansion and Aquifer Storage and Recovery (ASR) Resistance to Drought, Excerpt from Draft Technical Memorandum dated September 30, 2019 from Pascual Benito and Derrick Williams to Ediwn [sic] Lin, Todd Groundwater, Subject: Pure Water Monterey Expansion SEIR Groundwater Modeling Analysis (the “Excerpt”) (attached hereto as Exhibit 2);<sup>3</sup> and
- Appendix B: MPWMD Analysis of Available Well Capacity for 10-Year Maximum Daily Demand (MDD) and Peak Hour Demand (PHD).

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<sup>2</sup> Indeed, at its May 20, 2019 meeting, the MPWMD Board approved 1 and 3 Year Strategic Planning Goals, attached hereto as Exhibit 1, which include “Support commencement of the Cal-Am desalination project.”

<sup>3</sup> Mr. Stoldt also provided a short summary response to Ian Crooks at Cal-Am by email on October 15, 2019, attaching the Excerpt, and noting, “I have also attached a summary of resilience to drought conditions as it relates to drought and ASR.” Mr. Stoldt’s October 15, 2019, email also copied Mr. Luster and Mr. Sciuto.

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Mr. Stoldt cites the Excerpt in an attempt to respond to criticism that the Stoldt Memo's supply assumptions do not comply with the legal requirement under Water Code section 10635, California Code of Regulations, title 22, section 64554, and the CPUC's General Order 103-A, that a water system's supply must be assessed in dry and multiple dry water years, and include the source's lowest anticipated daily yield. Mr. Stoldt states in his October 31 letter that the Excerpt "shows that with Pure Water Monterey expansion, the system can endure a multiple year drought," and that it "also shows the availability of ASR water based on historical climate and weather data and, in fact, shows availability during drought years."

It has now become apparent that the Excerpt did not merely provide portions of the Technical Memorandum. The final, complete Technical Memorandum has been released as Appendix D to M1W's draft Supplemental Environmental Impact Report ("SEIR"), which was made public on November 7, 2019. A comparison of the Excerpt to the Technical Memorandum shows Mr. Stoldt intentionally manipulated the Excerpt to make it appear that the Technical Memorandum's authors had reached a conclusion regarding the ability of Cal-Am's water supply system to withstand multiple years of drought with Expanded PWM but without desalination. The Technical Memorandum's authors did not make such a conclusion.

As reported by Rob Wellington, legal counsel to M1W, in his November 7, 2019 memo to the M1W Board Chair and Board Members (attached as Exhibit 3), Mr. Stoldt not only cut and pasted portions of the Technical Memorandum to create the Excerpt, he also included the following concluding sentence that was not contained in the Technical Memorandum: "This shows that the built-up reservoir of ASR in storage is sufficient to meet a 4-year drought, and likely longer, as shown beginning in 2034."

Apart from the basic facts that this manipulation was not authorized by the Technical Memorandum's authors, was made to look like their determination, and was then transmitted to the Coastal Commission to influence the Commission's consideration of the Water Supply Project, Mr. Stoldt's added conclusion sentence is improper for several additional reasons. First, the purpose of the Technical Memorandum is to evaluate the PWM Expansion's impacts on groundwater, not to evaluate PWM Expansion's ability to meet Cal-Am's annual or monthly system demands under various drought conditions. Indeed, the Technical Memorandum specifically confirms that the proposed modifications to expand the capacity of the PWM project are intended only as a back-up to the Monterey Peninsula Water Supply Project. (See Technical Memorandum, pages 1 and 3.) Second, Figure 7 in the Technical Memorandum, which Mr. Stoldt used to support his conclusion in the Excerpt, is based on several highly optimistic assumptions, including that the State Water Resources Control Board's Cease and Desist Order obligation requiring Cal-Am to reduce its Carmel River pumping is met in 2021 and that there is no drought between now and 2034. Regarding drought, such an assumption is not only speculative, it is highly unlikely since a multi-year drought has occurred in California in virtually every decade since 1917. Third, Mr. Stoldt's conclusion is based on his own unverified calculation of demand (which has not been adopted by the MPWMD Board, and is lower than the demand previously asserted by MPWMD in testimony to the CPUC), not the expected future customer demand determined through the evidentiary proceedings by the CPUC – the agency charged by statute to make utility sizing determinations.

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Unfortunately, the Coastal Commission Staff Report for the Monterey Peninsula Water Supply Project, released on October 28, 2019, relies almost solely on the Stoldt Memo and the Attachments to Mr. Stoldt's October 31, 2019 letter (including the Excerpt) to conclude that the proposed PWM Expansion could feasibly replace desalination and still meet demand, and recommends that the Coastal Commission deny a coastal development permit for the Water Supply Project. In response to Cal-Am's and the CPUC's rejection of expanded PWM as a feasible alternative to desalination due to its inability to provide sufficient supplies, especially during multiple drought years, the Coastal Commission Staff Report concludes, citing the Excerpt, that "the District has evaluated how much water would be available during multiple drought years and determined that, with the Pure Water Expansion adding water to the ASR project each year and with the current level of demand and expected increases in that demand, Cal-Am's portfolio could provide adequate water for multiple drought years (see Exhibit 10 – *Draft Technical Memorandum – Pure Water Monterey Expansion SEIR Groundwater Modeling Analysis*)." Coastal Commission staff added the Excerpt to the Coastal Commission Staff Report as Exhibit 10.<sup>4</sup>

We hereby demand that MPWMD correct the record with the Coastal Commission regarding these issues.

### **Failure to Provide Full Disclosure to the Lieutenant Governor**

The M1W Board has clearly and consistently taken the position that a potential expansion of PWM was being investigated as a backup to, and not a replacement for, desalination. The M1W Board affirmed its position in adopting Resolution 2019-19 on October 28, 2019 (attached as Exhibit 4), stating that:

- "PWM Expansion was to be 'only a backup water supply to the Cal Am desalination plant . . . in the event that the Cal Am plant becomes delayed' with regard to meeting the Cease and Desist Order deadline of December 31, 2021, and not as a replacement to Cal-Am's desalination project;" and
- The M1W Board's "prior approval of proceeding with the initial environmental, permitting and design work for the potential expansion of the Pure Water Monterey

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<sup>4</sup> Coastal Commission staff also relied upon Appendix B to Mr. Stoldt's October 31, 2019 letter, entitled MPWMD Analysis of Available Well Capacity for 10-Year Maximum Daily Demand (MDD) and Peak Hour Demand (PHD) ("Well Capacity Analysis"). The Well Capacity Analysis also contains inaccurate data. Table 1 of the Well Capacity Analysis purports to identify the capacity of Cal-Am's supply wells, including columns for "Authorized Operations," "Desired Operations," and "Desired Operations Firm Capacity." Mr. Stoldt does not cite the source for his numbers, but they appear to be substantially inflated. Nevertheless, Coastal Commission staff attached the Well Capacity Analysis as Exhibit 9 to the Coastal Commission Staff Report.

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Project was done specifically as a backup plan to, and not as an option in the place of, the Cal Am desalination project.”<sup>5</sup>

As expressed in our November 3, 2019 letter, we share the M1W Board’s concern with the viability of Expanded PWM if desalination is not available.

Unfortunately, it appears that M1W staff has continued to promote Expanded PWM as an alternative to replace desalination, despite these very clear statements from the M1W Board. A mere two days after Resolution 2019-19 was adopted, on October 30, 2019, M1W’s general manager traveled to Sacramento for an in-person meeting with Lieutenant Governor Kounalakis and the Lieutenant Governor’s environmental policy advisor, Matthew Dumlao, and Jonas Minton of the Planning and Conservation League. On November 7, 2019, the Coastal Commission posted an Ex Parte Communication Disclosure Form (attached as Exhibit 5), in which the Lt. Governor reported that at the meeting Mr. Minton and Mr. Sciuto explained that Expanded PWM could “provide enough water to meet the region’s needs, obviating the need for the desal plant.”

On November 8, 2019, a Corrected Ex Parte Communication Disclosure Form (attached as Exhibit 6) was posted on the Coastal Commission’s website concerning the Lieutenant Governor’s meeting with Mr. Minton and Mr. Sciuto. The corrected disclosure attributes the statement that Expanded PWM obviates the need for the desal plant to Mr. Minton, and also reports that Mr. Sciuto, representing M1W, explained what the recycled water project was, and that its expansion is feasible.

Even if Mr. Sciuto did not himself state that the desalination plant was not needed with the expansion of PWM, as M1W’s representative and in light of his Board’s resolution just two days before, his silence at the meeting in the face of statements directly contradicting his Board, and his failure to provide the Lieutenant Governor with a full and complete disclosure, is an egregious omission.

Cal-Am hereby requests that the M1W Board’s publicly adopted position, that Expanded PWM is being investigated as a back up to desalination and is not a viable replacement, be immediately communicated to the Lieutenant Governor and any other public officials Mr. Sciuto may have met with but failed to fully disclose this information.

### **Harm to Cal-Am from Staff Conduct**

MPWMD staff’s misleading conduct and M1W staff’s continued advocacy for permitting agencies to reject the Water Supply Project in favor of Expanded PWM as a replacement to desalination, contrary to the express intent of the MPWMD and M1W Boards, has caused, and continues to cause, substantial harm to Cal-Am and its customers. As you also know, Cal-Am has provided funding in the amount of \$314,000 to M1W to enable it to proceed with

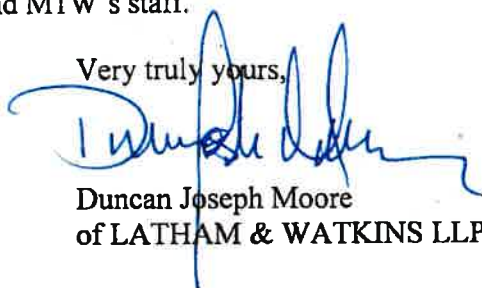
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<sup>5</sup> Indeed, the draft SEIR for the PWM Expansion project confirms that the project is proposed as a back-up to the MPWSP, “not as an option or alternative to the MPWSP.” (Draft SEIR, p. 2-8.)

environmental review of a potential expansion of PWM, based on M1W's representation that such potential expansion was a backup to and not a replacement for Cal-Am's CPUC-approved desalination project. While M1W was proceeding with such environmental review, Cal-Am continued and continues to incur substantial costs in moving forward with permitting and other approvals for the desalination plant.

Cal-Am has grave concerns about the activities described in this letter. Cal-Am reserves all of its rights regarding recovery of any damages incurred by it or its customers as a result of the improper actions by MPWMD's and M1W's staff.

Very truly yours,



Duncan Joseph Moore  
of LATHAM & WATKINS LLP

Attachments

cc: Rob Wellington, Esq., Wellington Law Offices (for M1W Board)  
David Laredo, Esq., De Lay & Laredo (for MPWMD Board)  
Tom Luster, California Coastal Commission  
Jason Reiger, Esq., California Public Utilities Commission  
Rich Svindland, Cal-Am

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# **EXHIBIT 1**



# Monterey Peninsula Water Management District

## Strategic Goals

### Adopted May 20, 2019

#### One-Year Goals

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#### 1. Continue to Advance Water Supply Projects

The District has made progress over the past year to secure contracts and funding for water supply projects. Continued progress would entail the following:

- With completion of construction of Pure Water Monterey; the District needs to incorporate sales to Cal-Am in its billing system, develop a water accounting process, pay for establishment of reserves, work with Monterey One Water on annual water rate setting, and monitor operations.
- Support commencement of the Cal-Am desalination project; Further develop Financing Order and timing for the “Ratepayer Relief Bonds” public contribution.
- Advance “back-up” plan in the event the desalination project is delayed – Environmental, design, and permitting for Pure Water Monterey expansion.
- Complete Santa Margarita ASR Site; Identify ASR operational issues and vulnerabilities to help optimize performance
- Address rule changes to create additional supplies in short term (reestablish District Reserve, expand use of water entitlements, ease transfers, identify unused credits, etc)

#### 2. Complete Measure J/Rule 19.8 Feasibility Analysis

Coordinate the efforts of the District’s eminent domain attorneys, valuation and cost of service consultant, investor-owned utility consultant, investment banker and other professional to yield meaningful work product for General Manager to draft plan for compliance with Rule 19.8.

#### 3. Continue to Raise Profile of District at Local, Regional, State, and Federal Level

- Provide leadership on water issues locally and regionally
- More interaction with local NGOs
- Continue speaking and sponsorship opportunities
- Enhance State and Federal regulators’ understanding of District role
- Pursue State and Federal funding opportunities
- Continue to track bills and provide guidance at State and Federal level
- Maintain public outreach and visibility, locally and within the industry

#### **4. Establish Clear Requirements for Water Distribution Systems within the District**

The District could benefit by more clearly stating or codifying in its Rules and Regulations its expectations and requirements from large Water Distribution Systems (WDS) within its boundaries with respect to the following:

- Reporting production and consumption and other reporting requirements
- Posting current rates and charges
- Posting other consumer-oriented information
- Rules on annexations
- Ensure District revenues appropriately collected (e.g. User Fee in Canada Woods territory; Water Supply Charge in satellite systems; Revisit Capacity Fee discount for non-Main territory)
- Summarize key conditions of existing WDS and monitor compliance; Look at methods of establishing administrative record regarding compliance; Clarify remedies/penalties for non-compliance;
- Examine compliance with water pressure requirements
- Consider aligning District Boundaries more closely to underlying systems (LAFCO process)
- Other

#### **5. Develop Comprehensive Strategy for Permit 20808-B**

The District has successfully reassigned portions of the original New Los Padres Reservoir permit 20808 to Phases 1 and 2 of ASR (20808-A and 20808-C.) However, permit conditions for each are different. The remainder permit 20808-B, without an approved extension, could be revoked by the SWRCB if water is not planned to be beneficially used by the year 2020. ASR operations are constrained by the season of diversion, points of injection and extraction, and out-of-date instream flow requirements. A strategy for the remainder permit will include:

- Identification of two to three potential new injection and recovery sites, both in the Seaside Basin and the Carmel Valley
- Possible source well rehabilitation and/or expansion in Carmel Valley; Potential treatment capacity expansion. May require EIR.
- Develop strategy for direct diversion component of water right.
- Amend existing permits and conform all permits to same standards; Working with Cal-Am and DDW, attempt to create greater operating flexibility such that any injection well can inject any water and wells can be used for both recovery and production.
- Complete a water availability analysis and an IFIM study to revise permit conditions.

#### **6. Fiscal Sustainability and Long-Term Financial Planning**

The District should examine its requirements for long-term fiscal strength, including:

- Plan for Measure J/Rule 19.8 costs and exposure

- Reserves and investments
- Strategies for funding PERS and OPEB liabilities
- Ongoing maintenance and replacement of District assets
- Discuss rebate funding if Cal-Am reduces program
- Water Supply Charge plan for sunset/suspension/reduction.
- Plan for retirement of Rabobank Loan
- Study fiscal impact of realignment of District boundaries

## **7. Organizational Issues**

The Board may seek to direct staff to review its essential services and staffing levels, as well as succession plans. This review may include actions related to the following:

- Addition of new staff to meet changing District priorities
- Examine succession planning
- Identify needs if Measure J/Rule 19.8 feasibility is indicated
- Consider adoption of a “Sustainability Policy” for all District activities
- Tour District assets for Board members and staff
- Consider employee team-building or morale-building events each year
- Ensure appropriate staff training (customer service, CPR, confined space, etc)
- Implement revised file retention policy and email retention policy; Reduce physical files; establish searchable electronic file repository.
- Annual update of District website
- Obtain CSDA “Transparency Certificate”; Continue to achieve Government Finance Officer Association award for Comprehensive Annual Financial Report (CAFR)

## **Three-Year Goals**

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### **8. Measure J/Rule 19.8 Next Steps**

If feasibility is indicated, prepare for bench trial on public necessity: (a) identify costs, funding plan, and risks, (b) develop clear plan of operations, (c) perform formal appraisal, (d) build findings of public necessity, and (e) diagram legal strategy.

If feasibility is not indicated, resolve remaining issues in Rule 19.8 such as: should the District revisit the issue again in the future? Or, what to do about other water distribution systems within the District? Also develop a plan to replenish reserves for costs associated with the process.

### **9. Establish a Long-Term Strategy for Los Padres Dam**

The District is coordinating a team of consultants to look at long-term alternatives for the Los Padres Dam. Cal-Am is participating in the funding. The National Marine Fisheries Service

(NMFS) and California Department of Fish and Wildlife (CDFW) are involved in technical review. Work to date has included development of Instream Flow Incremental Method (IFIM) study to evaluate habitat from dam removal, expanded reservoir capacity, and/or changed operations, as well as creation and calibration of the Carmel River Basin Hydrologic Model to evaluate water availability under various alternatives. The team has looked at upstream fish passage feasibility and sediment management under various alternatives. NMFS has indicated a series of additional studies are desired, which may result in 2- to 3- years of additional work.

- In addition to additional scenarios of the Carmel River Basin Hydrologic Model (CRBHM), additional studies might include: (a) Comprehensive water quality monitoring and modeling, (b) Additional hydrologic simulations (e.g., historical simulations), (c) Fisheries Monitoring & Life Cycle Model Development, (d) Historical Ecology & Hydrology Assessment, (e) Upper Carmel River Habitat Assessment, and (f) Conduct a Carmel River Flood Risk Assessment
- The District will also want to review overall feasibility and cost considerations, and liability and management issues
- Is there a role for hydroelectric generation in the long-term strategy?

#### **10. Prepare for Allocation of “New Water”**

The 1990 Allocation EIR resulted in the District developing a process for the allocation of water to the jurisdictions. The process was very interactive with jurisdiction participation. The District will need to be proactive to develop fair and equitable mechanisms for allocation of new water from the Monterey Peninsula Water Supply Project to the jurisdictions.

- Meet with jurisdictions to agree on future parameters
- Update and evaluation of each jurisdiction’s general plan needs; Consider allocations for special entities (e.g. Department of Defense, Montage, etc)
- Develop policy for allocation of new water; Determine CEQA requirements
- Perform initial allocation
- Clean up the District rules regarding Water Credit transfers, sales, and categories.

#### **11. Continue to Examine Revising or Streamlining Rules and Regulations**

A broad examination of what policies, rules, and regulations can be revised without an intensification of water use while the CDO remains in effect, as well as what direction policy should take for the future when the CDO is lifted.

- Changes that can support affordable housing and/or auxiliary dwelling units
- Consider change to second-bathroom protocol
- Develop credit for innovative technologies
- Options for reducing disposables/trash in Group II setting
- Examine conservation off-set program
- General clean-up

## **12. Carmel River Mitigation Program**

Determine direction for the District's Carmel River mitigation activities as a result of removal of San Clemente Dam and the assumption that a new water supply comes on line.

- Invest in data collection to support future actions (PIT tagging, construction and staffing of a weir for fish counts, etc)
- Promote strategies for addressing the striped bass issue
- Assess Carmel Valley changes in use over time
- Secure outside funding for habitat restoration
- Develop Mitigation Program "Endgame" Plan
- What will be future Cal-Am operations?
- What will be role of Cal-Am, NMFS, CDFW, non-Cal-Am pumpers?
- How will a baseline be established?
- What data will be needed? How will it be collected? For how long?





# **EXHIBIT 2**



Pure Water Monterey Expansion  
And Aquifer Storage and Recovery (ASR)  
Resistance to Drought

Excerpt from DRAFT TECHNICAL MEMORANDUM

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**DATE:** September 30, 2019

**PROJECT #:** 91553.0202

**TO:** Ediwon Lin, Todd Groundwater

**FROM:** Pascual Benito and Derrick Williams

**PROJECT:** Pure Water Monterey

**SUBJECT:** Pure Water Monterey Expansion SEIR Groundwater Modeling Analysis

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**Predicted Hydrology Assumptions**

The Seaside Basin predictive model simulates a 33-year period (Hydrometrics WRI, 2009). The hydrology (rainfall and recharge) used to calibrate the groundwater model was applied to the predictive model. To extend the hydrology through the predictive period, the 1987 through 2008 hydrology data were used to simulate model years (MY) 1 through 22, and the 1987 through 1997 hydrology data were then repeated for MY 23 through 33 (Figure 3). This is the approach that has been adopted for all predictive models of the Seaside Basin since 2009. By using this hydrology, even during the period from MY1 to present when actual hydrology is known, model runs can be compared to evaluate relative groundwater levels.

**Predicted Carmel River Flow and Injection Assumptions**

Monterey Peninsula Water Management District (MPWMD) estimated the amount of Carmel River water available for ASR injection for the predictive simulation based on historical streamflow records. Because the future simulated hydrology is based on the historical hydrology between 1987 and 2008, the future streamflows are expected to be the same as the historical streamflows. MPWMD staff compared historical daily streamflows between water year 1987 and water year 2008 with minimum streamflow requirements for each day. This allowed MPWMD to identify how many days in each month ASR water could be extracted from the Carmel River.

Using a daily diversion rate of 20 acre-feet per day, MPWMD calculated how many acre-feet of water from the Carmel River could be injected into the ASR system each month. The Carmel River water available for injection was divided between the ASR 1&2 Well Site and the ASR 3&4 Well Site according to the historic division of injection.

### Cal-Am Water Demand

The scenarios evaluated are based on an annual demand that starts off at 10,400 acre-feet (AF) in October of MY 8 (simulated year 2020) and increases linearly to 11,325 AF through the end of MY 33 (simulated year 2045). The monthly distribution of Cal-Am's annual deliveries, provided by MPWMD, was used to estimate future monthly demand, and are based on monthly averages of deliveries from 2007 to 2017.

Cal-Am's monthly groundwater pumping from the Seaside Basin is calculated by subtracting Cal-Am's Table 13 diversion, Carmel Valley extractions for customer service, and Sand City Desal Plant supplies from the monthly demands. MPWMD supplied monthly Table 13 diversion rates, which are based on projected climate. Carmel Valley extractions for customer service and Sand City Desal Plant flowrates are constant from year to year.

### Water available for Cal-Am pumping

Cal-Am's future pumping from the Seaside Basin will be drawn from three pools of water, listed in the order in which they are applied to meet monthly demand:

- Native groundwater
- PWM project water recovery
- Carmel River ASR recovery

Cal-Am's pumping is allocated to these three pools during the simulation. Pre-project values are consistent with previous model input (MY4 through 7). From future water year 2022 onward, the allotment from the three water pools is sufficient to supply the requisite pumping. This pool includes pumping for the SNG development from MY4 through 7, consistent with previous project models.

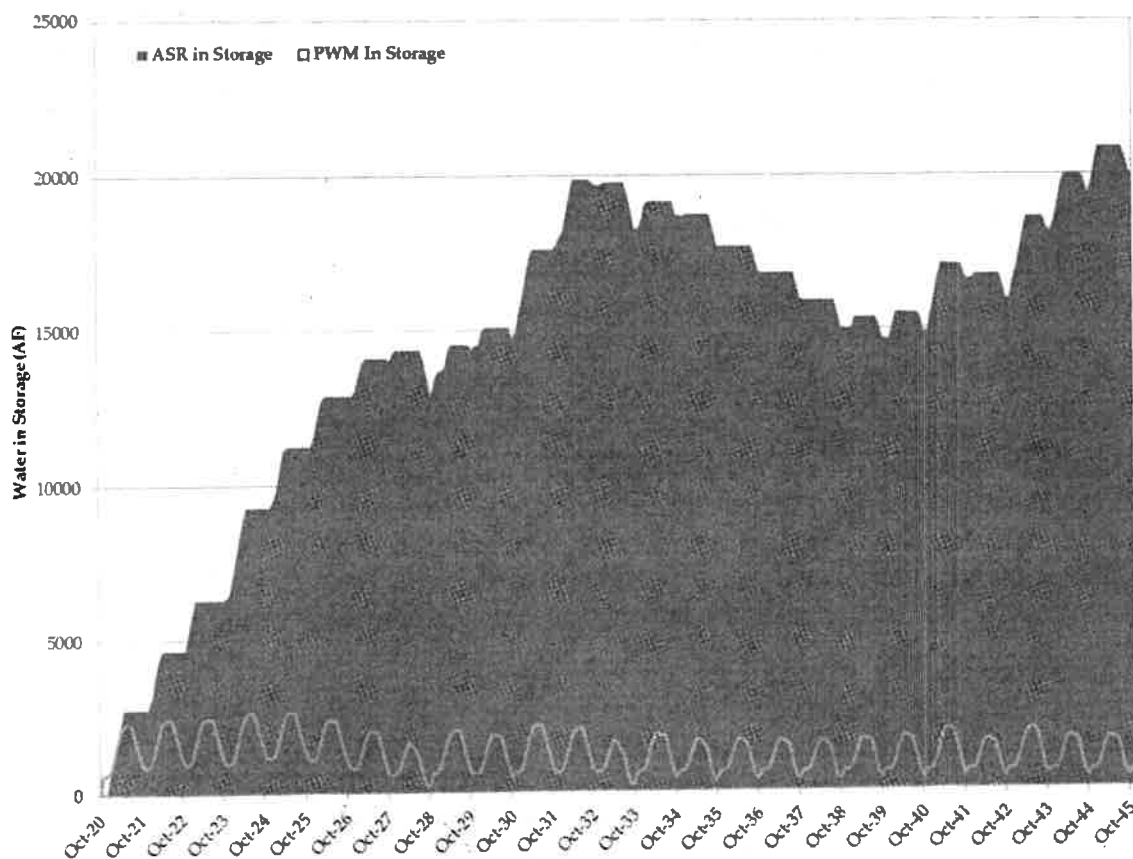
Cal-Am forgoes 700 AF of water from the native groundwater pool every year as a replenishment repayment once the CDO is met, which we assume occurs at the start of the project. Replenishment repayment is water Cal-Am must pay back to the Watermaster because Cal-Am has historically pumped more than their operating safe yield. We therefore assume that Cal-Am pumps only 774 AF/year of its assumed natural safe yield of 1,474 AF/year beginning in October 2020 (MY8). The 700 AF of natural safe yield not pumped over the 25-year period counts as in-lieu recharge, and is Cal-Am's replenishment repayment. Following demand projections from Cal-Am, we assume that native water is pumped at a constant daily rate in agreement with the annual water right.

This water is projected to become available in WY2020 (MY8) and supply between 4,750 and 5,950 AF/year, in accordance with the climate-based projected injection schedule developed by M1W and Todd Groundwater (*PWM Expansion - Model Scenarios and Inj. Well Delivery Schedule 2019-08-01.xlsx*). We assume zero PWM water in storage at the start of the project. PWM water in storage during the Project is shown by the green line on Figure 7.

Cal-Am's extraction of ASR water from the Carmel River is subject to climate conditions. Before Cal-Am has met the CDO (MY1 through 7), the maximum allowed diversion rate of Carmel River water is 20 AF/day, and no ASR water can be stored from year to year. This is consistent with previous PWM models. Once Cal-Am meets the CDO (MY8), the maximum allowed diversion rate increases to 29 AF/day, and ASR water in storage is carried over from year to year. We assume that Cal-Am injects all of

the water they are permitted to pump from the Carmel River on a monthly basis, and that ASR extraction is capped by ASR well capacity. The theoretical amount of ASR water in storage during the Project is shown by the blue area on Figure 7. The actual amount of ASR water stored during the project may be less than what is shown by the blue area on Figure 7 because some water may flow out to the ocean or to adjoining basins.

Figure 7.



This shows that the built-up reservoir of ASR in storage is sufficient to meet a 4-year drought, and likely longer, as shown beginning in 2034.



# **EXHIBIT 3**





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November 7, 2019

Memo to: M1W Board Chair and Board Members

From: Rob Wellington, Legal Counsel

Re: **How the Memo that is Exhibit 10 to the Coastal Commission Staff Report on the Cal-Am Desalination Project was Drafted from Excerpts from a Technical Memo for the PWM Expansion SEIR and Provided to the Coastal Commission**

Background. At this Board's October 28<sup>th</sup> regular board meeting it was reported that the Staff Report of the Coastal Commission concerning the Cal-Am Desalination Project had just been released earlier that afternoon. On the next day General Manager Sciuto received information that Exhibit 10 to that Staff Report was a 3-page excerpt from a much longer draft Technical Memorandum prepared for the Supplemental Environmental Impact Report (SEIR) for the Pure Water Monterey (PWM) Expansion Project. In a telephone conference call on October 31<sup>st</sup> among Board Chair Stefani, General Manager Sciuto and myself, I was requested by the Board Chair to look into and report on just how that Exhibit 10 memo came to be prepared and provided to the Coastal Commission.

The SEIR. At the March 25, 2019 regular board meeting this Board authorized the funding for and proceeding with the environmental, permitting and detailed design work for the potential expansion of the Pure Water Monterey Project, as a backup plan to the Cal-Am desalination project should that project be delayed for some reason beyond the Cease and Desist Order deadline of December 31, 2021. The estimate for that SEIR and related work and the not-to-exceed amount approved was \$1,000,000. 25% of those costs were to be paid by M1W, with 75% to be paid by the Monterey Peninsula Water Management (MPWMD), M1W's partner in the PWM Project. Cal-Am then entered into a reimbursement agreement to pay its share of the SEIR costs for its own planned facilities (4 new extraction wells and a pipeline segment), with an initial contribution of \$314,300.

The Technical Memo. The SEIR being prepared for the PWM Expansion Project ("Backup Plan" – as it is referred to in most M1W documents) includes a number of technical supporting reports. One of those is a 56-page hydrogeology report from consultant Montgomery & Associates, entitled "Technical Memorandum – Subject: Expanded PWM/GWR Project SEIR; Groundwater Modeling Analysis." The first draft of that Tech Memo was received on or about October 2<sup>nd</sup> by the M1W staff persons in charge of the SEIR work for the PWM Expansion Project. Within a day or two that Tech Memo, pursuant to customary practice, was provided by M1W staff to the two MPWMD staff members (one a certified hydrogeologist) with whom they had been closely working as part of the SEIR review team, asking them to review and comment on the memo.

The Exhibit 10 Memo (the Excerpt). When General Manager Sciuto was initially advised about the Exhibit 10 Memo on October 29<sup>th</sup> that was the first time he had known about or seen this document. He immediately inquired of his staff about the matter and then sent out an email to all M1W Board Members reporting the issue and noting that it appeared that someone on the MPWMD staff had cut and pasted portions of the Tech Memo to create the 3-page Exhibit 10 Memo.

That shorter memo, which became Exhibit 10, is marked "DRAFT" and is identified to be "An Excerpt from DRAFT TECHNICAL MEMORANDUM." A comparison of the two memos shows that excerpts from pages 10 through 11 and 14 through 17 of the full Tech Memo were compiled to make up the 3-page memo. The concluding sentence of that memo - "This shows that the built-up reservoir of ASR in storage is sufficient to meet a 4-year drought, and likely longer, as shown beginning in 2034." - is not from the Tech Memo but apparently was added in separately.

Upon inquiry MPWMD General Manager Dave Stoldt advised that he was the person who had prepared the excerpted memo. He stated to me that for some time he had been receiving numerous inquiries about the adequacy of the ASR water from the Carmel River, and responding to defend claims that such water would not be available after some years of drought. He said when he saw the Tech Memo provided to his staff he was particularly impressed with the information provided and explained in figure 7 (of ASR water in storage during the PWM Project), and felt that it would be worthwhile to cut and paste from that Tech Memo to craft something like an FAQ (Frequently Asked Questions) memo to deal with responding to inquiries and claims about the ASR issue. He indicated that he did not create the excerpted memo specifically for Coastal Commission use, but upon inquiry from Commission senior staff member Tom Luster he provided him with a copy. He said he also provided copies of the memo to Jeff Davi and John Tilley, co-chairs of the Coalition of Peninsula Businesses, and to Mike DeLapa, Executive Director of LandWatch. Stoldt stated that he had never mentioned nor shown his memo to any member of the M1W staff. I did not specifically ask, but it seemed quite clear to me that General Manager Stoldt does not believe he did anything improper with what he perceived to be a document in the possession of a public agency.

Release of the SEIR. I have been advised by the M1W staff team for the SEIR that, as planned, they intend to release the SEIR for public review sometime today. That SEIR will include the Montgomery & Associates Tech Memo, identified as Appendix D, with no revisions made to any language from the first draft of that Tech Memo that were cut and pasted into the Exhibit 10 memo.

Please feel free to contact me if you have any further questions regarding the above report.

- R.R.W.

cc: General Manager Paul Sciuto

# EXHIBIT 4



## RESOLUTION NO. 2019-19

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF MONTEREY ONE WATER STATING THAT ITS PRIOR APPROVAL TO PROCEED WITH THE POTENTIAL EXPANSION OF THE PURE WATER MONTEREY PROJECT WAS DONE ONLY AS A BACK- UP PLAN FOR, AND NOT AS AN ALTERNATIVE TO, CAL-AM'S DESALINATION PROJECT**

**WHEREAS**, on March 25, 2019, at a regular M1W board meeting, this Board considered an agenda item of proceeding with the approval of the funding of preparation for environmental, permitting and detailed design work for the potential expansion of the Pure Water Monterey (PWM) Project, and pursuant to agreement M1W was and is to be reimbursed by the MPWMD and Cal-Am for their apportioned shares associated with all the potential expansion environmental, permitting and design costs; and

**WHEREAS**, the staff report on this matter, and the discussion of the Board Members regarding it, made it clear that the proposed PWM Expansion was to be "only a backup water supply to the Cal Am desalination plant . . . In the event that the Cal Am plant becomes delayed" with regard to meeting the Cease and Desist Order deadline of December 31, 2021, and not as a replacement to Cal-Am's desalination project; and

**WHEREAS**, contrary to the purpose and intent of this Board in proceeding with working on the potential expansion of the PWM Project, as stated above, there is currently substantial confusion in the community about this Board's intent; and

**WHEREAS**, at all times herein M1W remains in a contractual and working relationship with Cal-Am to sell 3500 acre feet of recycled/purified water to Cal-Am when the PWM Project begins production, to modify the M1W outfall, to construct a brine mixing structure, etc.; and

**WHEREAS**, the purpose and intent of this Resolution, therefore, is to clarify and restate, for the record, the understanding and basis upon which this Board has proceeded with looking into and working on the expansion of the PWM Project.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of Monterey One Water that it hereby restates and reiterates that its prior approval

of proceeding with the initial environmental, permitting and design work for the potential expansion of the Pure Water Monterey Project was done specifically as a backup plan to, and not as an option in the place of, the Cal Am desalination project, and only to have a ready-to-go alternative plan in place in the event that the Cal Am desalination project is delayed beyond the Cease and Desist Order deadline of December 31, 2019.

**PASSED, APPROVED AND ADOPTED** by the Board of Directors of the Monterey One Water at a regular meeting duly held on October 28, 2019 by the following vote:

AYES:

NOES:

ABSENT:

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Ron Stefani, Board Chair  
M1W Board of Directors

ATTEST:

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Paul A. Sciuto, General Manager  
Secretary to Board of Directors

# **EXHIBIT 5**





# EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Lt. Governor Eleni Kounalakis (by Matthew Dumlao)

1) Name or description of project: Cal-Am Desalination Project in Monterey Co.

2) Date and time of receipt of communication: 10/30/2019 at 12:00-12:30

3) Location of communication: Lt. Governor's Office in Capitol Building

(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)

4) Identity of person(s) initiating communication: Jonas Minton, Planning and Conservation League

5) Identity of person(s) on whose behalf communication was made: Jonas Minton, Paul Sciuto (GM, Monterey One Water)

6) Identity of persons(s) receiving communication: Lt. Governor Kounalakis, Matthew Dumlao (Environmental Policy Advisor to Lt. Governor)


7) Identity of all person(s) present during the communication: Jonas Minton, Paul Sciuto (General Manager, Monterey One Water), Lt. Governor, Matthew Dumlao

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

Jonas Minton and Paul Sciuto shared their concerns with CalAm's proposed desalination project in Monterey County. Mr. Minton provided an history of his involvement with water issues on the Monterey Peninsula, including his role in pushing for the cease and desist order that required CalAm to develop replacement water supplies to the Carmel River by 2021. Mr. Minton shared that his organization originally supported the project and the slant well design. However, Mr. Minton and Mr. Sciuto explained that since the project was originally proposed, an alternative water source has emerged - Pure Water Monterey - and that project could be expanded to provide enough water to meet the region's needs, obviating the need for the desal plant.

11/6/2019

Date

  
Signature of Commissioner

**TIMING FOR FILING OF DISCLOSURE FORM:** File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

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# **EXHIBIT 6**



**RECEIVED**  
NOV 08 2019

Ex Parte Communication Disclosure Form

File by Commissioner: Matthew Dumlao

- 1) Name or description of project: Cal-Am Desalination Project in Monterey Co.
- 2) Date and time of communication: 11/8/2019 at 12:18.
- 3) Location of communication: Phone call
- 4) Identity of person(s) initiating communication: Jonas Minton, Planning and Conservation League.
- 5) Identity of person(s) on whose behalf communication was made: Jonas Minton
- 6) Identity of person(s) receiving communication: Matthew Dumlao (Environmental Policy Advisor to Lt. Governor).
- 7) Identity of all person(s) present during the communication: Jonas Minton and Matthew Dumlao

Complete, comprehensive description of communication content:

Jonas Minton called to clarify the description of a prior communication that occurred on November 6, 2019 between the Lt. Governor, Mr. Minton, Paul Sciuto and Matthew Dumlao and was reported by Matthew Dumlao. He wanted to make sure that the position of Paul Sciuto and Monterey On Water was accurately summarized. As Mr. Minton explained, Mr. Sciuto did not make the claim that expanding the recycled water project – Pure Water Monterey – would render the desal plant unnecessary. Mr. Sciuto took no position on the merits of the desal plant. Only Mr. Minton, as a representative of the Planning and Conservation League, argued that expanding Pure Water Monterey would make the desal plant unnecessary.

11/8/2019  
Date

Matthew Dumlao  
Signature of Commissioner

**RECEIVED**

NOV 08 2019

## CORRECTED Ex Parte Communication Disclosure Form

File by Commissioner: Matthew Dumlao (on behalf of Lt. Governor Eleni Kounalakis)

- 1) Name or description of project: Cal-Am Desalination Project in Monterey Co.
- 2) Date and time of communication: Meeting 10/30/2019 at 12:00-12:30.
- 3) Location of communication: Lt. Governor's Office in Capitol Building
- 4) Identity of person(s) Initiating communication: Jonas Minton, Planning and Conservation League.
- 5) Identity of person(s) on whose behalf communication was made: Jonas Minton, Paul Sciuto (GM, Monterey One Water)
- 6) Identity of person(s) receiving communication: Lt. Governor Kounalakis, Matthew Dumlao (Environmental Policy Advisor to Lt. Governor).
- 7) Identity of all person(s) present during the communication: Jonas Minton, Paul Sciuto, Lt. Governor Kounalakis, and Matthew Dumlao

## Complete, comprehensive description of communication content:

Jonas Minton shared the Planning and Conservation League's concerns with CalAm's proposed desalination project in Monterey County. Mr. Minton provided a history of his involvement with water issues on the Monterey Peninsula, including his role in pushing for the cease and desist order that required CalAm to develop replacement water supplies to the Carmel River by 2021. Mr. Minton shared that his organization originally supported the project and the slant well design. However, Mr. Minton explained that since the project was originally proposed, an alternative water source has emerged – a recycled water project called Pure Water Monterey – and that project could be expanded to provide enough water to meet the region's needs, obviating the need for the desal plan. Paul Sciuto, representing Monterey One Water (the agency developing the Pure Water Monterey project), explained what the recycled water project is and that expanding Pure Water Monterey was feasible.

11/6/2019 (corrected 11/8/2019)

Date



Signature of Commissioner



## W. ROBERT PATTERSON & ASSOCIATES

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Nov 7, 2019

Mr. David J. Stoldt  
 General Manager  
 Monterey Peninsula Water Management District  
 5 Harris Court  
 Monterey CA 93940

**Subject: Measure J – Public Water Feasibility Assessment**

Dear Dave:

The Monterey Peninsula Water Management District (MPWMD) has provided the data and preliminary analytics to meet the challenge for the passing of Measure J. Most specifically the requirement that “the MPWMD can act if a beneficial pathway for Monterey’s future water supply is feasible.”

Exhibit 2-A “Monterey Peninsula Water Management District Preliminary Valuation and Cost of Service Analysis Report” sets forth the system data and the specifics of the Monterey Water System. It separates the Base Water System from the necessary Asset Additions and the Potential Additional Assets.

The Exhibit 2-A Report sets a strong point for furtherance of the Feasibility Assessment and the decision-making the MPWRD Board must make going forward. The Feasibility Assessment based on the comparison of Revenue Requirements offers a solid basis for comparison.

In reading the Executive Summary and the Feasibility Analysis several questions concerning the preliminary analytics not explained in the text arose:

- 1) Why is only 70% of the Monterey Pipeline and PS included in the Base Water System? On what basis is 30% of the Monterey Pipeline and PS allocated to Asset Additions?
- 2) On what basis is the Income Approach valued at 80% and the Sales Comparison at 20% in the Total Base Water System? The exclusion of the Cost Approach is explained.
- 3) What additional costs are required to complete the Desal Plant beyond the \$92,749,000 million? Are they included in the ES-2 A Revenue Requirement?

Measure J – Public Water Feasibility Assessment

- 4) And, how are they covered in the Revenue Requirement of Case B and Case C?
- 5) Further, on what basis were the Typically Monthly Water Bills calculated?

I look forward to your answers and the presentation on Nov. 12, 2019.

-----##-----

Sincerely yours,



W. Robert Patterson  
Principal

WRP/sj



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MPWMD

**Coalition of Peninsula Businesses**

A coalition to resolve the Peninsula water challenge to  
comply with the CDO at a reasonable cost

*Members Include: Monterey County Hospitality Association, Monterey Commercial Property Owners' Association,*

*Monterey Peninsula Chamber of Commerce, Carmel Chamber of Commerce, Pacific Grove Chamber of Commerce, Monterey County Association of Realtors, Associated General Contractors-Monterey Division, Pebble Beach Co., Community Hospital of the Monterey Peninsula*

November 5, 2019

Jack Ainsworth, Executive Director  
The Honorable Dayna Bochco, Chair, and Member  
California Coastal Commission  
45 Fremont Street, Ste. 2000  
San Francisco, California 94105

Transmitted by fax to 415-904-5400

Dear Director Ainsworth, Honorable Chair Bochco and members:

The Coalition of Peninsula Businesses represents virtually all the employers on the Monterey Peninsula and their 35,000 plus employees. It is truly the voice of the Peninsula.

The Coalition brings to your attention several facts and several troubling developments at the Monterey Peninsula Water Management District (MPWMD) that bear directly on a report from the District (*Demand and Water Supply on the Monterey Peninsula*) intrinsic to staff's recommendation to deny a Coastal Development Permit to California American Water Co. for its Monterey Peninsula Water Supply Project (MPWSP).

MPWMD General Manager David Stoldt suggested recently, without supporting evidence or discussion with the party that owns the entitlement, that a long-standing water entitlement could be reduced by 180 af. Mr. Stoldt also suggested recently, without supporting evidence or discussion with the party to be benefitted, that a special reserve created by the District could be transferred to a different not-yet-created reserve and allocated for a different purpose. Mr. Stoldt also suggested a procedure for the District to take back unused water allocations. An attorney for the State Water Resources Control Board (SWRCB) sent an e-mail to remind Mr. Stoldt and the District that such transfers are prohibited by Condition 2 of the Cease and Desist Order (CDO). Apparently, Mr. Stoldt is attempting to find a way to support his likewise unsupported and erroneous conclusion, unfortunately repeated by your staff in its denial recommendation, that a desal plant is not needed to satisfy water demand on the Peninsula.

A second unsupported contention in the Demand and Water Supply study is that an expanded Pure Water Monterey (ePWM) project will produce enough water to eliminate the need for a desal plant. Your staff concludes that this project is "well-developed and feasible." It is neither. The ePWM draft EIR is not yet released, so a long way from the end of agency and public review and comment, let alone becoming a project. Recently the agency responsible for this proposal confirmed its intent that ePWM is intended to be a back-up not a replacement for desal. It is possible the ag community in Monterey County may present substantial opposition to use of ePWM water (if and when any is produced), which is in large part derived from Salinas Basin water, to help solve the Peninsula's water needs. It is pertinent to note that the original project, Pure Water Monterey (PWM), has been delayed five times and is still not constructed, let alone capable of delivering potable water for Peninsula use or treated water for the Castroville Seawater Intrusion Project to benefit the ag community.

We attach our criticisms of the Stoldt/MPWMD "Demand and Supply" report, which has not been endorsed or adopted by MPWMD.

Our Coalition was organized almost ten years ago to build community support for development of a water supply, at the lowest possible cost, to meet the demands of the SWRCB CDO and protect the Carmel River and its environment from the ill-effects of over-pumping. The Coalition is the first-ever broad-based effort to unite virtually every residential and commercial interest on the Peninsula.

Staff's recommendation to abandon the desal plant is misguided and flawed. The Peninsula needs a safe, secure, stable, sufficient and sustainable water supply. It has needed this for almost fifty years. Elimination of the desal plant from the trio of water supply projects ignores the foundational principle of diversifying sources to assure sufficiency, stability and sustainability.

Sincerely,



Jeff Davi, Co-chair



John Tilley, Co-chair

cc: Tom Luster <tluster@coastal.ca.gov>  
 Steve Westhoff, State Water Resources Control Board  
 <steven.westhoff@waterboards.ca.gov>  
 Molly Evans, Monterey Peninsula Water Management District at 831-644-9560  
 Ron Stefani, Chair, Monterey One Water at 831-372-6178  
 Chris Cook, California American Water Co. <chris.cook@amwater.com>  
 Ian Crooks, California American Water Co. <ian.crooks@amwater.com>

## **Coalition of Peninsula Businesses**

**A coalition to resolve the Peninsula water challenge to  
comply with the CDO at a reasonable cost**

*Members Include: Monterey County Hospitality Association, Monterey Commercial Property Owners' Association,*

*Monterey Peninsula Chamber of Commerce, Carmel Chamber of Commerce, Pacific Grove Chamber of Commerce, Monterey County Association of Realtors, Associated General Contractors-Monterey Division, Pebble Beach Co., Community Hospital of the Monterey Peninsula*

September 16, 2019

The Honorable Molly Evans, Chair, and Board  
Dave Stoldt, General Manager  
Monterey Peninsula Water Management District  
P. O. Box 85  
Monterey, California 93942

Transmitted by fax to 831-644-9560

Re: Item 9-A, *Supply and Demand for Water on the Monterey Peninsula*

Dear Ms Evans, Board Members and Mr. Stoldt:

The Coalition of Peninsula Businesses finds a number of things about the report, *Supply and Demand for Water on the Monterey Peninsula*, troubling. In fact, the report appears to be a 'dressed-up' version of arguments MPWMD made to the CPUC before, and rejected by the CPUC in, its final approval of the Monterey Peninsula Water Supply Project. This report seems to constitute a 'second bite at the apple' now that the Supreme Court rejected all appeals, including MPWMD's, of the CPUC decision approving the Monterey Peninsula Water Supply Project. As a consequence, the report deservedly lacks credibility.

The 'Principal Conclusions' reached are problematic.

The first 'conclusion' contradicts a number of the CPUC findings of fact' in its decision approving the Monterey Peninsula Water Supply Project. A sampling of those contradictions follows:

- 19. PWM expansion alone fails to provide a sufficient supply ...[or] sufficient supply flexibility or reliability...;
- 25. Construction and operation of the MPWSP will allow Cal Am to meet reasonable demand..., provide a reliable and secure supply, include a reasonable "buffer" against uncertainties, and satisfy all other reasonable

needs;

- 73. There is a need for additional water supplies, over and above any water savings that can be accomplished through conservation, use of recycled water or other purchased water.

The CPUC approval was based on objective standards following CPUC General Order 103b (written into law in the California Code of Regulations at Waterworks Standards) and AWWA standards for sizing water supply projects. How do the assertions in this report meet those important standards for supply, reliability and flexibility?

The second conclusion is that either water supply option is sufficient to lift the CDO. The CDO specifies it shall remain in effect until a) Cal Am certifies, with supporting documentation, that it has obtained a permanent supply of water [to reduce Carmel River pumping to the legal limit] and b) the Deputy Director for Water Rights concurs.... Given that the supply option that does not include a desal plant does not and cannot comply with the standards mentioned above (including sufficiency, reliability, flexibility) and since the CDO is issued against Cal Am, how can the District assert with any confidence that it can secure a lifting of the CDO based on non-existent evidence of a "permanent" water supply to serve Peninsula water needs?

The fourth conclusion is that 'several factors' contribute to pressure on (sic) decreasing per capita water use. As mentioned earlier, the CPUC rejected this argument by stating in "finding of facts" point 29 that "the assertions by some parties [importantly including MPWMD] that the downward trend in water use in the District will continue ...are not convincing."

The third conclusion that the long-term Peninsula water needs may be less than thought is problematic on several levels.

- Report calculations of water needed for legal lots results in a trivial reduction in overall demand (by the way, the updated water use factors incorrectly list multi-family use at 1.2 AFA instead of .12 AFA) so are not of much concern.
- Reducing the 'tourism bounceback' needs from 500 AFA (the need used in the CPUC approval, and once agreed to by MPWMD - that helped develop that figure) without adequate discussion or documentation is unacceptable. It is also unacceptable to label this figure as due to 'tourism bounceback' as it actually represents a figure for economic recovery of all sectors of the Peninsula economy including recovery of lodging levels to prior highs. Again, this reduction was presented to the CPUC and rejected in its final approval.

- The Pebble Beach Co. entitlement to 345 AFA is a matter of law and not subject to ex post facto tinkering.

We urge the District to reject this analysis of Peninsula water demand and supply. We need a desal plant as approved by the CPUC as the only means of obtaining a sufficient, stable, secure and sustainable water supply which even an expanded Pure Water Monterey (soon to be in double default without any "transparent" explanation to the public) and drought failure-prone Aquifer Storage and Recovery will not provide.

Sincerely,



Jeff Davi, Co-chair



John Tilley, Co-chair

**Coalition of Peninsula Businesses**

A coalition to resolve the Peninsula water challenge to  
comply with the CDO at a reasonable cost

*Members Include: Monterey County Hospitality Association, Monterey Commercial Property Owners' Association,  
Monterey Peninsula Chamber of Commerce, Carmel Chamber of Commerce, Pacific Grove Chamber of Commerce,  
Monterey County Association of Realtors, Associated General Contractors-Monterey Division,  
Pebble Beach Co., Community Hospital of the Monterey Peninsula*

September 24, 2019

The Honorable Molly Evans, Chair, and Board

Monterey Peninsula Water Management District  
P. O. Box 85  
Monterey, California 93942

Transmitted by fax to 831-644-9560

Dear Chair Evans and Board:

The night of your recent Board meeting, MPWMD General Manager handed us a one page 'response' to our letter of concern re the 'water demand and supply' report (the report); our letter was delivered to you by fax Sunday night before your Board meeting.

Aside from the informality of the response, the responses are not satisfactory for several reasons which we explain below (the responses are shown in italics).

*Response to our criticism of first Principal Conclusion in the report: Citation of CPUC Findings: We do not dispute those findings were made by the CPUC. We are simply presenting the facts about supply and demand as they exist at this time. One could assert that the CPUC knows less about local demand than the District. The CPUC did not present any findings about market absorption, nor when future demand will require new supply.*

The conclusions reached by the CPUC were based on exhaustive testimony and exhibits from Cal Am, from various subject matter experts and the testimony of numerous

others (including Mr. Stoldt in 2017) with a stake in the outcome. To imply that the district knows more about local demand than the company tasked with producing water to meet local water demand is absurd; virtually everything Mr. Stoldt purports to know about local water production and use is based on information derived from Cal Am. After decades of frustration of efforts and desires of local water users to remodel, renovate, reuse and rebuild, Mr. Stoldt should be a little more receptive to the ideas about future demand and 'market absorption' expressed by those local water users, many of whom will be the source of future demand and 'market absorption.' Also missing from the analysis is any mention, or taking into account, of the new California housing mandates from a package of bills signed into law by Governor Jerry Brown in late September 2017 (an excellent recap of those bills and their requirements can be found at <[sacbee.com/news/politics-government/capitol-alert/article176152771.html](http://sacbee.com/news/politics-government/capitol-alert/article176152771.html)>).

Response to our criticism of the report's lack of objective standards in estimating demand and supply needed: *Objective Standard of CPUC General Order 103b: We believe it is intended to have said 103A. GO 103A only speaks to maximum daily demand (MDD) and peak hourly demand (PHD), and does not refer to average annual demand. Hence, there is no requirement to look back 10 years on annual demand (which if you did, is still over 1,000 AF below the current sizing assumption.) Our analysis does consider trending 10-year MDD and PHD, and asserts that the additional well capacity included in the Pure Water Expansion will be more than sufficient for a 15-16 MGD MDD. Because the trending MDD is in decline, the 10-year Max-Month was 10-years ago, so may require over 21-22 MGD MDD. Use of the Carmel River legal rights in summer months or additional well capacity would be required - still inexpensive - to meet the higher MDD values.*

Mr. Stoldt is right – we should have cited CPUC General Order 103-A. Mr. Stoldt is not correct in asserting that General Order 103-A (along with the AWWA standards we referenced but Mr. Stoldt does not mention) do not specify that sizing a water supply project to cover *maximum daily demand* and *peak hourly demand* within a ten-year period. It should be remembered that at the beginning of the MPWSP application process, Cal Am used statistics based on five-year histories and changed to using statistics based on ten-year histories because of the generally used water supply project sizing standards. Cal Am's testimony and exhibits of Richard Svindland and others filed in January 2013 are excellent sources, among others, to consult on this point.

Response to our criticism of the second Principal Conclusion that either supply option (desal or expanded PWM) would be sufficient to lift the CDO: *How can the District assert the CDO would be lifted? Both supply scenarios are "permanent." Both scenarios allow Carmel River pumping to stay below the legal rights.*

Our criticism stands as presented: the CDO cannot be lifted until our area “proves” it has a “permanent supply of water.” Aquifer storage and recovery (ASR) is far from a permanent supply. One only has to review the ASR production records of the Peninsula’s last drought – when ASR produced NOTHING - to understand the danger of relying on ASR as a source of “permanent supply.” To include Pure Water Monterey (PWM), with its interruptible source of treatment water, is problematic. The source water is dependent on ag water uses remaining constant, which is highly unlikely in light of recent developments in ag practices and changes in technology. PWM is close to its second default in the last few months. PWM expansion is dependent on some of the same unreliable and interruptible water sources as the original plant and therefore as distant, if it is in fact built, from a “permanent supply” as the original. Any water supply project that purports to be ‘permanent’ that does not include a desal plant to provide drought-proof and reliable water production is just wishful thinking (this important concept was supported in testimony from, among others, Mr. Stoldt in 2017). To step away from desal, which seems to be the real purpose of the study, would create a serious risk that we will never see a lifting of the CDO.

Response to our questioning the fourth Principal Conclusion about contributing factors to decreased water use: *“the downward trend in water use in the District will continue” The District report does not contend this at all. The report says where do we go from here?... assuming no continued downward trend in annual use. The price elasticity and legislative action discussion underpins the District claim that water use per person is not likely to increase.*

We did not contend that the report predicted continued decreases in water use; we did point out that the CPUC rejected this argument as “not convincing.” To conclude water use per person will not rebound (that is, increase) as it has throughout California after the severe state drought restrictions were lifted is to ignore recent history and human nature.

In addition, when thinking about water demand and ‘market absorption’ please see our comment above on the new California housing mandate – for housing for workers and middle management.

Response to our comments on the third Principal Conclusion (*that long-term water supply needs may be less than thought*): *Legal lots of record: The point is the sum of several “trivial” reassessed assumptions can be significant. Tourism Bounceback: This figure was labeled ‘tourism bounceback’ by Cal-Am in its April 14, 2016 and September 27, 2017 testimony and tied to tourism*



*occupancy rates in their April 23, 2012 and January 11, 2013 testimony.*

The comment that the “sum of several trivial assessments can be significant” will be addressed later.

Mr. Stoldt spent a lot of time on occupancy statistics (STRS reports, etc.) to reach the conclusion that the amount of water labeled ‘tourism bounceback’ is overstated even though it is part of the final CPUC approval and even though the district earlier on agreed with that number and later unsuccessfully tried to convince the CPUC it should be reduced.

Mr. Stoldt’s conclusion that the bounceback has already occurred is wrong and a few simple conversations with hospitality industry professionals would have shown him otherwise.

The occupancy statistics relied on are county-wide, not specific to the Peninsula. Further, those statistics do not differentiate between full-service establishments and others. The 500 afa of supply was intended to include not just the return to prior levels of occupancy on the Peninsula (full-service facilities, for instance, were at occupancy levels in the high 70s to low and mid-80s during 1998-99-2000) but water use increases as the rest of the Peninsula economy recovers (see Svindland testimony of January 11, 2013).

The events of 9-11-01 hurt the industry but the recent recession hurt the industry much more and has had a much more lasting effect. The lodging industry is still struggling to achieve occupancy levels in the high 70s and low 80s. As the Peninsula’s principal driver of economic activity, all other economic activity - and therefore water use - will increase as the lodging industry achieves its goal. Also ignored in this analysis is the fact that several new lodging facilities will be built in the next couple of years. The Peninsula should be a world-class travel destination; it should not be stuck, as it has been for years, with a third-rate water supply.

Returning to the ‘sum of trivial reassessments can be significant:’ it seems to the Coalition that this *Supply and Demand for Water* report is created to accomplish one thing: tinkering at the margins to reassert failed arguments about the nature and extent of long-term water demand and persuade everyone to abandon the desal plant. Abandoning the desal might (but likely would not) make the purchase of Cal Am more affordable or feasible and make it imperative to embrace the construction of expanded PWM with a guaranteed source of purchase for the produced water, without which

construction of the expansion cannot take place.

Mr. Stoldt may be forgetting the decades-long struggle of the Peninsula to achieve a long-term, safe, sustainable, secure, sufficient water supply. With such a supply now in sight, he has unfortunately slipped in to an all-too-familiar train of thought that has derailed local water supply efforts for over almost fifty years. The Peninsula's long-term water supply needs may not be less than thought. If the report is successful in persuading the Peninsula to abandon the desal plant, we will be stuck in our current condition of water poverty for the foreseeable future.

Please reject this report and its unsupportable conclusions and please do not allow it to become an issue at the November California Coastal Commission Monterey Peninsula Water Supply Project Coastal Development Permit hearings.

Sincerely,



Jeff Davi, Co-chair



John Tilley, Co-chair

cc: MPWMD General Manager Dave Stodt

## Summary of Key Provisions of SB 13 / AB 68 / AB 670 / AB 881

### Reduced Costs and Burdens for Developing ADUs

- Cities must approve ADU applications within 60 days, without a hearing or discretionary review.<sup>1</sup>
- For ADUs permitted by 2025, cities cannot require the owner to live at the property.<sup>2</sup>
- Cities cannot charge any impact fees for ADUs under 750 sqft; fees for larger ADUs are limited.<sup>3</sup>
- Homeowners associations must allow the construction of ADUs.<sup>4</sup>
- ADUs can be developed at the same time as a primary unit, under most of the same rules.<sup>5</sup>
- A city must delay code enforcement against an existing unlawful ADU to allow it to be legalized.<sup>6</sup>

### ADUs Subject to Automatic Approval — No Local Limits

Cities must permit certain categories of ADU without applying any local development standards (e.g., limits on lot size, unit size, parking, height, setbacks, landscaping, or aesthetics), if proposed on a lot developed with one single-family home.<sup>7</sup> ADUs eligible for this automatic approval include:

- An ADU converted from existing space in the home or another structure (e.g., a garage), so long as the ADU can be accessed from the exterior and has setbacks sufficient for fire safety.<sup>8</sup>
- A new detached ADU that is no larger than 800 sqft, has a maximum height of 16 feet, and has rear and side setbacks of 4 feet.<sup>9</sup>
- Both of the above options (creating two ADUs), if the converted ADU is smaller than 500 sqft.<sup>10</sup>

### ADUs Subject to Ministerial Approval — Minimal Local Limits

Even if not subject to automatic approval, a city generally must approve any attached or detached ADU under 1,200 sqft unless the city adopts a new ADU ordinance setting local development standards for ADUs.<sup>11</sup> If a city adopts such an ordinance, it must abide by the following restrictions:

- No minimum lot size requirements.<sup>12</sup>
- No maximum unit size limit under 850 sqft (or 1,000 sqft for a two-bedroom ADU).<sup>13</sup>
- No required replacement parking when a parking garage is converted into an ADU.<sup>14</sup>
- No required parking for an ADU created through the conversion of existing space or located within a half-mile walking distance of a bus stop or transit station.<sup>15</sup>
- If the city imposes a floor area ratio limitation or similar rule, the limit must be designed to allow the development of at least one 800 sqft attached or detached ADU on every lot.<sup>16</sup>

### Adding Units to Multifamily Properties

The new laws allow units to be added to multifamily buildings. Cities must permit these types of units in multifamily buildings without applying any local development standards:

- New units within the existing non-living space of a building (e.g., storage rooms, basements, or garages). At least one unit and up to ¼ of the existing unit count may be created this way.<sup>17</sup>
- Two new homes on the same lot as the multifamily building but detached from it, with 4-foot side and rear setbacks and a 16-foot maximum height.<sup>18</sup>

*Unless otherwise noted, references are to Gov. Code § 65852.2 as amended in Section 1.5 of AB 881, Stats. 2019 c. 659. <sup>1</sup> § 65852.2(a)(3). <sup>2</sup> § 65852.2(a)(6). <sup>3</sup> § 65852.2(f)(3)(A). <sup>4</sup> AB 670, Stats. 2019 c. 178. <sup>5</sup> §§ 65852.2(a)(3); (j)(1); (j)(9). <sup>6</sup> § 65852.2(n). <sup>7</sup> § 65852.2(e)(1). <sup>8</sup> § 65852.2(e)(1)(A). <sup>9</sup> § 65852.2(e)(1)(B). <sup>10</sup> § 65852.2(e)(1)(B); AB 68 (Ting), Stats. 2019 c. 655 § 2 (amending Gov. Code § 65852.22(h)(1)). <sup>11</sup> § 65852.2(a)(4). <sup>12</sup> § 65852.2(a)(1)(B)(i). <sup>13</sup> § 65852.2(c)(2)(B). <sup>14</sup> § 65852.2(a)(1)(D)(xi). <sup>15</sup> §§ 65852.2(d)(1), (d)(3), (j)(10). <sup>16</sup> § 65852.2(c)(2)(C). <sup>17</sup> § 65852.2(e)(1)(C). <sup>18</sup> § 65852.2(e)(1)(D).*