



Supplement to 11/16/2020 MPWMD Board Packet

Attached are copies of letters received between and October 14, 2020 and November 6, 2020. These letters are listed in the November 16, 2020 Board packet under Letters Received.

Author	Addressee	Date	Topic
Molly Evans	MPWMD Board	11/9/20	Resignation Update
Keith Van Der Maaten	Water Supply Planning Committee	11/2/20	MPWMD Water Supply Planning Committee, November 2, 2020, Meeting, Agenda Item 2 – ASR Bypass Pipeline EIR Addendum
Roger Masuda	David Laredo	11/2/20	Overview of Carmel River Issues Related to CalAm’s Proposal for ASR Bypass Pipeline Project
Marli Melton	MPWMD Board	10/30/29	Comment on Water Demand and Price
George Soneff	MPWMD Board	10/28/20	Public Comment Item #2: Certification of Final EIR for the Potential Acquisition of Monterey Water System and District Boundary Adjustment
Linda Lopez	George Riley	10/27/20	Question re Other Charges on Cal-Am Monthly Bill
Margaret-Anne Coppennoll	MPWMD Board	10/19/20	Agenda Item #9 and # 10 – October 19, 2020 Board Meeting
Winston Stromberg	MPWMD Board	10/19/20	MPWMD Board of Directors October 19, 2020 Meeting, Agenda Item 11 – Pure Water Monterey Expansion Lead Agency Status
George Soneff	MPWMD Board	10/19/20	Agenda Item #9 – October 19, 2020 Board Meeting
Michelle Mark Levine	Alvin Edwards	10/15/20	GFOA Certificate of Achievement for Excellence in Financial Reporting

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Molly Evans
PO Box 1264
Monterey CA 93942

November 9, 2020

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Bldg G
Monterey CA 93940

RE: Resignation Update

Dear Chair Edwards:

After discussion with the Monterey County Elections Office and the District’s legal counsel, I am revising my resignation. I will accept my second term, to which I will be appointed in lieu of election. Following the taking of the oath of office alongside the new Directors, I will tender my resignation to be effective immediately.

As I have stated previously, it has truly been my honor to serve the people of Division 3 for the past five years, and I regret that I will not be able to continue to represent them for the next four years. I will be forever grateful to have had the opportunity to serve this community alongside you and the other Directors (past and present) and all of the District’s top-notch staff professionals.

Sincerely,



Molly Evans
Director, Division 3



MARINA COAST WATER DISTRICT

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November 2, 2020

VIA EMAIL

Water Supply Planning Committee Members
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, California 93940

Re: MPWMD Water Supply Planning Committee, November 2, 2020, Meeting, Agenda Item 2 – ASR
Bypass Pipeline EIR Addendum

Dear Chair Riley and Members of the Committee:

MCWD has reviewed the Agenda Item No. 2 for the MPWMD Water Supply Planning Committee meeting, November 2, 2020 and would like to provide the following comments. In short, there appears to be two options to move forward in resolving Cal Am's system "bottlenecks", 1) Install a new, parallel, pipe in General Jim Moore, or 2) Optimize the use of the existing pipeline in General Jim Moore and optimize water operations through permit changes as previously described and provided by MCWD in separate correspondence and included below. The staff reports favors the option of constructing a new parallel pipeline; however, it provides very little analysis to support that option. Since MCWD is the owner of the existing pipeline in General Jim Moore, we have great interest in working together with our neighboring agency to identify the best use of that pipeline and to identify the option with the highest beneficial use for both MCWD and the MPWMD.

First and foremost, what is missing in the staff report is the cost-benefit justification for the proposed parallel pipeline which would include how much water will actually be "lost to the ocean" without the parallel pipe, what would be the cost of the pipeline, and what would be the estimate value of the lost water? Exhibits 3A and 3B, included within the attachments to the staff report, are the only "analysis" provided, and both exhibits fail to show how much water the parallel pipeline will be saving by removing the supposed bottleneck. The question regarding how much ASR water would be saved is especially relevant because Carmel River flows may only be diverted for ASR injection during December through May, and only if river flows are in excess of the steelhead bypass flow requirements. So during that 6 month period, when and how often is it necessary to bypass the existing pipeline in General Jim Moore to permit injection of ASR water into the basin at the same time as water is being extracted from the basin to meet customer demand in the southern portion of the District?

Further, the staff report describes the problem as a bottleneck in simultaneous operation of ASR injection and **Pure Water Monterey (PWM) recovery**, but the staff report lacks any analysis on the utilization and optimization of the existing pipeline that, currently, has available capacity for Pure Water Monterey, and how the option to construct a new pipeline in place of optimizing the use of the existing pipeline is beneficial to overall water supply. MCWD's existing potable water pipeline in General Jim Moore can carry all recovered PWM water. To date, there have been no discussions or negotiations with MCWD on the use MCWD's pipeline for this purpose. The MCWD Board has authorized its General Manager to negotiate the use of MCWD's pipeline for PWM. It would seem this step should be taken prior to making decisions to move

forward on the construction of an additional pipeline that simply parallels and is intended to provide similar function as this existing pipeline.

MCWD would like to point out that the statement on the second page of Agenda Item No. 2 does not accurately capture MCWD's position as stated at the 9/24 MCWD/MPWMD meeting. Item 2 reads "MCWD suggested that if a change petition was filed and granted to change the place of use for ASR and Table 13 water rights, these permits could be used in the winter and PWM water could be banked in the Seaside Groundwater Basin and recovered in the summer and used for drought". To clarify, MCWD's suggestions are that if change petitions were filed and granted, these permits could then be used to meet Carmel Valley, Carmel, and Forest Lake Tanks demands during December through May. If all of those demands are met, then any excess 3,376 AFY water, ASR water, and Permit 21330 water could be used to meet other Cal Am demands or banked in the Seaside Groundwater Basin. During December through May, injected PWM water would be banked to be recovered in the summer to meet Cal Am demands all the way to the Carmel Valley if necessary. Any PWM water not needed to meet immediate demands would continue to be banked for building up a drought reserve.

In moving ahead, MCWD would like to have further discussions on how to best optimize its pipeline for MPWMD's uses, but this requires a better understanding of details not provided in this staff report, specifically, the amounts of Carmel River Water ("ASR") that would be saved per month (e.g. not "lost to the ocean") if the new parallel pipeline were constructed, and the value of the water. From there, a complete analysis and comparison of the options can be made, including the following elements in the second option:

- (1) The existing requirements on the recovery from storage of ASR water both in the CDO and in the two ASR water rights permits being eliminated and ASR water being authorized to be used as a direct use; and,
- (2) Permit 21330's authorized place of use being expanded to be the same as the ASR permits, i.e., the entire MPWMD jurisdictional boundaries; and,
- (3) During December through May, Cal Am would be diverting as much river water as possible when conditions meet or exceed steelhead bypass flow requirements and Cal Am would decide how to account for that water among (a) 3,376 water, (b) ASR water, and (c) Permit 21330/Table 13 water. With the recommended water right changes, the analysis should use all three types of water first for direct use to supply the Carmel Valley, the City of Carmel, the Forest Lake Tanks, and points north in the Cal Am system. Any excess river water not needed for direct use would be classified as ASR water and injected in the Seaside Basin. Under that operating scenario, during December through May, PWM water would not need to be pumped to the Forest Lake Tanks except in drought years when there is no ASR water anyway. The PWM water would remain in storage for recovery and use during the summer.
- (4) The Forest Lake pump would need to be implemented, permitting delivery of PWM/ASR to the City of Carmel and the Carmel Valley in the summer months.
- (5) The existing MCWD-owned pipeline in General Jim Moore would be optimized in its use to meet MCWD's South Ord demands when developed, for ASR injection and recovered water, and for PWM recovered water.

Best Regards,



Keith Van Der Maaten
Marina Coast Water District
General Manager

Cc: Dave Stoldt, Monterey Peninsula Water Management District

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*Celebrating our
100th Anniversary*

November 2, 2020

VIA EMAIL

To: David Laredo, General Counsel, Monterey Peninsula Water Management District

From:



Roger K. Masuda, Legal Counsel, Marina Coast Water District

Subject: Overview of Carmel River Issues Related to CalAm's Proposal for ASR Bypass Pipeline Project

Some water agencies tend to look at a proposed new water infrastructure "through a telescope" to only solve the immediate perceived problem, whereas water issues are all interrelated. Here the MPWMD needs to make a benefit-cost analysis of the proposed new Bypass pipeline within the bigger water picture with the overall objective of optimizing CalAm's surface water, groundwater, and recycled water rights and the use of its pipeline and pumping infrastructure, and weighing the real benefits of the pipeline with its costs. This is especially critical when CalAm is undergoing a substantial change in its water supply sources. This problem is sometimes referred to as "not seeing the forest for the trees."

As shown below and in Keith Van Der Maaten's comments, the proposed ASR Bypass Pipeline Project has a very low benefit-cost ratio as compared with the alternative actions proposed in this memorandum and in Mr. Van Der Maaten's comments, which alternative actions will result in operational improvements in meeting Carmel Valley to Forest Lake Tank water demands during December through May.

Background:

A. The upcoming substantial shift in CalAm's water supply sources from South to North: From 2016 through 2019, approximately 75% of CalAm's water supply came from the South (i.e., Carmel River) and the remainder came from the North (i.e., native Seaside Basin groundwater and stored ASR water). When CalAm eliminates all illegal Carmel River diversions, and with full operation of PWM, approximately 65% of CalAm's water supply will be coming from the North and the remainder will be coming from the South. Based upon the MPWMD staff's description, CalAm's service area may be divided into Southern and Northern Zones. The Southern Zone being the Carmel

Valley, the City of Carmel, and the areas served from the Forest Lake Tanks (e.g., Carmel, Pebble Beach, and West (New) Monterey). The Northern Zone is generally East (Old) Monterey, Del Rey Oaks, Sand City and Seaside.

B. The seasonality of demand and where water supply must be conveyed during the different seasons: Right now, during many summer months but especially during a multi-year drought, CalAm needs to meet Southern Zone demands with water coming from the Northern Zone. When CalAm eliminates all illegal Carmel River diversions, that situation will occur every year during all of June through October and many Novembers. Except during drought years, with the water right permit changes being proposed in this memorandum, December through May demands in the Southern Zone will normally be met with CalAm's legal Carmel River water rights, i.e., the 3,376 AFY water, amended ASR permit water, and amended Permit 21330 water. During drought years, a reduction in available supplies from the Southern Zone would be offset by drawing on banked ASR water and PWM water stored in the Seaside Basin along with native Seaside Basin groundwater.

C. Water is not distinguishable once it is diverted or extracted; it is just labeled and accounted for after the fact: While everyone talks about the different types of water, e.g., 3,376 AFY water, diverted ASR water, Permit 21330 water, native Seaside groundwater, stored ASR water, stored PWM water, the different types of water are determined after the fact through water accounting rules, which can change from time to time. For example, once ASR water and PWM water are injected into the Seaside Basin, all ASR water, PWM water, and native groundwater are comingled, and after any Seaside Basin water is extracted/recovered, the operator labels the water extracted to a water account that the operator chooses. For example, the operator can account that stored PWM water is being extracted first, native groundwater second, and stored ASR water third.

Carmel River issues:

1. **SWRCB.** SWRCB's Overall Objective, starting with Order WR 95-10, was and is for CalAm to eliminate all illegal diversions from the Carmel River by employing a carrot-and-stick approach.

1.1. The carrot-and-stick approach since Order WR 95-10 was used to encourage CalAm to develop new Carmel River and other water supplies, but it does not allow CalAm to increase its overall Carmel River diversions, especially during the summer months to protect steelhead, wildlife, and river habitats.

1.2. CalAm's Other Existing Legal Carmel River Diversions – ASR Water Right Permits 20808A and 20808C and Permit 21330. All three permits were issued after

Order WR 95-10.

1.2.1. ASR Permits 20808A and 20808C. The two permits are jointly owned by MPWMD and CalAm. ASR water is diverted from the same CalAm Carmel River wells that are used to divert the 3,376 AFY. The two ASR water right permits authorize diversion of 5,326 AFY of high flows during December through May subject to very specific steelhead bypass flow requirements, i.e., water cannot be diverted under the permits unless river flows exceed the applicable bypass flow requirement. The permits do not allow CalAm to use any diverted ASR water for direct use. All diverted ASR water must first be injected into the Seaside Basin. Section 22, Recovery of Stored Water, in Permit 20808C basically requires, subject to some expressed exceptions, that all water diverted during December through May shall be recovered and used during the immediately following June through November period to offset Carmel River diversions that CalAm would otherwise make in order to reduce adverse impacts to steelhead, wildlife, and river habitat. When injected ASR is recovered, then the water may be used for direct use "Within the boundaries of Monterey Peninsula Water Management District."

1.2.2. Permit 21330. This permit is only owned by CalAm and authorizes CalAm to divert 1,488 AFY from the same CalAm wells during the same diversion period and under the same steelhead bypass flow requirements as are in the ASR permits. Unlike the ASR permits, this permit is for direct use and the authorized place of use of Permit 21330 water is only within the Carmel River watershed. The place of use map dated February 7, 2012, shows the place of use to be limited to the Carmel Valley and approximately the eastern half of the City of Carmel. No water under this permit may be delivered to the Forest Lake Tanks or the Seaside Basin for storage.

2. New Operations. What happens when CalAm eliminates all illegal Carmel River diversions?

2.1. When CalAm eliminates all illegal diversions, most of the SWRCB's carrot and stick requirements go away because SWRCB has achieved its number one goal within the SWRCB's jurisdictional authority.

2.2. Of its 3,376 AFY water, CalAm will continue to need to limit its summer diversions to minimize harm to steelhead and river habitat. Summer flows will still be subject to consultation with NOAA Fisheries and CDFW.

2.3. CalAm should be required to continue funding habitat improvement and fishery recovery projects, monitoring, and studies.

2.4. As further discussed below, the WR Order 2016-0016 and ASR permit requirements that water diverted for injection in the Seaside Basin during December

through May must be recovered and used in the following June through November must be eliminated in order to achieve more prudent conjunctive use of CalAm's various water supply sources.

3. Optimization of CalAm's Carmel River water supply once it eliminates all illegal diversions.

3.1. Once CalAm eliminates all illegal diversions, it should be allowed to optimize its Carmel River water supplies subject to the limitations listed in Section 2 above.

3.2. As discussed above in Background A, from 2016 through 2019, approximately 75% of CalAm's water supply came from the South (i.e., Carmel River direct use) and the remainder came from the North (i.e., native Seaside Basin groundwater and stored ASR water). When CalAm eliminates all illegal Carmel River diversions and with full operation of PWM, approximately 65% of its water supply will be coming from the North and the remainder will be coming from the South. Based upon the MPWMD staff's description, CalAm's service area may be divided into Southern and Northern zones. The Southern Zone being the Carmel Valley, the City of Carmel, and the areas served from the Forest Lake Tanks (e.g., Carmel, Pebble Beach, and West (New) Monterey). The Northern Zone is generally East (Old) Monterey, Del Rey Oaks, Sand City, and Seaside.

3.3. The two ASR water right permits and Permit 21330 are existing legal diversions, which already contain the same steelhead protection requirements, e.g., water under the permits may only be diverted during December through May and only if Carmel River flows exceed prescribed steelhead bypass flows. In other words, river flows must exceed prescribed flows to protect steelhead for CalAm to divert any water. However, all three permits contain additional unnecessary limitations that restrict their use and that are no longer necessary once CalAm eliminates all illegal diversions.

3.4. The two ASR permits are currently required to inject all diverted Carmel River water into the Seaside Basin during December through May and then to recover the injected water during the following June through November period. The requirement to recover and use the injected water during the following June through November was designed to require CalAm to reduce its illegal diversions during June through November when it was still diverting far in excess of its legally-allowed 3,376 AFY. Because CalAm will no longer be illegally diverting Carmel River water, the need for that requirement to promptly use any injected ASR water goes away. Going forward because of the PWM Project, injected ASR water can be banked as carryover storage and used as needed during individual or multiple dry years. Because the reason for the requirement to use injected ASR water in the immediately-following June through November season will no longer exist, and because the requirement could work as an

obstacle to optimizing the build-up of stored supplies against drought, the requirement should be eliminated.

In addition, ASR water may not currently be used for direct use, and it may only be supplied to customers after the ASR water is first injected into the Seaside Basin. That requirement should no longer be necessary, especially when the PWM Project becomes fully operational. If all divertible ASR water could be used for direct use, in wetter years the PWM supplies could be allowed to build up in the Seaside Basin for a longer period of time.

As discussed further in Section 5, CalAm's Plumbing Problems, and in the MPWMD staff discussion, if ASR water must first be injected in the Seaside Basin via the New Monterey Pipeline and may not be used directly in the Southern Zone, then any Southern Zone demands that cannot be met with the 3,376 AFY water and Permit 21330 water must be met with water coming from the Seaside Basin. However, CalAm cannot move ASR water north in the New Monterey Pipeline at the same time that Seaside Basin native and stored groundwater must move south in the same pipeline to the Forest Lake Tanks to meet Southern Zone demands.

The obvious solution is to allow ASR water to be used for direct use within the Southern Zone and for Permit 21330 water be used within the entire Southern Zone. During the December through May period, any ASR water not needed for direct use could be conveyed to serve areas of the Northern Zone or for injection into the Seaside Basin. Of course, during the summer, supplies from the Seaside Basin would be used to serve both the Northern and Southern Zones.

3.5. Permit 21330 has the same December through May diversion period and the same steelhead bypass flow requirements as the two ASR permits. The major differences are that currently Permit 21330 water may be used only for direct use and that water may only be used within the Carmel River watershed, which is just the Carmel River Valley and the eastern portion of the City of Carmel – this is known as the permit's authorized place of use. In other words, Permit 21330 water may not be delivered to the Forest Lake Tanks or beyond. The permit's authorized place of use should be made the same as the authorized place of use under the ASR permits, i.e., within the entire boundaries of the MPWMD. Permit 21330 water to the extent it is not required for direct use could also be permitted to be injected into the Seaside Basin like ASR water.

3.6. Water Operations would be optimized and streamlined with the above permit changes. During December through May, the 3,376 AFY water, ASR water, and Permit 21330 water would be used to provide direct use water to meet all Southern Zone water demands. For water accounting purposes, the water used for direct use within the Southern Zone during December through May would be: First, 3,376 AFY

water, second, Permit 21330 water, and third, ASR water. Excess water, if any, could be used to meet Northern Zone water demands and/or to inject into the Seaside Basin as ASR stored water assuming that existing CalAm plumbing would permit that. During June through November, both the Southern and Northern Zones would be supplied largely with water from the Seaside Basin.

Greater optimization would be achieved if all three permits were consolidated into one with the same permitted uses, places of use, and limitations; however, that is unlikely because CalAm is the sole owner of Permit 21330. The consolidation could be achieved if MPWMD takes over CalAm's Monterey District.

3.7. The above permit changes will not "concentrate the recovery of the CalAm's legal right of 3,376 into the summer months" as argued in the MPWMD staff report. That is because of the substantial change in Carmel River operations when CalAm reduces its current diversions of around 7,000 AFY to only 3,376 AFY, or a more than 50% reduction. If CalAm only diverts 2 cfs or less per day from June through November (183 days), CalAm would only divert 726 AF during the summer and autumn (dry) months. December through May = 182 days; $3,376 - 726 = 2,650$ AF; $2,650$ AF + 182 days = 14.6 AF/day or 7.3 cfs. That 14.6 AF/day would be utilized to meet demand within the Southern Zone during December through May. Additional Carmel River water diverted under the three permits would first be used to meet Southern Zone demands and any excess water sent to the Northern Zone for direct use or for Seaside Basin storage.

3.8. Protests to Change Petitions. MPWMD staff has suggested that the change petitions may prompt the filing of protests in opposition to the proposed permit changes, but the suggestion is based upon conjecture. The context within which the change petitions would be filed are as follows: (a) CalAm has eliminated all illegal Carmel River diversions; (b) the steelhead bypass flow requirements applicable to all diversions under the three permits would remain unchanged; (c) CalAm has already publicly represented that summer diversions will be at the very minimum, e.g., less than 2 cfs; (d) it is presumed that CalAm would continue to be required to fund habitat improvement and fishery recovery projects, monitoring, and studies; and (e) NOAA Fisheries would still maintain oversight over CalAm's compliance with Carmel River diversions and improvement projects, monitoring, and studies. The permits would no longer need to control time of use for banked ASR water because both PWM water and ASR water would be banked and withdrawn as needed to most efficiently meet system demands. With the above conditions, there would not appear to be any meritorious grounds for a substantive protest to the change petitions.

4. Moratorium on New Service Connections.

4.1. Ordering Paragraph 15 (p. 27) of SWRCB Order WR 2016-0016 states: "The Conditions of this Order, WR 2009-0060 and State Water Board Order 95-10 shall remain in effect until (a) Cal-Am certifies, with supporting documentation, that it has obtained a permanent supply of water that has been substituted for the water illegally diverted from the Carmel River and (b) the Deputy Director for Water Rights concurs, in writing, with the certification."

4.2. The actual moratorium was imposed by the CPUC in Decision ("D.") 11-03-048 in March 2011 at the request of CalAm and not the SWRCB. CalAm had to request the moratorium so that it would be able to petition the SWRCB for relief from Order WR 2009-0060 in the future. (See Ordering Para. 3.b of 2009-0060; see also Ordering Para. 3.c. of 2016-0016.) Ordering Paragraph 5 of the CPUC D.11-03-048 states: "Upon the receipt by California-American Water Company of the written concurrence of the Deputy Director of Water Rights of the State Water Resources Control Board with California-American Water Company's finding that a permanent supply of water is ready to serve as a replacement for the unlawful diversions of Carmel River water, California-American Water Company shall file a Tier 1 advice letter transmitting the written concurrence and removing from its tariffs the special condition contained in Ordering Paragraph 1 of this decision." Ordering Paragraph 1 imposed the moratorium on new service connections.

4.3. The test for lifting the moratorium is CalAm's finding "that a permanent supply of water is ready to serve as a replacement for the unlawful diversions of Carmel River water." David Stoldt in his memorandum dated June 1, 2020, to the MPWMD Water Supply Planning Committee on "Requirements for Lifting of the Cease and Desist Order and Moratorium on New Service Connections," recognized a second test, i.e., in addition to having a replacement water source to replace all illegal diversions, the second test would require that CalAm's total water supply would meet customer demand. He determined that only 781 AFY of additional supply would be needed. In his September 17, 2020 PowerPoint entitled "Key Issues Related to Monterey Peninsula Water Supply Solutions – [Coastal Commission] Items Th3a & Th4a, Mr. Stoldt clarified that the 781 AFY consists of 81 AFY to lift the moratorium and the remaining 700 AFY as pay back water CalAm has agreed to deliver to the Seaside Basin Watermaster for CalAm's overdrafting of over 17,500 AF of Seaside Basin groundwater.

Under Mr. Stoldt's analysis, implementation of PWM Expansion, either for the full 2,250 AFY or for an initial lesser amount, would provide a sufficient permanent replacement supply that also meets customer demand. Thereby lifting the moratorium. He noted that the 781 AFY did not include Permit 21330 (averaging about 300 AFY when available), additional Sand City desalination plant production over 94 AFY, Seaside Basin carryover credits the total of which has averaged over 900 AF each of

the past 4 years, plus as of October 1, 2020, there will about 1,200 AF of stored ASR water.

4.4. CalAm has stated that it will not present any such certification to the SWRCB unless and until its desalination project gets all required regulatory approvals. Because of that unreasonable position, SWRCB should amend Ordering Paragraph 15 to allow MPWMD to make the certification request to the SWRCB Division of Water Rights Chief as well as CalAm.

5. Adverse Impacts of CalAm's Proposed Desal Project on ASR.

5.1. MPWMD, not CalAm, has been the leader in developing the ASR Project. However, CalAm will use ASR when it benefits CalAm. For example, CalAm's main justification for including the cost of the New Monterey Pipeline and Hilby Pump Station in rates was to provide maximum conveyance of ASR to the Seaside Basin for injection; when actually the New Monterey Pipeline is needed to convey desalinated water to the Southern Zone. CalAm is now using ASR as the justification for the proposed Bypass Pipeline Project.

5.2. In Sawyer and Hazen's August 8, 2020 filing on behalf of CalAm with the Coastal Commission, CalAm allowed its consultants to substantially discount ASR as a reliable water source. CalAm allowed Sawyer and Hazen to trash the ASR Project because if CalAm builds its proposed desalination project, ASR water would not be needed.

5.3. Why is that? The testimony of CalAm expert witness David Mitchell in CalAm's 2019 General Rate Case (CPUC A.19-07-004, July 1, 2019) was that CalAm's demands for 2021 would be 9,338 AF, for 2022, 9,478 AF, and for 2023, 9,610 AF. CalAm states that its desalination plant will produce 6,252 AFY. PWM will produce 3,500 AFY. Carmel River will produce 3,376 AFY. Seaside Groundwater Basin will produce at least 774 AFY. Just those resources alone will provide 13,902 AFY, or 145% of its 2023 demand. CalAm understands that if it gets to build its desalination project, ASR will not be needed. The Sawyer and Hazen filing is the first public evidence that CalAm is moving away from its commitment to maximize ASR supplies. With such a large supply of excess desal water for decades to come, there would be no need for ASR water at all.

In addition, the desalination plant is basically a 24/7/365 operation. When water demand decreases during off-peak times (e.g., during the night and during the winter), excess desal water is produced. CalAm will need to move that excess desal water to the Southern Zone during December through May and/or inject the excess desal water into the Seaside Basin every month via its proposed "ASR" Wells #5 and #6, which are really injection/extraction wells for excess desal water. CalAm cannot move excess

desal water to the Southern Zone during December through May if ASR water needs to move north in the New Monterey Pipeline. Remember CalAm's main justification for including the cost of the 5,900 GPM New Monterey Pipeline and Hilby Pump Station in rates was to provide maximum conveyance of ASR to the Seaside Basin for injection.

5.4. CalAm's Proposed Bypass Pipeline. Please also see Keith Van Der Maaten's comments submitted today to the Water Supply Planning Committee and the discussion below in Section 6.1. As discussed in Section 5.3 above, by doing simple math, if CalAm gets to build its 6,252 AFY desalination plant, no ASR water will be needed to meet Peninsula water demands for decades to come. While the Bypass Pipeline is not needed to maximize ASR supplies, the Bypass Pipeline is essential for CalAm's desalination project due to lack of sufficient firm capacity for desal water in MCWD's potable water pipeline. So why would MPWMD want Peninsula ratepayers to pay for a pipeline that is not needed for ASR but is essential for CalAm's desalination project? As Keith Van Der Maaten states in his comments, MPWMD and MCWD need to work cooperatively together to optimize the water supply and infrastructure serving both Peninsula customers and MCWD customers.

6. CalAm's Plumbing Problems.

6.1. ASR water cannot move north in the New Monterey Pipeline at the same time that Seaside Basin stored or native water is trying to move south in the same pipeline.

6.1.1. If ASR water must first be injected in the Seaside Basin via the New Monterey Pipeline and not be used directly in the Southern Zone, then any Southern Zone demands that cannot be met with the 3,376 AFY water and Permit 21330 water must be met with water coming from the Seaside Basin. However, CalAm cannot move ASR water north in the New Monterey Pipeline at the same time that Seaside Basin native and stored groundwater must move south in the same pipeline to the Forest Lake Tanks to meet Southern Zone demands.

6.1.2. MPWMD staff's concern is that ASR water is available for diversion in a dry December or a dry May and would need to be conveyed via the New Monterey Pipeline at the same time that water in the Seaside Basin must be delivered to the Forest Lake Tanks to meet Southern Zone demand. To solve this plumbing problem, CalAm is proposing to build an expensive bypass pipeline that would be used very infrequently and would only "save" a minimal amount of ASR water. Remember that in June through November, no ASR water may be diverted so no ASR water would be in the New Monterey Pipeline moving north during those months.

6.1.3. As discussed above, Carmel River flows may only be diverted for ASR injection during December through May and only if river flows are in excess of the

steelhead bypass flow requirements. There is no guarantee that any water will be available for ASR injection, especially in the shoulder months of December and May during Below Normal or dryer water years. For example, from CY 2010 through 2019 (10 years), ASR flows were only diverted 5 times during December and only 4 times during May. The proposed Bypass Pipeline Project would only use the Segunda/Crest Pipeline to move ASR water north. That pipeline only has a conveyance capacity of 700 GPM (1.56 cfs or 3.09 AF per day) or less than 12% of the capacity of the 5,900 GPM New Monterey Pipeline. For the months of December and May that means a maximum of 96 AF per month that ASR water could be delivered for injection under the Project, assuming that water can be diverted all 31 days of a December or May, which is an even less frequent an occurrence. This approach of utilizing only Segunda Crest to move ASR supplies north for storage begs the question of why CalAm claimed that the Monterey Pipeline and Hilby Pump Station were required and that the cost should be borne by ratepayers to "maximize" ASR recovery when no ASR supplies would be moving through that new pipeline for injection during the times that the Bypass Pipeline is operating.

6.1.4. The obvious and more cost-effective solution, discussed above in Section 3, is that during December to May, ASR water should be permitted for direct use and Permit 21330 water should be allowed to be delivered to the Forest Lake Tanks. Any excess ASR water and Permit 21330 water could be delivered to the Northern Zone for direct use or Seaside Basin storage. Then, during December through May, especially when 3,376 AFY water, ASR water, and Permit 21330 water are available to meet all Southern Zone demands, Seaside Basin water would be used to serve the Northern Zone and any excess PWM water would remain banked in the Seaside Basin. Of course, during the summer, Seaside Basin water – both stored and native - would be used to serve both the Northern and Southern Zones.

6.2. The essential need for a New Forest Lake Pump Station. CalAm's system cannot operate without the new Forest Lake Pump Station, proposed in its current General Rate Case before the CPUC. During droughts and at other times, CalAm already has the problem of meeting Southern Zone demands and fire flows south of the Forest Lake Tanks when there is insufficient Carmel River water because CalAm cannot pump the water uphill to Carmel and the Carmel Valley from the Forest Lake Tanks. CalAm finally publicly acknowledged that this problem exists in its current General Rate Case filing requesting the CPUC to approve funding of a new Forest Lake Pump Station. When CalAm eliminates all illegal Carmel River diversions, there will not likely be sufficient Carmel River flows during at least June through October to meet Carmel Valley and City of Carmel demands. CalAm will need to pump water from the North through the New Monterey Pipeline to the new Forest Lake Pump Station to deliver water to the City of Carmel and the Carmel Valley.

7. Conclusion. From a big picture water system perspective and including the above water right permit changes, CalAm's proposed Bypass Pipeline Project is not needed to "save" ASR water from going out to the ocean.

David, I would be happy to discuss this memorandum with you and to answer any questions you might have and to provide you with any additional information.

[End of Memorandum]

cc: Keith Van Der Maaten
Ruth Muzzin, Esq.
Chip Wilkins, Esq.

Arlene Tavani

From: Marli Melton <marlimelton@gmail.com>
Sent: Friday, October 30, 2020 9:10 AM
To: Arlene Tavani
Subject: Comment on Water Demand and Price

Dear Arlene,

I noticed that there has been and continues to be a lot of debate about the ways the demand for water might change if water becomes less expensive, and thought the following might be helpful.

Here is one important reason why lower water rates are very unlikely to mean a huge increase in demand for water: **there are lots of competing products and uses for those dollars!**

Many people have pointed out that water rates here are now so high that they cannot afford their medications, car repairs, or even adequate food, let alone any luxuries. They will be extremely likely to spend more on these and other basic necessities, not water.

For those ratepayers who are more fortunate, lower water rates could allow them to buy that new iPhone or iPad, eat more meals out, put more into their 401k, and/or donate more money to good local causes.

We've all gotten used to conserving water, and it's very likely statewide policies will continue to urge and even require us to continue to conserve. So it's much more likely that we'll spend what we save on water to buy or give to something else.

The problem with Econ I (or 101) is that one gets used to looking at supply and demand curves for just one thing at a time, so it's almost a

reflex to say, "oh, price down, demand up," even though the world is far more complicated than that.

With many thanks for all the good work on the part of MPWMD's board and staff, and apologies to everyone who already knew this,

Marli Melton
Carmel Valley

October 28, 2020

VIA U.S. MAIL & E-MAIL: COMMENTS@MPWMD.NET

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 92940

Mr. David Stoldt, General Manager
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 92940

Re: **PUBLIC COMMENT ITEM #2: CERTIFICATION OF FINAL EIR
FOR THE POTENTIAL ACQUISITION OF MONTEREY WATER
SYSTEM AND DISTRICT BOUNDARY ADJUSTMENT**

Board of Directors and Mr. Stoldt:

This letter is submitted on behalf of California-American Water Company (“Cal-Am”), the owner and operator of the Monterey Water System (“MWS”), in relation to the above-referenced matter that is scheduled for consideration by the District at a Special Meeting to occur on October 29, 2020.

On behalf of Cal-Am, we previously submitted a July 31, 2020 letter commenting on the draft EIR, and an October 19, 2020 email concerning the administrative record. Our October 19, 2020 email forwarded three documents for inclusion into the record. Those were:

- (1) Agenda Report entitled: “Consider Adoption of Proposed Operations Plans for Rule 19.8 Acquisition of Monterey Water System,” dated October 19, 2020;
- (2) Monterey Peninsula Water System Operations Plan, dated October 9, 2020 (“Operations Plan”); and

October 28, 2020

Page 2

(3) Monterey Water System Contract Management Plan, dated September 2020 (“Contract Management Plan”).

Each of these documents is relevant to the District’s proposed certification of the Final EIR for acquisition of the Monterey Water System and District Boundary Adjustment (“Project”). Specifically, the Operations Plan and Contract Management Plan indicate a future change in operations of the MWS if the District assumes ownership and control—directly contrary to the Final EIR’s repeated contention that there will be no changes to the manner of operation of the MWS as a result of the Project. These two operational documents were publicly released for the first time on October 15, 2020, barely 72 hours before the previously-scheduled October 19 meeting on certification of the EIR.

Some of the MWS operations changes the District is now scheduled to adopt, but which are nowhere reflected or analyzed in the EIR, include:

- The Operations Plan specifies a new level of hydraulic performance for the system: “*storage tanks must have the ability to refill the entire pressure zone capacity within 8 hours to have the tanks full at the start of the next day.*” (Operations Plan at p. 47). Achieving that level of water supply and pumping capacity would require infrastructure improvements throughout the system.
- The Operations Plan states: “*All [fire] hydrants shall be Dry Barrel and have an isolation valve on the bury.*” (Operations Plan at p. 57). Converting all of the system’s fire hydrants to Dry Barrel would require replacing thousands of fire hydrants. Dry Barrel hydrants are used in areas where freezing occurs regularly, and are unnecessary in Monterey.
- The Operations Plan specifies that all storage tanks in excess of one million gallons capacity must undergo dry inspections – i.e., with the tank completely drained – every three years. (Operations Plan, Table 12-6) The MWS includes numerous tanks with a capacity in excess of one million gallons. Just in Pebble Beach, there are three tanks with a capacity of five million gallons each, meaning that every year in Pebble Beach alone a large tank would be drained, unnecessarily wasting a substantial volume of water.

October 28, 2020

Page 3

These are just some examples of changes in operations that would have potentially significant environmental impacts that were not analyzed or even acknowledged in the EIR. Because the District released the operational documents at the eleventh hour, there are likely to be even more examples of the EIR's failure to review the significant changes in planned operation of the MWS, and Cal-Am reserves the right to raise any and all evidence of future operational changes found within the Operations Plan and Contract Management Plan should litigation be necessary.

By bisecting consideration of the Project and its Final EIR from consideration of the Operations Plan and Contract Management Plan, the District has committed impermissible segmenting and piecemealing of a single, whole, project. Under CEQA Guidelines, § 15378, "'project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Emphasis added.)

CEQA requires that the entire action considered by a lead agency be described in the EIR. In *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 396, the Supreme Court explained: "We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects"; see also *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 [a lead agency may not split a single project into smaller, separate pieces so as to avoid identifying all of the environmental impacts].)

Here, instead of analyzing the environmental impacts of the acquisition and the changes in operation *together*, as required by CEQA, the District's EIR looks solely at an acquisition where no operational change is acknowledged, and, on that basis, conveniently claims no significant impacts will occur. Separately, the District proposes to approve an Operations Plan and Contracts Management Plan that do, in fact, alter future operations, and notably, the District does not consider CEQA at all in that proposed approval. The District's Agenda Report for the Operations Plan and Contract Management Plan does not even mention CEQA, let alone explain how the actions proposed therein will affect the environment. This is classic impermissible piecemealing, the result of which is a failure to proceed in the manner required by law and a failure to

manatt

October 28, 2020

Page 4

evaluate the full range of the Project's potential environmental impacts. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.)

Finally, by basing an entire EIR on a Project Description that ignores operational changes, the EIR's environmental analysis is based on a fallacy, and rendered essentially meaningless.

Should the District certify the EIR under these circumstances it would be doing so in violation of the California Environmental Quality Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "George M. Soneff".

George M. Soneff

RECEIVED

23

NOV 02 2020

MPWMD

Monterey Peninsula Water Management District
George Riley, Div. 2 Director
5 Harris Court, Ste G
Monterey CA 93940

October 27, 2020

Dear Mr. Riley;

I am a resident and business owner here in Monterey.

As with everything, the rates are rising quickly.

With that said, I have been taking a better look at my utility bills, specifically my water bill.

On my CAL AM billing there is a section marked "Other Charges" and another section marked "Pass Through Charges".

Upon calling CAL AM, I was informed that those charges were in fact local charges not their charges.

I called the City of Monterey who directed me to MPWMD.

What I need is the breakdown of the acronyms and explanation of just what the charges cover.

Some of the charges seem to be double. Just worded different.

One charge in particular is the Surfrider Foundation Int. Comp. Seriously?

Please help me understand these charges and why they seem to total over 1/3 of my bill for water usage. Please respond in writing to the address below.

Thank you for your help in this matter.



Linda L. Lopez
222 Lerwick Drive
Monterey, CA 93940

1 attachment

LLL/lcl

Cc:2



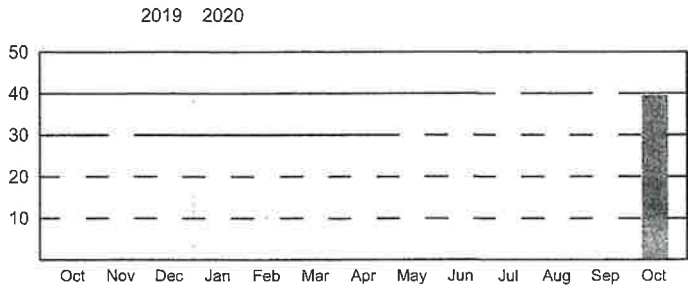
Reading and Usage Summary

Meter No.	Measure	Size	From Date	To Date	Previous Read	Current Read	Meter Units	Billing Units	Total Gallons
78728935	10 CF	5/8"	09/19/2020	10/19/2020	11,121 (A)	11,174 (A)	53	39.64	3,964

A = Actual E = Estimate 1 CF = 7.48 gallons 1 Billing Unit = 100 gallons Total Gallons: 3,964

Billed Usage History (graph shown in 100 gallons)

- 3,964 gallons = usage for this period
- 2,767 gallons = usage for same period last year



Next Scheduled Read Date: on or about November 17, 2020
Account Type: Residential

Average daily use for this period is: **128** (31 days)

Year to Date Billed Usage: 33,731 gallons

Account Detail

Account No. 1015-210020418600

Service To: 222 LERWICK DR MONTEREY, CA 93940-5412

For more information about your charges and rates, please visit: <https://www.amwater.com/caaw/Customer-Service-Billing/Water-Rates/>

Prior Billing	115.07
Payments	-115.07
Total payments as of Oct 14. Thank you!	-115.07
Balance Forward	0.00

Service Related Charges - 09/19/20 to 10/19/20

Water Service		66.07
Water Service Charge		21.22
Water Usage Charge	(29.9 x \$1.0078)	30.13
	(9.74 x \$1.5117)	14.72

Other Charges		24.62
Conservation Surcharge	(39.64 x \$0.0751)	2.98
TCJA ADIT Surcredit		-1.47
Payment Assistance Surcharge Water		1.81
Pre-2015 WRAM Surcharge	(1 x \$10.08)	10.08
Post-2015 WRAM/MCBA Surcharge		8.80
	(39.64 x \$0.2219)	
Consolidated Expense Balancing Account		2.72
	(39.64 x \$0.0686)	
TCJA ADIT - Plant Surcredit		-0.30

Total Service Related Charges		90.69
Pass Through Charges		16.89
MPWMD User Fee	(\$66.07 x 8.33%)	5.50
Surfrider Found Int Comp	(1 x \$1.21)	1.21
SVWC Intervenor Compensation		1.64
	(1 x \$1.64)	
MPWMD Purchased Water Surcharge	(39.64 x \$0.2155)	8.54

Taxes		4.63
City Franchise Fees		1.05
Utility User Tax		2.09

(Continued on next page)

Handwritten notes:

- only
- 66.07
- 21.22
- 30.13
- 14.72
- Contact or Call Monterey local charges
- 12 Charges
- 90.69
- 16.89
- 5.50
- 1.21
- 1.64
- 8.54
- 4.63
- 1.05
- 2.09
- only City of Monterey
- surcharges voted on
- 10/25/20
- Kianna



Public Comment, MPWMD Board Meeting, October 19, 2020 – Agenda Items # 9 and #10

I would like to thank the MPWMD Board for the outstanding job they have been doing, and are doing, to support our communities' efforts to work together towards solving our water supply issues. Your dedicated work and tireless efforts to develop the best workable plans as well as focusing on moving forward to implement those plans is indeed admirable and much appreciated by our communities. I congratulate you and admire you for the progress made to date and urge you not to stop short of complete success. Please consider the serious implications of M1W's continued actions to withhold SEIR certification. This failure to certify the SEIR will hamper progress on fulfilling the community desire to have a reliable, environmentally safe, and affordable water supply for now and future decades. You have an opportunity to lighten the stress load and financial burden that this water issue represents, especially during this challenging time of COVID-19 health threat. Please consider the value of supporting our citizenry and looking out for the public good. This is a fiduciary responsibility to the taxpayers who funded the million-dollar Supplemental EIR. This is the best option to stop the illegal Carmel River water pumping and to ensure a potable water supply now without the complications of sticky litigation and unrealistic efforts to derail Pure Water Monterey Expansion. Please listen to the voice of the people and move forward with your capacity and authority to support SEIR certification as well as appealing to LAFCO to proceed with the operational plan approval needed to press on.

You are the heroes with the courage and strength of character and integrity to implement the best, and right now, the only, solution that can ensure a secure water supply for our future.

Thank you for all the outstanding work you are doing for all our communities. God bless you all. I salute you and staff. Special thanks and bravissimo to Chair Alvin Edwards for his outstanding leadership, and to General Manager David Stoldt for his integrity and genuine, faithful adherence to truthful reporting.

Margaret-Anne Coppernoll, Ph.D.
Marina

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 www.lw.com

LATHAM & WATKINS LLP

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October 19, 2020

VIA EMAIL

Board of Directors
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 Monterey, California 93940

Re: MPWMD Board of Directors October 19, 2020, Meeting, Agenda Item 11 –
 Pure Water Monterey Expansion Lead Agency Status

Dear Chair Edwards and Members of the Board:

On behalf of California-American Water Company (“Cal-Am”), this letter expands on our August 17, 2020, letter to the Board and provides additional support demonstrating why MPWMD staff’s proposal to steal the CEQA lead agency role from Monterey One Water (“M1W”) for the Pure Water Monterey Expansion project (“PWM Expansion”) is unlawful and inappropriate. As the proposed purchaser of potable water produced by the PWM Expansion, Cal-Am has a direct interest in ensuring that the PWM Expansion undergoes sufficient and appropriate environmental review, and that the public agencies involved in that review comply with proper legal procedures. MPWMD staff’s proposal flies in the face of environmental review standards and procedural norms, and undercuts the basic lead agency and public review principles upon which CEQA is based.

As background, MPWMD staff’s proposal for MPWMD to assume lead agency status for the PWM Expansion was first suggested in an item on the Board’s August 17, 2020, meeting agenda. Prior to that meeting, Cal-Am submitted a letter advising the Board of the legal errors and oversights that would occur under staff’s proposal, and the item was pulled from the agenda. The August 17 letter is attached hereto as Attachment A and is hereby incorporated by reference.

Now that the proposal is once again before the Board, Cal-Am reiterates that staff’s proposal’s has no basis in law. Simply put, MPWMD has no legal ability to “step into [M1W]’s shoes as lead agency” and take the actions contemplated in the staff report and the proposed letter to the M1W Board of Directors attached thereto as Exhibit 11-A. Staff’s proposed letter suggests a course of action that materially misrepresents the legal basis for a responsible agency to assume lead agency status under CEQA and would lead this Board into committing egregious legal error. As our prior letter explained, staff’s proposal:

1. Violates the binding terms of the 2012 MOU, which gave M1W the lead agency role for a Groundwater Replenishment Project, with express discretion to decide whether it would implement such a project;
2. Contradicts other documents explaining M1W's role as lead agency, such as the 2013 MRWPCA-MPWMD Groundwater Replenishment Project Cost Sharing Agreement ("2013 Agreement") and the Final SEIR for the PWM Expansion (e.g., Final SEIR at p. 4-101 ["M1W is the appropriate lead agency . . . as is the principal proponent of the Proposed Modifications to its PWM/GWR Project"]);
3. Ignores that on April 27, 2020, M1W appropriately exercised its sole discretion as lead agency to reject certification of the Final SEIR for the PWM Expansion as a result of substantial deficiencies in its environmental analysis; and
4. Fails to identify any appropriate legal path for MPWMD to assume lead agency status under CEQA or OPR's dispute resolution procedures.

In addition to these deficiencies, staff's proposal also violates the plain language of CEQA and the CEQA Guidelines. Public Resources Code section 21067 defines "lead agency" as "the public agency which has the *principal responsibility for carrying out* or approving a project which may have a significant effect upon the environment." (Emphasis added.) Further, the CEQA Guidelines provide criteria for identifying the appropriate lead agency, stating:

Where *two or more public agencies will be involved with a project*, the determination of which agency will be the lead agency shall be governed by the following criteria:

- (a) If the project will be *carried out by a public agency, that agency shall be the lead agency* even if the project would be located within the jurisdiction of another public agency.

(CEQA Guidelines, § 15051, subd. (a) [emphasis added].) Here, M1W is a public agency that would carry out the PWM Expansion, as it did the original PWM project. In fact, M1W owns and operates the PWM project and facilities that the PWM Expansion proposes to expand, and there is no ability for MPWMD to "carry out" the PWM Expansion – that can only be done by M1W. MPWMD therefore expressly agreed that M1W would need to carry out the PWM Expansion when it entered into the 2013 Agreement with M1W, which states that "[M1W] shall" (i) "be the lead Party for performance and completion of work under this Agreement"; (ii) "serve as the contracting authority for the Parties for the GWR Project and, with MPWMD's concurrence, contract directly with all professionals, firms, and outside contractors"; and (iii) "hold title to all GWR Project facilities to be constructed under this Agreement" (2013 Agreement, §§ 7, 9, 6 [emphasis added].) Clearly, under the express terms of the 2013 Agreement, M1W is the sole public agency *carrying out* the project.

Accordingly, MPWMD's role in the PWM Expansion is more limited. Because it is not *carrying out* the project, as a matter of law it cannot serve as lead agency for PWM Expansion. (See, e.g., *Planning & Conservation League v. Department of Water Resources* (2000) 83

Cal.App.4th 892, 904-907; *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 239 [citing cases and noting that “courts have concluded that the public agency that shoulders primary responsibility for creating and implementing a project is the lead agency, even though other public agencies have a role in approving or realizing it”].) In addition, although the CEQA Guidelines recognize instances where two public agencies may enter into an agreement designating the lead agency where such agencies have a “substantial claim” to be the lead agency,” (CEQA Guidelines, § 15051, subd. (d)), here M1W and MPWMD already did that, ***expressly agreeing that M1W shall serve as lead agency and MPWMD shall serve as a responsible agency.*** (2012 MOU, §§ II.1.C, II.2.D.) Should MPWMD attempt to usurp the lead agency role from M1W, it would be violating CEQA and applicable case law.¹

Moreover, staff’s proposal is made even more tenuous by MPWMD’s limited role with respect to the PWM Expansion. CEQA only applies when a public agency proposes to “approve” a project. (Pub. Resources Code, § 21080, subd. (a); CEQA Guidelines, § 15004.) The term “approval” refers to a public agency decision that “commits the agency to a definite course of action in regard to a project.” (CEQA Guidelines § 15352, subd. (a).) Notably, “approval” does not include an agency’s “mere interest” in a project, “or inclination to support” a project. (CEQA Guidelines, § 15004, subd. (b)(4)). In other words, to trigger CEQA, there needs to be an identifiable discretionary action to be taken by the public agency in order to approve a project.

Here, MPWMD did issue some ancillary approvals in support of the original PWM Project. However, in listing permits and approvals required for the PWM Expansion, the Final SEIR does not list **any** new or amended approvals that are required from MPWMD. (See Final SEIR, p. 2-33, Table 2.8 [New or Amended Permits or Approvals for Proposed Modifications].) If MPWMD need not undertake any discretionary action in approving the PWM Expansion, it serves no role in its CEQA review, making staff’s lead agency claim legally irrelevant. Even if MPWMD must make some limited discretionary approval, it was not substantial enough for M1W or the SEIR preparers to identify it in the SEIR – nor substantial enough for MPWMD to raise it as an error during MPWMD’s participation in the SEIR process. Therefore, to the extent MPWMD claims its approval authority is sufficient to be designated a lead agency, such arguments are specious and belied by the record.

Overall, staff’s attempt to insert MPWMD as lead agency for PWM Expansion despite its very limited role betrays the proposal’s true purpose of simply reversing another agency’s decision that staff does not like. Nothing in CEQA allows a responsible agency to assume lead agency status after the preparation of an EIR simply because the responsible agency has expended resources in support of a certain project and it does not agree with the lead agency’s decision to reject the EIR and project.

¹ Moreover, as explained above, M1W owns and operates the PWM project and facilities that the PWM Expansion proposes to expand and is the only entity that can “carry out” the PWM Expansion. Therefore, there is no credible basis for MPWMD to assert that it has a “substantial claim” to lead agency status.

LATHAM & WATKINS LLP

We once again urge this Board to reject staff's proposal for MPWMD to "assume the role of lead agency" for the PWM Expansion. Should the Board attempt to take over as lead agency or pursue other actions with respect to the PWM Expansion Final SEIR, MPWMD and the Board will be committing CEQA error that would undoubtedly be overturned by a court.

Very truly yours,



Winston Stromberg
of LATHAM & WATKINS LLP

cc: Rich Svindland, California-American Water Company
Ian Crooks, California-American Water Company
Kathryn Horning, Esq., California-American Water Company
Duncan Joseph Moore, Esq., Latham & Watkins LLP
Tony Lombardo, Esq., Lombardo & Associates

ATTACHMENT A

LATHAM & WATKINS^{LLP}

August 17, 2020

VIA EMAIL

Board of Directors
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 Monterey, California 93940

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Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

Re: MPWMD Board of Directors August 17, 2020, Meeting, Agenda Item 11 – Pure Water Monterey Expansion Lead Agency Status

Dear Chair Edwards and Members of the Board:

On behalf of California-American Water Company (“Cal-Am”), this letter addresses Monterey Peninsula Water Management District (“MPWMD”) staff’s proposal that MPWMD steal the CEQA lead agency role away from Monterey One Water (“M1W”) on the Pure Water Monterey Expansion project (“PWM Expansion”). MPWMD has no legal ability to “step into [M1W]’s shoes as lead agency” and take the actions contemplated in the proposed letter to the M1W Board of Directors attached to the agenda packet as Exhibit 11-A. Cal-Am, as the proposed purchaser of potable water produced by the PWM Expansion, has a direct interest in ensuring that the project undergoes sufficient environmental review, and that agencies, including MPWMD, comply with the proper legal procedures. MPWMD staff’s proposed letter materially misrepresents the legal basis for a responsible agency to assume lead agency status under CEQA. We urge this Board to reject staff’s proposal for MPWMD to “assume the role of lead agency” for the PWM Expansion. Should the Board attempt to take over as lead agency, MPWMD and the Board will be committing an egregious CEQA error.

Staff’s proposal flies in the face of commitments made nearly a decade ago that confirm M1W’s lead agency status for the original Pure Water Monterey Groundwater Replenishment Project (“Phase 1 PWM”) and PWM Expansion. On April 20, 2012, MPWMD, M1W,¹ and Cal-Am entered into the Groundwater Replenishment Project Planning Term Sheet and Memorandum of Understanding to Negotiate in Good Faith (“2012 MOU”) to enable planning and environmental evaluation of a groundwater replenishment project. Under the binding terms of the 2012 MOU:

MRWPCA will act as lead agency pursuant to CEQA, and will prepare or have prepared an environmental document pursuant to

¹ Prior to November 2017, M1W was referred to by its former name, Monterey Regional Water Pollution Control Agency (“MRWPCA”).

CEQA to evaluate the environmental impacts of such a GWR Project. *If MRWPCA chooses to implement a GWR Project, MRWPCA will adopt or certify an environmental document . . . that in its judgment complies with CEQA.* MRWPCA will use funding provided by MPWMD, in addition to its own funds, for this effort.

(2012 MOU, § II.1.C [emphasis added], attached hereto as **Exhibit A.**) “MRWPCA *expressly retains its discretion with respect to whether it will implement a GWR Project.*” (*Id.*, § II.1.E [emphasis added].) For its part, MPWMD retained “discretion to consider the CEQA Documents in a manner fully consistent with its role as a *responsible agency* under CEQA.” (*Id.*, § II.2.D [emphasis added].)

The contractual agreements referenced in staff’s proposed letter expressly confirm this understanding, stating that “MRWPCA shall be the lead Party for performance and completion of work” on the Phase 1 PWM. (See 2013 MRWPCA-MPWMD Groundwater Replenishment Project Cost Sharing Agreement, § II.C.7, attached hereto as **Exhibit B.**) Additionally, the Final Supplemental Environmental Impact Report (“Final SEIR”) for the PWM Expansion specifically concluded that M1W is the appropriate lead agency for evaluation of the action, given that it is the principal proponent of the PWM Expansion. (E.g., PWM Expansion Final SEIR, p. 4-101.)

As the MPWMD Board is aware, on April 27, 2020, the M1W Board of Directors denied certification of the Final SEIR for the PWM Expansion as a result of substantial deficiencies in the environmental analysis related to: source water for the PWM Expansion; water supply and demand; impacts to agricultural water supplies; and failure to evaluate the PWM Expansion either as an alternative to or a cumulative project with Cal-Am’s Monterey Peninsula Water Supply Project (“MPWSP”).² The M1W Board decided to not certify the Final SEIR after nearly two years of environmental review, including an extended public comment period in which many members of the public raised substantial comments and concerns regarding PWM Expansion and the Final SEIR. At no time during the preparation and M1W’s consideration of the Final SEIR did MPWMD raise any concerns about M1W’s ability to serve as CEQA lead agency or the sufficiency of its environmental review.

Now, in staff’s proposed letter to the M1W Board, staff asserts that MPWMD must step into the lead agency role “for the purposes of certifying the Final SEIR” because M1W “has not timely acted to certify the SEIR” and “MPWMD has made considerable investments of time and public resources.” However, M1W *had no obligation whatsoever* to certify an SEIR that it found to be legally deficient. In fact, it would have been contrary to the terms of the 2012 MOU and been a prejudicial abuse of discretion for M1W to certify the legally inadequate SEIR. (Pub. Resources Code, § 21168.5.) Moreover, contrary to MPWMD staff’s letter, M1W did not “refuse[] to take definitive action to exercise discretion or finish its lead review of the SEIR.”

² In the CPUC’s proceedings for the MPWSP, the CPUC similarly determined that PWM Expansion would be infeasible for “myriad independent reasons.” (See CPUC D.18-09-017, Appx. C, p. C-17.)

The MIW Board took definitive action when it rejected certification of the Final SEIR at its April 27 meeting.

MPWMD staff fails to cite any provision in CEQA—because there is none—that allows a CEQA responsible agency to assume the lead agency role after the preparation of an EIR simply because the responsible agency has expended resources in support of a certain project and does not agree with the lead agency’s decision to reject the EIR and project.

Indeed, staff’s attempt to usurp lead agency status from MIW has no basis in law. Nothing in CEQA allows the changing of lead agency status at the end of the environmental review process, after a duly-prepared EIR has been publicly circulated and considered by the lead agency’s decisionmaking body, except when very specific and limited conditions not present here are met. CEQA Guidelines section 15052 provides that a shift in lead agency designation may occur *only* when:

- (1) The lead agency did not prepare *any* environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.
- (2) The lead agency prepared environmental documents for the project, but the following conditions occur: (A) a subsequent EIR is required pursuant to Section 15162; (B) the lead agency has granted a final approval for the project; and (C) the statute of limitations for challenging the lead agency’s action under CEQA has expired.
- (3) The lead agency prepared inadequate environmental documents *without* consulting with the responsible agency and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(Emphasis added.) In its proposed letter, *staff concedes that none of these conditions are met*, yet claims that Section 15052 nonetheless does not foreclose its ability to assume the role of lead agency. MPWMD staff is wrong.

To support its novel interpretation, staff quotes a legal treatise, intentionally omitting a crucial portion of that treatise that emphasizes the limited circumstances in which lead agency roles may change during the environmental review process. The treatise explains: “For example, this can occur if a project application is submitted to a county and the area containing the project is later annexed to a city or included in a newly incorporated city.” (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act § 3.8(e).) This example is based on *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, also cited in MPWMD staff’s letter, where the lead agency designation changed mid-environmental review from a county to a city. There, the applicant “asked the County to send the administrative record on the Project to the City, which was about to be incorporated and which would have jurisdiction over the Project. Accordingly, on June 18, 1991, the County deferred further consideration of the Project to the City.” (*Gentry*,

supra, 36 Cal.App.4th at p. 1369.) In discussing the propriety of such a change in lead agency, the court noted that CEQA Guidelines section 15051 allows agencies to enter into agreements designating the lead agency as had happened between the county and the city. (*Id.* at pp. 1397–1398.) Even so, after the change in lead agency designation, the project applicant reapplied to the city for project approvals, and the city issued a new notice of its CEQA process. (*Id.* at p. 1369.)

The authority cited by MPWMD staff in its proposed letter has absolutely no bearing on the facts here. When read in context, the authority cited by staff suggests that when an agency’s jurisdiction over a project is transferred by annexation or incorporation **and** the agencies agree, lead agency status may be transferred without restarting the CEQA review process. With respect to the PWM Expansion and SEIR, however, no transfer in jurisdiction has occurred and M1W has not agreed to cede any CEQA authority to MPWMD.

Staff also suggests that M1W may use the Office of Planning and Research’s (“OPR”) dispute resolution process to resolve MPWMD’s claim that it can serve as lead agency. (Pub. Resources Code, § 21165, subd. (a); CEQA Guidelines, § 15053; Cal. Code Regs., tit. 14, §§ 16000 *et seq.*) This is also incorrect. Staff ignores that such a dispute exists only when there is a “contested, active difference of opinion between two or more public agencies as to which of those agencies **shall prepare any necessary environmental document**” and “each of those agencies claims that it either has or does not have the obligation **to prepare that environmental document.**” (Pub. Resources Code, § 21165, subd. (b) [emphasis added].) In other words, the dispute resolution process occurs **before** an environmental document is prepared, not after the fact.

OPR can resolve disputes regarding lead agency status **at the outset of the environmental review process** “based on consideration of the criteria in [CEQA Guidelines] Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA.” (CEQA Guidelines, § 15053, subd. (e).) CEQA Guidelines section 15051, subdivision (a), states that “[i]f the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.” It has always been understood that M1W—not MPWMD—is responsible for implementing (i.e., carrying out) any eventual groundwater replenishment project. As the 2012 MOU expressly states, MPWMD agreed that M1W “expressly retains its discretion with respect to whether it will **implement a GWR Project[.]**” (2012 MOU, § II.1.E [emphasis added].)

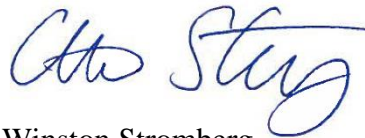
Accordingly, in 2015, M1W approved the Phase 1 PWM, certified its associated Final EIR, and committed to carrying out construction, operation, and maintenance of Phase 1. Had M1W certified the PWM Expansion SEIR, it would have been responsible for carrying out those same tasks with respect to the PWM Expansion. In contrast, MPWMD’s role has been limited to that of a responsible agency, providing financial funding and issuing ancillary approvals. MPWMD has not and could not have carried out the Phase 1 PWM or PWM Expansion in the same manner or to the same degree as M1W. Therefore, under CEQA Guidelines section 15051, M1W has the only claim to lead agency status.

Assuming that MPWMD did have a claim, CEQA Guidelines section 15051 provides that where there are two or more public agencies with a substantial claim to be lead agency, the lead agency will generally be designated either by the first to act on the project or by agreement. Here, M1W undisputedly acted first (in 2012) *and with MPWMD's express contractual agreement*. MPWMD cannot, at this late stage, credibly argue that it has the better claim to lead agency status in a brazen attempt to reverse M1W's decision.

Even if the M1W Board were to agree that MPWMD could assume the role of lead agency for the PWM Expansion, MPWMD would need to restart the CEQA process and resolve the significant deficiencies in the SEIR identified by the M1W Board when it denied certification. MPWMD cannot simply assume lead agency status, certify an SEIR already determined to be deficient by the proper lead agency and for which it did not control either the preparation or the responses to public comments, and then approve the PWM Expansion. There is no procedure under CEQA for such conduct because it is not recognized under CEQA as an acceptable process for an environmental document.

In sum, the only legal action the Board can take here is to reject staff's proposal to assume the role of lead agency for the PWM Expansion.

Very truly yours,



Winston Stromberg
of LATHAM & WATKINS LLP

cc: Rich Svindland, California-American Water Company
Ian Crooks, California-American Water Company
Kathryn Horning, Esq., California-American Water Company
Duncan Joseph Moore, Esq., Latham & Watkins LLP
Tony Lombardo, Esq., Lombardo & Associates

EXHIBIT A

**MRWPCA-MPWMD-CAL AM
GROUNDWATER REPLENISHMENT PROJECT
PLANNING TERM SHEET AND
MEMORANDUM OF UNDERSTANDING TO NEGOTIATE IN GOOD FAITH**

This Groundwater Replenishment Project Planning Term Sheet And Memorandum of Understanding To Negotiate In Good Faith (“GWR MOU”) is entered into as of April 20, 2012, by and between the Monterey Regional Water Pollution Control Agency, a joint powers authority (“MRWPCA”), the Monterey Peninsula Water Management District, a California special act district (“MPWMD”), and the California-American Water Company (“Cal Am”), an investor-owned water utility; collectively the “Parties”, based upon the following facts, intentions and understandings of the Parties.

**I.
BACKGROUND**

A. MRWPCA owns and operates a wastewater collection and treatment system in northern Monterey County, including the Regional Treatment Plant (“RTP”) and the associated ocean outfall (“Outfall”). From the RTP, MRWPCA produces treated wastewater that has the potential for reuse;

B. MPWMD was created by the California Legislature in 1977 for the purposes of “conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water.” The MPWMD’s specific functions are “management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects.” It is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and “fix, revise, and collect rates and charges for the services, facilities, or water furnished by it”;

C. Cal Am is an investor-owned water utility regulated by the California Public Utilities Commission (“CPUC”) that serves retail customers in the Monterey Peninsula. Cal Am has been ordered by the State Water Resources Control Board to significantly reduce its diversions from the Carmel River, its largest source of water supply, on a schedule that will result in Cal Am being able to divert only 30 percent of its historical draw from the Carmel River by December 31, 2016. Cal-Am requires additional sources of water to serve Cal Am’s Monterey Peninsula customers. CPUC approval for certain aspects of such additional water supplies is required.

D. The CPUC previously approved Cal Am’s participation in the “Regional Project,” in conjunction with the Monterey County Water Resources Agency and the Marina Coast Water District (Decision 10-12-016, December 2, 2010.) The Regional Project was intended, among other things, to fulfill Cal Am’s need for additional water supplies. However, Cal Am has withdrawn from participation in that project, and is seeking alternative approaches to meet its needs.

Page 2 of 8

E. The Seaside groundwater basin ("Seaside Basin") is in a state of overdraft, and rights to water and pumping thereof have been adjudicated by the Monterey Superior Court. The Seaside Basin is governed by a Watermaster appointed by the Court.

F. MPWMD and Cal Am have an existing aquifer storage and recovery project ("ASR") which involves the injection of water into the Seaside Basin, and its recovery for the benefit of Cal Am. This initial phase ("ASR Phase 1") uses water diverted from the Carmel River, which is injected and extracted using two existing wells.

G. MRWPCA treats wastewater at the RTP, creating a potential source of water supply.

H. The parties believe that an additional increment of water supply should be generated for the benefit of Cal Am and its customers, many of whom are within the service areas of MPWMD and MRWPCA, by conveying advanced treated wastewater from the MRWPCA to the Seaside Basin, where it could be injected for storage and subsequent recovery by Cal Am ("GWR Project").

I. There would be substantial benefits of such a Groundwater Replenishment Project, including but not limited to:

- Drought resistant element of water supply portfolio;
- Cost-effective water supply; and
- Diversification of Cal Am's water supply portfolio
- There are also other benefits to this project, including but not limited to:
 - i. Improved water quality in Monterey Bay
 - ii. Advance the State of California's recycled water policies;
 - iii. Reuse of water otherwise discharged to the ocean;
 - iv. Lower carbon footprint relative to desalination;

J. The Parties intend by this GWR MOU to enable planning and environmental evaluation of a groundwater replenishment project by the following:

- to commit themselves to evaluate the ways in which a groundwater replenishment project could be effectively accomplished;
- to commit themselves to negotiate in good faith to reach agreement on such a project, should it be deemed viable;
- for MRWPCA to commit to act as lead agency to achieve California Environmental Quality Act ("CEQA") compliance for such a project, should it be deemed viable;
- for MPWMD to assist MRWPCA in providing the necessary financial support for the foregoing planning and CEQA compliance activities, subject to Recital M, below; and
- to identify non-binding preliminary terms of a GWR project agreement, which will assist in focusing the development of a GWR project responsive to the Parties' capabilities and needs.

Page 3 of 8

K. Except as set forth in Recital J above, the terms set forth in this GWR MOU are the Parties' preliminary concept of terms that may be included in future agreements by and among some or all of the Parties ("GWR Agreements".) They are not intended to be, nor should they be considered as, binding on the Parties.

L. None of the Parties intends by this GWR MOU to commit itself, or the other Parties, to a particular course of action, other than as set forth in Recital J above. The Parties reserve their discretion to evaluate and determine the feasibility or viability of any GWR Project, as well as project impacts, alternatives and mitigation measures, including but not limited to not proceeding with the GWR Project.

M. MPWMD financial support for GWR described in Recital J above is contingent upon successful implementation of a new revenue collection mechanism during the 2012-13 fiscal year.

II.

BINDING TERMS REGARDING PROCESS TO EVALUATE AND IF FEASIBLE DEVELOP A GROUNDWATER REPLENISHMENT PROJECT

1. MRWPCA

- A. MRWPCA is anticipated to be the source of the recycled water supply. MRWPCA would apply additional treatment to wastewater from the RTP, convey that water to the Seaside Basin, and inject it into the aquifer, thus making an additional source of water available for use by Cal Am and its customers.
- B. MRWPCA will in good faith commit to evaluate its resources and capabilities with respect to the feasibility of performing the foregoing functions.
- C. In the event that a feasible project is identified, MRWPCA will act as lead agency pursuant to CEQA, and will prepare or have prepared an environmental document pursuant to CEQA to evaluate the environmental impacts of such a GWR Project. If MRWPCA chooses to implement a GWR Project, MRWPCA will adopt or certify an environmental document – including any necessary supplements or addenda thereto (collectively "CEQA Documents") – that in its judgment complies with CEQA. MRWPCA will use funding provided by MPWMD, in addition to its own funds, for this effort.
- D. MRWPCA will negotiate in good faith with the other Parties to develop GWR Agreements acceptable to all Parties, which agreements will be consistent with the CEQA Documents. The Parties' goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR Project to be operational

such that water can be made available to Cal Am on the schedule set forth by the SWRCB.

- E. MRWPCA expressly retains its discretion with respect to whether it will implement a GWR Project or enter into a GWR Agreement, and on what terms. Nothing in this agreement shall be construed as limiting MRWPCA's obligation to consider any and all alternatives, including the "no project" alternative, and any and all mitigation measures, and to make the requisite findings, in the above-referenced CEQA process.

2. MPWMD

- A. MPWMD will provide matching funding for MRWPCA and MPWMD GWR evaluation, planning, pre-design, and environmental review costs for the GWR derived from its new revenue collection mechanism implemented for the 2012-13 fiscal year. The Parties anticipate that MPWMD will contribute 50% of MRWPCA's actual GWR related costs, which 50% is currently estimated to be \$1,036,550 in FY 2012-13 and \$1,469,200 in FY 2013-14. Initially within 90 days after MPWMD's implementation of its new revenue collection mechanism for FY 2012-13, and by April 1 of each following year, the MRWPCA and MPWMD will meet and confer to review and must agree upon the Project budget for the following fiscal year. During a fiscal year, upon presentation to MPWMD by MRWPCA of invoices representing Project expenditures, MPWMD will remit to MRWPCA within 60 days an amount representing 50% of the expenditure. However, if required by MPWMD's new revenue collection mechanism, invoices presented before November 1 shall be paid no later than December 31, and invoices presented before May 1 shall be paid no later than June 1.
- B. If MPWMD determines that a GWR Project is viable, MPWMD will negotiate in good faith with the other Parties to develop a GWR Agreement acceptable to all Parties, which agreement will be consistent with the above-described CEQA Documents. The Parties' goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR Project to be operational such that water can be made available to Cal Am on the schedule set forth by the SWRCB.
- C. In the event that GWR Agreements are executed, MPWMD will undertake the permanent financing of GWR with long-term debt, secured by either revenues of MPWMD or payments to be received under a water purchase agreement with Cal Am, or both. Proceeds of the financing, or revenues received from water sales, will be used to reimburse MRWPCA for its past out-of-pocket contributions of MRWPCA for a GWR Project (any unreimbursed costs including the MRWPCA investment before execution of this MOU). Such permanent financing will be undertaken when and if the Parties agree that the Project shall proceed to design and construction and requires funding in excess of that reasonably available from pay-as-

Page 5 of 8

you-go monies, notwithstanding that MRWPCA and MPWMD may decide to undertake more than one permanent financing in order to facilitate a pilot project or construction in phasing.

- D. MPWMD expressly retains its discretion with respect to whether it will enter into any GWR Agreement, and on what terms; as well as its discretion to consider the CEQA Documents in a manner fully consistent with its role as a responsible agency under CEQA.

3. CAL AM

- A. If each Party independently agrees that a GWR Project is viable, Cal Am will negotiate in good faith with the other Parties to develop a GWR Agreement acceptable to all Parties, which agreement will be consistent with the above-described CEQA Documents. The Parties' goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR to be operational such that water can be made available to Cal Am on the schedule set forth by the SWRCB.
- B. Subject to ratemaking treatment approved by the CPUC and terms acceptable to Cal Am, Cal Am will enter into a GWR Agreement with MPWMD, with minimum annual purchase obligations of water at a price sufficient to pay the annual costs of debt and the costs of the GWR Project, including without limitation, operations, maintenance, repair, replacement, regulatory compliance, and administration costs, associated with the portion of the GWR Project's output purchased by Cal Am.
- C. As the CPUC regulated entity, Cal Am will have the primary role with respect to the CPUC, including but not limited to, obtaining the approvals required by that agency.
- D. Cal Am will bear its own costs with respect to all of its efforts in furtherance of realizing a GWR Project.

4. Good Faith Commitment

- A. In order to explore the potential public and private benefits of this project, and to ensure that each Party's efforts in furtherance of realizing such a project are well spent, the Parties hereby make a good faith commitment to pursue development of such a GWR, in compliance with all applicable laws. The Parties shall meet with the goal of reaching agreement by June 30, 2012, on the criteria for determining the viability of a GWR Project, which criteria shall include but not be limited to (1) providing for a schedule and for adjustments of same for the timeframe within which the GWR Project will be operational, and (2) a process and timeframe for verifying that the range of estimated costs for GWR Project water are consistent with the MRWPCA current cost estimates of \$2500-\$3000 per acre foot.

Page 6 of 8

5. Term and Termination

- A. This GWR MOU shall expire upon the earlier of (1) full execution of a GWR Agreement, or (2) upon written agreement of the Parties to terminate.
- B. Upon thirty days advance written notice to all Parties, and upon the withdrawing Party's good faith determination that further participation is not feasible for any reason, any Party may withdraw from this MOU. If two Parties withdraw, this MOU is terminated.
- C. Any obligation to pay survives termination until such payment is made in full.

**III.
NON-BINDING PRELIMINARY TERMS**

The provisions in this Section III set forth the Parties' preliminary understanding that may be included in a final project agreement or agreements ("GWR Agreement"). These provisions are not intended to be, nor should they be considered as, binding on the Parties. Each Party expressly retains discretion with respect to whether it will enter into a GWR Agreement, or on what terms.

1. The GWR Project is intended by the Parties to provide approximately 3500 AF of advanced treated wastewater ("Replenishment Water") that can be made available, conveyed to the Seaside Basin and injected therein using new wells, by MRWPCA. MRWPCA will design, construct, own and operate the facilities to convey the water from the RTP and inject it into the Basin.
2. Upon payment by MPMWD to MRWPCA as set forth below, MPWMD shall take title to the Replenishment Water that has been injected into the aquifer. MPWMD will make the Replenishment Water available for purchase by Cal Am for the purpose of serving Cal Am's retail water customers in the Monterey Peninsula area.
3. Upon permanent financing, MPWMD will pay to MRWPCA the full amount of MRWPCA's costs to design, construct, obtain regulatory approvals, treat, deliver and inject the Replenishment Water. The commodity cost for the Replenishment Water shall recover at minimum all costs associated with GWR operation, maintenance, repair, replacement and administration, including regulatory compliance.
4. MRWPCA, MPMWD, and Cal Am shall coordinate the scheduling of injection of recycled water, Carmel River water, and any other water.
5. Subject to CPUC ratemaking approval, Cal Am shall enter into a contract to purchase the Replenishment Water from MPWMD. This contract will inter alia promptly

Page 7 of 8

reimburse MPWMD for the following prudently incurred costs: MPWMD's annual cost of debt service, Replenishment Water payments to MRWPCA for operations and maintenance, reimburse MRWPCA for any of its project development costs not previously reimbursed by MPWMD, as well as for MPWMD's costs.

6. The parties anticipate that terms addressing the following non-exhaustive list of topics will also be needed:

- Additional Financial Provisions;
- No Partnership, Joint Venture or JPA.
- Coordination with others
- CPUC approvals
- Regulatory Compliance
- Storage and Recovery Agreement with Seaside Basin Watermaster
- Brine Disposal
- Additional Acts
- Representations and Warranties.
- Litigation; Cooperation in Litigation
- Force Majeure
- No Third Party Beneficiaries.
- Dispute Resolution
- No Assignment
- Default, Cure and Remedies
- Attorneys Fees
- Notices
- Miscellaneous Provisions

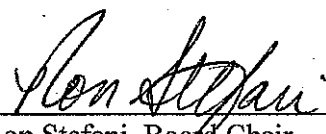
Page 8 of 8

The Parties re-confirm that neither a GWR Agreement, nor any replenishment project, can proceed unless and until the Parties have negotiated, executed and delivered mutually acceptable GWR Agreements, with any public agency action performed in compliance with CEQA and on other public review and hearing processes, and subject to all applicable governmental approvals. The Parties intend by this GWR MOU to inform and focus the work necessary to develop and review a water transfer program, not to pre-determine what that program may be.

WHEREFORE, this GWR MOU was executed by the parties on the date first above written.

MRWPCA

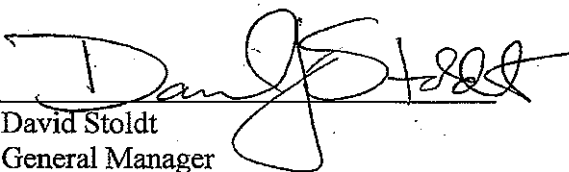
MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY,

By: 

Ron Stefani, Board Chair
MRWPCA Board of Directors

MPWMD


MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT,

By: 

David Stoldt
General Manager

CAL AM

CALIFORNIA AMERICAN WATER COMPANY,

By: 

Robert MacLean
President

EXHIBIT B

**MRWPCA-MPWMD
GROUNDWATER REPLENISHMENT PROJECT**

COST SHARING AGREEMENT

This Cost Sharing Agreement is entered into as of May 20, 2013, by and between the Monterey Regional Water Pollution Control Agency, a joint powers authority ("MRWPCA") and the Monterey Peninsula Water Management District, a California special act district ("MPWMD"), collectively the "Parties", based upon the following facts, intentions and understandings of the Parties.

**I.
BACKGROUND**

A. The Agency was formed as a Joint Powers Agency by a Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency, effective as of June 29, 1979. Member entities formed the Agency in order to seek joint solutions to their wastewater treatment needs. The Agency owns and operates the Regional Treatment Plant ("RTP"), 25 wastewater pump stations, a land and ocean outfall. From the RTP, MRWPCA produces tertiary treated wastewater for agriculture irrigation. MRWPCA could treat waste waters through advanced treatment to provide for additional reuse.

B. MPWMD was created by the California Legislature in 1977 for the purposes of "conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water." The MPWMD's specific functions are "management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects." It is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and "fix, revise, and collect rates and charges for the services, facilities, or water furnished by it".

C. The parties believe that an additional increment of water supply should be generated for the benefit of Cal Am's Monterey District customers, many of whom are within the service areas of MPWMD and MRWPCA, by conveying advanced treated wastewater from the MRWPCA to the Seaside Basin, where it could be injected for storage and subsequent recovery ("GWR Project").

D. The Parties and California American Water Company jointly entered into a Groundwater Replenishment Project Planning Term Sheet And Memorandum of Understanding To Negotiate In Good Faith ("GWR MOU") on April 20, 2012 to, among other things, enable planning and environmental evaluation of a groundwater replenishment project by the following:

- to commit themselves to evaluate the ways in which a groundwater replenishment project could be effectively accomplished;

Page 2 of 9

- to commit themselves to negotiate in good faith to reach agreement on such a project, should it be deemed viable;
- for MRWPCA to commit to act as lead agency to achieve California Environmental Quality Act ("CEQA") compliance for such a project, should it be deemed viable;
- for MPWMD to assist MRWPCA in providing the necessary financial support for the foregoing planning and CEQA compliance activities; and
- to identify non-binding preliminary terms of a GWR project agreement, which will assist in focusing the development of a GWR project responsive to the Parties' capabilities and needs.

E. Since 2005, MRWPCA has incurred costs of about \$2,698,265 for conceptual planning for a Groundwater Replenishment Project.

II. AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts recited and the mutual goals and objectives contained herein, the Parties agree as follows:

A. Finance

1. **Planning and Development Costs Defined**

This Agreement is by its terms limited to sharing of costs of planning and development of the GWR Project, incurred beginning April 1, 2012. Examples of those costs include:

- a. CEQA
- b. Feasibility Review
- c. Facilities Planning
- d. Monitoring Well Construction and Testing
- e. Pilot Treatment and Pilot Injection
- f. Public Outreach

2. **Financing of GWR Project Planning and Development Costs**

The Parties estimate that the costs described in Section 1., immediately above, will total \$6,957,352 as shown in the budget in Appendix A. Beginning FY2013-14, MPWMD shall pay seventy-five percent (75%) of such costs, and MRWPCA shall pay twenty-five percent (25%) of such costs. Seventy-five percent (75%) of full employee costs (salary and benefits) incurred by MRWPCA for up to two (2) of its employees' allocable time committed to tasks falling within the components described in Section 1., immediately above, shall be paid (reimbursed) by MPWMD. Prior to FY2013-14, such costs are shared fifty percent (50%) by each Party. Other employee costs incurred by either Party and allocable to the GWR Project will be reimbursed from the proceeds of the permanent financing pursuant to any reimbursement resolution adopted by MPWMD or MRWPCA.

Page 3 of 9

3. Grants and Loans

MRWPCA or MPWMD may each pursue and receive grants, state revolving fund loans, or other forms of reimbursement from local, state, or federal sources. All such receipts will be delivered to MRWPCA and credit the GWR Project ledger as received. Such receipts will be deemed to offset project costs.

4. Reimbursement

MRWPCA shall invoice MPWMD and MPWMD shall pay, subject to the conditions described in Section 10.

5. Limited Obligation

MPWMD's financial obligations are limited obligations payable from its Water Supply Charge. MPWMD will provide a quarterly report to MRWPCA indicating the status of available funds.

B. Ownership

6. System Ownership

MRWPCA shall hold title to all GWR Project facilities to be constructed under this Agreement.

C. Governance of Agreement

7. Scope of Work

MRWPCA shall be the lead Party for performance and completion of work under this Agreement. However, the Parties will endeavor to meet regularly to monitor the progress of work under this Agreement.

8. GWR Project Budgets

The Boards of MRWPCA and MPWMD shall approve a joint budget each fiscal year for phases of the GWR Project ("GWR Project Budgets".) To the extent that additional funds are required to complete work authorized by this Agreement the Parties will meet to discuss appropriate modifications to the GWR Project Budget, and neither Party shall unreasonably refuse to modify the GWR Project Budget as necessary to complete work authorized by this Agreement. MRWPCA shall meet at least quarterly to review the budget and provide MPWMD updates and modifications to the budget on a timely basis.

D. MRWPCA's Obligations

9. Day-to-Day Management

MRWPCA shall provide day-to-day management of the work authorized by this Agreement, subject to applicable terms and conditions herein. MRWPCA shall serve as the contracting authority for the Parties for the GWR Project and, with MPWMD's concurrence, contract directly with all professionals, firms, and outside contractors.

Page 4 of 9

10. Payment

MRWPCA shall pay for consultants, contractors, and other GWR Project-related costs in accordance with the terms of this Agreement. MRWPCA shall submit monthly invoices to MPWMD which will include back-up documentation substantiating the GWR Project-related costs incurred by MRWPCA.

11. Purified Water Sales Agreement

Before final design and construction proceeds, MRWPCA shall work jointly with MPWMD to develop a Recycled Water Sales Agreement under which MRWPCA will deliver recycled water to MPWMD for storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, quality, Watermaster storage and recovery agreement, metering and measurement of flows, invoicing, and other matters.

E. MPWMD's Obligations

12. Payment of Invoices

MPWMD shall have the right to review and confirm that the invoices submitted by the MRWPCA are in conformance with the terms of this Agreement. Payments will be made within 30 days of receipt of invoice. If during the review of invoice MPWMD disputes any payments as not being in accordance with this Agreement, the MPWMD will notify the MRWPCA within the 30 days to resolve any disputes.

13. Wholesale Water Purchase Agreement

Before final design and construction proceeds, MPWMD shall work jointly with California American Water Company to develop a Wholesale Water Purchase Agreement under which MPWMD will deliver potable water to California American from storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, minimum annual purchase amounts, water quality, metering and measurement of flows, invoicing, and other matters.

F. Term and Termination

14. Term

This Agreement shall remain in force and effect for five years. Before final design and construction proceeds, and in no case later than within thirty (30) days after the fourth anniversary of the date of adoption of this Agreement, the Parties shall meet to decide whether to extend this Agreement. Any extension of this Agreement shall be in writing and on mutually acceptable terms and conditions.

G. Events of Default; Dispute Resolution

15. Event of Default

The failure of a Party to comply with any provision of this Agreement that has a material and adverse effect on the other Party, except to the extent caused by a breach of this Agreement by the other Party, shall constitute an Event of Default under this Agreement;

provided, however, that the defaulting Party shall first have a period of thirty (30) days following receipt of notice from the other Party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period shall extend for a total of one hundred eighty (180) days, so long as the defaulting Party is diligently trying to cure such failure throughout such period.

16. Dispute Resolution

Staffs of both Parties shall meet and use their best efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement. To that end, staffs of both Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first meeting of the staff regarding a Dispute, then the Parties shall pursue non-binding mediation to be completed within sixty (60) days after the first meeting of the Parties regarding the Dispute. If the Parties do not settle the Dispute within the sixty (60) day period, either Party may pursue any and all available legal and equitable remedies.

H. Miscellaneous.

17. Force Majeure

Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive or regulatory government bodies or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either Party of any of its obligations hereunder shall be extended by the Parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected Party shall: (i) promptly notify the other Party of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent commercially reasonable.

18. Indemnities

- a. **MPWMD Indemnity.** MPWMD shall fully indemnify MRWPCA and its respective directors, , employees and agents against, and hold completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal or bodily injury, death or property damage ("Losses"), that may arise from (i) any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MPWMD employee specifically retained to provide services with respect to the facilities.
- b. **MRWPCA Indemnity.** MRWPCA shall fully indemnify MPWMD and its respective directors, employees and agents against, and hold completely free and harmless from, any Losses, that may arise from (i) any grossly negligent act or omission of MRWPCA related to the GWR Project construction, management,

operation, maintenance or repair, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MRWPCA employee specifically retained to provide services with respect to the GWR Project.

19. Insurance/Self Insurance

The Parties are either insured or self-insured as to any requirements under this Agreement. No policies or bonds are required of either party as to any provisions of this Agreement.

20. Notices

All notices to MPWMD required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager

All notices to MRWPCA required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Regional Water Pollution Control Agency
5 Harris Court, Building D
Monterey, CA 93940
Attention: General Manager

21. Successors And Assigns

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

22. Further Acts and Assurances

The Parties agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.

23. Captions

The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affects this Agreement. Words of any gender in this Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense so requires.

24. Severability

Should it be found that any part of this Agreement is illegal or unenforceable, such part or parts of this Agreement shall be of no force nor effect and this Agreement shall be treated as if such part or parts had not been inserted.

25. Entire Agreement

All previous negotiations had between the Parties hereto and/or their agents or representatives with respect to this Agreement are merged herein and this Agreement alone fully and completely expresses the Parties' rights and obligations.

26. Modifications In Writing

This Agreement shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

27. Interpretation

Each of the Parties hereby waives any provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the Party that drafted the contract, agreement or instrument.

28. Governing Law

This Contract shall be governed by and construed according to the laws of California.

29. No Third-Party Beneficiaries

Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the Parties, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

30. Assignment

Neither Party may assign its interest in this Agreement without the prior written consent of the other Party.

Page 8 of 9

31. Representation and Warranties

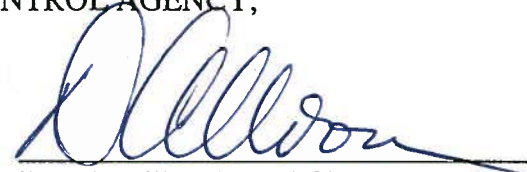
No representations or warranties are made or have been relied upon by either Party other than those expressly set forth herein, if any.

WHEREFORE, this Cost Sharing Agreement was executed by the parties on the date first above written.

MRWPCA

MONTEREY REGIONAL WATER POLLUTION
CONTROL AGENCY,

By:



Dennis Allion, Board Chair
MRWPCA Board of Directors

MPWMD

MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT,

By:



David Pendergrass, Chair
MPWMD Board of Directors

From: [Soneff, George](#)
To: [comments](#)
Subject: Oct. 19, 2020 Board Meeting -- Item #9
Date: Monday, October 19, 2020 11:33:23 AM
Attachments: [image001.png](#)
[Agenda Report Consider Adoption of Proposed Operations Plans.pdf](#)
[MWS Contract Management Plan.pdf](#)
[Water System Operations.pdf](#)

District Board of Directors:

To ensure their inclusion in the administrative record for **Item #9** on tonight's agenda, I am attaching the following three documents:

1. Agenda Report entitled "Consider Adoption of Proposed Operations Plans for Rule 19.8 Acquisition of Monterey Water System"
2. Monterey Peninsula Water System Operations Plan, dated October 9, 2020
3. Monterey Water System Contract Management Plan, dated September 2020

George Soneff

Partner

Manatt, Phelps & Phillips, LLP
2049 Century Park East
Suite 1700
Los Angeles, CA 90067
D (310) 312-4186 **F** (310) 996-6970
GSoneff@manatt.com

manatt.com



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Government Finance Officers Association
203 North LaSalle Street, Suite 2700
Chicago, Illinois 60601-1210
312.977.9700 fax: 312.977.4806

10/15/2020

Alvin Edwards
Board Chair
Monterey Peninsula Water Management District, California

Dear Mr. Edwards:

We are pleased to notify you that your comprehensive annual financial report (CAFR) for the fiscal year ended June 30, 2019 qualifies for GFOA's Certificate of Achievement for Excellence in Financial Reporting. The Certificate of Achievement is the highest form of recognition in governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

When a Certificate of Achievement is awarded to a government, an Award of Financial Reporting Achievement (AFRA) is also presented to the individual(s) or department designated by the government as primarily responsible for its having earned the Certificate. This award has been sent to the submitter as designated on the application.

We hope that you will arrange for a formal presentation of the Certificate and Award of Financial Reporting Achievement, and give appropriate publicity to this notable achievement. A sample news release is included to assist with this effort.

We hope that your example will encourage other government officials in their efforts to achieve and maintain an appropriate standard of excellence in financial reporting.

Sincerely,

A handwritten signature in black ink that reads "Michele Mark Levine". The signature is written in a cursive, flowing style.

Michele Mark Levine
Director, Technical Services