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October 21, 2020

UPS OVERNIGHT & EMAIL

Eileen Sobeck, Executive Director
State Water Resources Control Board
1001 I Street
PO Box 100
Sacramento, CA 95812

Re: **Carmel River Cease and Desist Order, WRO 2016-0016, Milestone 5**

Dear Ms. Sobeck:

This letter provides an update on California American Water Company's (Cal-Am) Annual Report regarding compliance with State Water Board WRO 2016-0016 (CDO) milestones. The Annual Report was submitted June 4, 2020 by letter from Chris Cook to Erik Ekdahl. As was predicted in June, CDO Milestone 5 was not met on September 30, 2020. Milestone 5 requires the following activities by September 30, 2020:

- (1) Drilling activity for at least one MPWSP Desalination Plan source water production well complete;
- (2) foundation and structural framing complete for MPWSP Desalination Plant pretreatment seawater reverse osmosis, and administration buildings at desalination plant;
- (3) excavation complete for MPWSP Desalination Plant brine and backwater storage basins; and
- (4) 25% MPWSP Desalination Plant transmission pipelines installed based on total length, including 100% installation of the "Monterey Pipeline and other ASR related improvements". (CDO Sect. 3.b.v., p. 21).

As provided in section 3.b.vi of the CDO, the consequence of a missed milestone is a reduction of 1,000 acre-feet of the Effective Diversion Limit, thereby reducing Cal-Am's Carmel diversion limit to 7,310 acre-feet in Water Year 2020-2021.

Progress towards Milestone 5

As explained in the Annual Report (Attachment 1), numerous circumstances beyond Cal-Am's control resulted in delays to the construction activities required in Milestone 5. First, in June 2018, Cal-Am timely submitted a Coastal Development Permit application for the Monterey Peninsula Water Supply Project (MWPSP) supported by the extensive environmental and technical analyses developed before the California Public Utilities Commission. On October 28, 2019, the California Coastal Commission staff released a partial staff report recommending

denial of the Coastal Development Permit. On November 4, 2019, Coastal Commission staff released an addendum to the staff report, stating that, among other things, additional groundwater modeling was needed to determine whether the project would deplete groundwater supplies. The Coastal Commission therefore decided to open a hearing on Cal-Am's application on November 14, 2019, but continued the hearing to a later date.

On January 28, 2020 Coastal Commission staff requested that Cal-Am withdraw its Coastal Development Permit application to allow time for more studies. Cal-Am declined to withdraw the application, opposing any additional delay. Cal-Am and many other parties also questioned the need for the additional groundwater analyses requested by Coastal Commission staff in light of the extensive record that had been created before the CPUC on the same issues. The SWRCB submitted a letter dated May 8, 2020 that raised similar questions about the need for the additional studies. Nevertheless, Cal-Am agreed to a short extension of the application deadlines to allow time to complete additional independent analyses of the issues raised by Coastal Commission staff. Time was further extended in response to the COVID-19 pandemic.

The Annual Report also noted the October 2019 order issued by the Monterey County Superior Court staying construction activities contemplated in Milestone 5. The stay order was in response to a Marina Coast Water District challenge to Monterey County's issuance of a development permit needed to begin construction on the desalination plant. Both the Coastal Development Permit and County development permit are necessary to begin the construction activities required in CDO Milestone 5.

Circumstances Resulting in Missed Milestone 5

There have been several developments since Cal-Am submitted the Annual Report in June 2020. The Coastal Commission scheduled Cal-Am's continued hearing for a special meeting on September 17, 2020, but on August 25, 2020, released a staff report again recommending denial of the project. Unfortunately, the Coastal Commission staff report did not provide any means for the Commissioners to independently consider the factual record and take any action other than denial of the application. Facing a risk of possible Commission denial, Cal-Am elected to withdraw its application on September 17, 2020. Cal-Am intends to refile the Coastal Development Permit application in the coming weeks and will use the intervening period to explore opportunities to address certain environmental justice concerns raised by the City of Marina. Thus, on September 25, 2020, Cal-Am sent a letter to the City asking if the City would meet with Cal-Am to discuss the City's concerns with the project, and explore possible options that could be mutually beneficial to the City, Cal-Am, and the region as a whole. The City responded on October 6, 2020, that it was amenable to opening a dialogue to address concerns of the City and its stakeholders. Upon receiving the City's letter, Cal-Am reached out to arrange next steps, and is awaiting the City's response.

Cal-Am has done everything within its control to develop and permit the MPWSP as required in the CDO, with the goal of eliminating unauthorized diversions from the Carmel River and, ultimately, extinguishing the CDO. For example, Cal-Am worked with a broad coalition of stakeholders to integrate the Pure Water Monterey project into the MPWSP in 2016, which resulted in a downsized desalination plant and source water intake system. Cal-Am has also diligently pursued project approvals and construction of project components to meet the CDO Milestones:

- CDO Milestone 1: Cal-Am achieved Milestone 1 on September 22, 2016 when the CPUC issued Decision 16-09-021, providing its approval to (1) enter into a Water Purchase Agreement with Monterey One Water and (2) construct various facilities (pipelines and pump stations) necessary to allow the Pure Water Monterey to proceed.
- CDO Milestone 2: Cal-Am achieved Milestone 2 in 2016, commencing construction of the Monterey pipeline and pump station project as part of the Pure Water Monterey project in October 2016, and commencing installation of the 36-inch pipeline on January 3, 2017.
- CDO Milestone 3: Cal-Am achieved Milestone 3 on September 13, 2018, when the CPUC issued Decision 18-09-017 certifying the MPWSP Final Environmental Impact Report and issuing a Certificate of Public Convenience and Necessity to construct the MPWSP 6.4 mgd desalination project. In 2018 and 2019 Cal-Am and the CPUC successfully defended all legal challenges to the CPUC’s decision.
- CDO Milestone 4: Following issuance of regulatory permits and authorizations to begin work, Cal-Am achieved Milestone 4 on September 16, 2019 by commencing construction on the Desalination Transfer Pipeline project for installation of over 2,500 linear feet of pipeline.
- CDO Milestone 5: Cal Am was on track to achieve Milestone 5 when in October 2019 the superior court issued a stay on all physical activities at the desalination plant site pending the Coastal Commission’s determination about the project slant wells. Since October 2019 when Coastal Commission staff released its report recommending denial of the Coastal Development Permit, Cal-Am has repeatedly attempted to work with Coastal Commission staff to resolve its concerns with the project, including submission of a detailed Habitat Mitigation and Monitoring Plan for the Cemex site, an analysis of local vernal ponds and an Adaptive Management Program to address any potential impacts, a plan for lining of the Monterey One Water outfall, reports on the adequacy of water supplies to meet customer demand, and an analysis of project impacts on disadvantaged communities.

While Cal-Am firmly believes that the circumstances that resulted in missing Milestone 5 are beyond Cal-Am’s control, we understand that it is less clear whether the actions of other CDO “Applicants” contributed to the missed Milestone.¹ Specifically, the Monterey Peninsula Water Management District (MPWMD), one of the early proponents of the MPWSP and an Applicant when the SWRCB amended and extended the CDO in 2016, has now become a staunch opponent of the Project, reversing its position despite being a party to multiple settlement agreements concerning the Project, which agreements had been relied upon by multiple parties. MPWMD submitted correspondence to the Coastal Commission that has undermined and delayed the Coastal Commission’s review and consideration of the MPWSP Coastal Development Permit application, including continued advocacy of a misleading water supply and demand analysis that was specifically rejected by the CPUC, submitting a deliberately manipulated consultant’s memorandum to make it appear to support MPWMD’s analysis, and

¹ The CDO directs several actions at the “Applicants” that jointly petitioned the SWRCB in 2016 to modify the prior CDO. The Applicants include Cal-Am, the Monterey Peninsula Regional Water Authority, the Monterey Peninsula Water Management District, the City of Pacific Grove, and the Pebble Beach Company. Section 3.b.viii. of the CDO requires a SWRCB finding that the cause for a missed Milestone is beyond the control of the Applicants, collectively, before the SWRCB may grant relief from EDL reductions for a missed milestone.

arguing instead for its own alternative water supply project (Pure Water Monterey expansion). In a June 15, 2020 letter to Coastal Commission executive director Ainsworth, MPWMD expressly asked the Coastal Commission to reject Cal-Am's application for the MPWSP.² Coastal Commission staff relied heavily on MPWMD's actions and the misleading information provided by MPWMD staff in the Coastal Commission staff's analysis of the MPWSP and recommendation to deny the Coastal Development Permit application.

The problem with MPWMD's position is that it will not produce an adequate, reliable and permanent long-term water supply for the Monterey Peninsula, which is required to lift the CDO and pull the Monterey Peninsula out of its perpetual state of water poverty and temporary fixes. MPWMD's positions will force the Monterey Peninsula to continue to rely on the Carmel River and Seaside Groundwater Basin indefinitely as the backstop to water supply and demand variability.

Perhaps more importantly, MPWMD appears willing to risk the Carmel River's recovery and the Monterey Peninsula's last and most critical water supply resource, the Seaside Groundwater Basin. For example, earlier this year, given the likelihood that an alternate water supply would not be completed by the end of 2021, the MPWMD Board was presented with a plan for an additional pipeline to maximize use of Aquifer Storage and Recovery (ASR) and Pure Water Monterey water supplies and minimize Carmel River diversions. The new pipeline would allow simultaneous injection of ASR and extraction of Pure Water Monterey from the Seaside Groundwater Basin. But opponents of the desalination plant objected to the new pipeline, claiming it also could support the desalination project. And so far, the MPWMD Board has delayed consideration of the pipeline, instructing staff to explore an alternative that, as noted by MPWMD staff, would necessitate intensification of pumping on the Carmel River in the summer months when Cal-Am is trying to reduce pumping to benefit the fishery. MPWMD's preferred alternative also does not account for critical protections for the Seaside Groundwater Basin. As the Seaside Basin Watermaster recently explained to Coastal Commission staff, without the volume of water to be provided by the MPWSP, the Seaside Groundwater Basin is in serious jeopardy of overdraft and seawater intrusion, conditions that would be catastrophic to both the communities' ASR and the Pure Water Monterey project, not to mention native groundwater supplies in the Basin. (See Attachment 2). This is a very short-sighted and dangerous game that the MPWMD is playing with the Monterey Peninsula's water supplies and resources. Rather than protecting and enhancing the region's water supplies and resources, as it is charged to do, MPWMD's actions appear to be designed to defeat the MPWSP at all cost.

Cal-Am understands that the primary function of the CDO milestones is to ensure that the MPWSP is diligently pursued and that the community understands the importance of reducing Carmel River diversions to authorized limits without delay. Cal-Am has at all times diligently pursued the MPWSP, and aggressively opposed all attempts to delay the project. Cal-Am continues to believe that the MPWSP is the only permanent and sufficient solution to the water

² We should emphasize that the water supply and demand analysis advanced by the MPMWD was rejected by the California Public Utilities Commission (CPUC), and that the Pure Water Monterey Expansion Project was rejected by Monterey One Water Board in August 2020 and has been aggressively opposed by the County, Monterey County Water Resources Agency, City of Salinas, and agricultural water users in the Salinas Valley. Moreover, as you are well aware, the Pure Water Monterey project itself has encountered significant delays and technical issues that affect both the timing and overall viability of that project.

supply shortage on the Monterey Peninsula. But given MPWMD's complicity in the events resulting in missing Milestone 5, we understand that the State Water Board is not likely to find that delays were beyond the control of the "Applicants." Accordingly, Cal-Am is preparing its Water Year 2020-2021 operations plan with the expectation that the Effective Diversion Limit under the CDO is reduced from 8,310 acre-feet to 7,310 acre-feet. In order to comply with the CDO and meet customer water demands in WY 2020-21, Cal-Am intends to rely on continued water conservation, continuation of the existing moratorium, optimizing water supplies, and carry-over credits under the CDO. Cal-Am is optimistic that the Monterey Peninsula's water demands can be met without additional rationing in Water Year 2020-2021.

Cal-Am would like to set up a meeting with you and your staff in the next few weeks to discuss Cal-Am's Water Year 2020-2021 operations in light of missed Milestone 5. At the meeting we also should begin discussions about how Cal-Am will manage water supplies next year in light of the likelihood that remaining CDO milestones will be missed. I will follow up with you this week to set a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Svindland". The signature is written in a cursive, flowing style.

Richard Svindland

cc: Erik Ekdahl (via email)
Steve Westhoff (via email)