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**STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of the Unauthorized Diversion and Use  
of Water by the California American Water  
Company; Cease and Desist Order WR 2009-0060

AMENDED APPLICATION FOR  
ORDER MODIFYING STATE  
WATER BOARD ORDER WR 2009-  
0060 (CEASE AND DESIST ORDER)

Pursuant to Water Code section 1832, Petitioners California-American Water Company (“CAW”), Monterey Peninsula Regional Water Authority (“MPRWA”), Monterey Peninsula Water Management District (“MPWMD”), the Pebble Beach Company (“PBC”), and the City of Pacific Grove<sup>1</sup> (collectively and/or individually, “Petitioners”) hereby submit this amended application (“Application”) to the State Water Resources Control Board (“SWRCB”) for an order modifying certain of the ordering provisions of Order WR 2009-0060 (referred to herein as “Order” or “CDO”).<sup>2</sup>

**I. Preliminary Statement**

Currently pending before the SWRCB is the application of Petitioners to amend the CDO (the “Original Application”). Filed on November 20, 2015, the Original Application requested certain modifications of the ordering provisions of the CDO, including an extension of the deadline for CAW to eliminate unauthorized diversions from the Carmel River until December 31, 2020, with certain annual milestones to demonstrate progress and mandatory reductions of diversions if milestones were missed. The first milestone proposed by Petitioners, with a deadline of September 30, 2017, was the issuance of a Certificate of Public Convenience and Necessity (“CPCN”) by the California Public Utilities Commission (“CPUC”) to construct the Monterey Peninsula Water Supply Project (“MPWSP”). At the time the Original Application was filed, the CPCN approving the MPWSP was anticipated from the CPUC before the end of 2016.

On March 17, 2016, the CPUC issued a new schedule for the MPWSP joint Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”), with certification of the Final EIR/EIS not expected until November 8, 2017. The CPUC’s unexpected delay in completing its environmental review will cause further significant delay in a decision on the

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<sup>1</sup> Although it is a member of the MPRWA, the City of Pacific Grove joins as an individual Petitioner due to its specific interest in the “City of Pacific Grove Recycled Water Project” described in Section IV.A.3.f., below.

<sup>2</sup> Petitioners understand that, as of its effective date, the requested order would supersede the ordering provisions of SWRCB Order WR 2009-0060. All other provisions of Order WR 2009-0060 and all other SWRCB orders concerning CAW’s diversions from the Carmel River would remain in effect until terminated by law or action of the SWRCB.

CPCN. Therefore, under the milestone schedule originally proposed by Petitioners, the first milestone will be missed, through no fault of Petitioners. In light of this delay, Petitioners, through this Application, request entry of an amended modification of the CDO in the form of the Proposed Order Amending and Restating Order WR 2009-0060, which is attached hereto as Attachment 1 (“Proposed Modified CDO”).

Petitioners fully appreciate the potential adverse effects of CAW’s unauthorized diversions on the Carmel River. Accordingly, CAW and community representatives, including the MPRWA and MPWMD, have pursued several important measures to address the potential effects of the continuing unauthorized diversions and to enhance and improve conditions for fish and wildlife resources in the Carmel River. Notably, on April 25, 2016, CAW and The Trust for Public Land (“TPL”) entered into a forbearance agreement whereby CAW will pay TPL for the forbearance of diversion and dedication of about 1,000 acre feet of water over the next four years to offset CAW’s unauthorized diversions and increase instream flows in the Carmel River. Under the agreement, TPL will retire irrigation of the two Rancho Canada golf courses, which currently use Carmel River water, leaving the water previously used for golf course irrigation in the Carmel River for instream benefits as further described in Section IV.A.4.e. In addition to flow enhancement, the TPL acquisition will result in the long-term restoration and conversion to riparian and natural habitat of, and public access to, hundreds of acres of land in the Carmel Valley. CAW does not seek an increase in the Effective Diversion Limit proposed in Attachment 1 hereto as a result of this forbearance agreement.

Significant progress also has been made on the San Clemente Dam Removal and Re-Route Project, and related restoration efforts, since the Original Application to amend the CDO was filed last year. The Dam Removal and Re-Route Project is now substantially complete and the Carmel River is flowing unimpeded around the original Dam site for the first time in more than 94 years. This significant Project was described in a February 26, 2016 letter from Mr. Robert MacLean, President of CAW, to Mr. Thomas Howard. (*See* Attachment 3).

Moreover, despite the CPUC’s delay of the MPWSP, Petitioners are seeking to take full

advantage of the MPWMD/ Monterey Regional Water Pollution Control Agency's ("MRWPCA") Pure Water Monterey Groundwater Replenishment Project ("GWR Project"), which could supply up to 3,500 acre feet per year to CAW's Monterey District customers as early as 2018. The GWR Project's EIR was certified on October 8, 2015. However, for the GWR Project to move forward, CAW must still obtain CPUC approval of a Water Purchase Agreement between CAW, MPWMD and MRWPCA to obtain water from the GWR Project, and authorization for CAW to construct a pipeline (the "Monterey Pipeline") to deliver water from the GWR Project to its customers. Assuming the CPUC promptly grants these approvals, CAW will begin construction of the pipeline and expects to deliver GWR Project water by 2018.

While terms of a forbearance agreement with TPL were being discussed, CAW and the public agency Petitioners entered into additional discussions with the Planning and Conservation League ("PCL") and the Sierra Club about how these changed circumstances ought to be addressed in an amendment to the Original Application for a modification of Order WR 2009-0060 filed last November. PCL and the Sierra Club had previously disagreed with the proposed Effective Diversion Limit in Petitioners' Original Application, but now, in light of the significant measures undertaken by CAW to offset its unauthorized diversions and mitigate impacts to the Carmel River, Petitioners, PCL and the Sierra Club have reached agreement to support the following proposed terms of the Proposed Modified CDO:

- Extend by an additional year, to December 31, 2021, the milestone schedule set forth in section 3.a.2.v. of the Proposed Modified CDO, Attachment 1 hereto;
- Set the Effective Diversion Limit at 8,310 acre-feet per annum ("afa") until December 31, 2021, subject to satisfaction of the milestones;
- Reduce the proposed Effective Diversion Limit in the first year of the proposed extension, from 8,671 afa, as originally proposed, to 8,310 afa;
- Reorder the start of construction of the GWR Project from the second milestone to the first milestone, to recognize that the delay of the MPWSP desalination component does not impact the GWR Project;

- Include a new commitment to, in any year that CAW delivers water from the GWR Project to its customers, reduce the annual Effective Diversion Limit by one acre-foot for every acre-foot of GWR Project water so delivered; and
- Modify, at the request of NOAA Fisheries, the ordering of priorities and funding for projects on the Carmel River to improve fish passage and habitat.

PCL and the Sierra Club now support the Proposed Modified CDO in its entirety, including the starting Effective Diversion Limit of 8,310 afa.

The Proposed Modified CDO replaces the original November 20, 2015 application in its entirety.

## **II. Introduction**

In Order WR 2009-0060, as amended by Order WR 2010-0001, the SWRCB required CAW to comply with Condition 2 of SWRCB Order WR 95-10. CAW has complied with these Orders by diligently implementing various actions in collaboration with the MPRWA, MPWMD and other community interests, including termination of unlawful diversions from the Carmel River in accordance with the schedule and conditions set forth in the CDO. Petitioners have diligently implemented measures to comply with the CDO, and CAW is currently meeting or has met all of the conditions of the CDO. Despite the best efforts of these parties as described below, factors beyond Petitioners' control prevent CAW and Petitioners from implementing a replacement water supply to eliminate all unauthorized diversions from the Carmel River before December 31, 2016 as required in the CDO. Accordingly, Petitioners hereby request that the SWRCB issue a new order modifying and restating certain of the ordering provisions of the CDO as specifically proposed in Attachment 1, the Proposed Modified CDO.<sup>3</sup>

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<sup>3</sup> The Proposed Modified CDO is the result of nearly two years of analysis and negotiations by Petitioners, stakeholders, resources agencies, and SWRCB staff. The Proposed Modified CDO includes significant commitments to measures to protect and enhance aquatic resources in the Carmel River through the extension period of the Proposed Modified CDO, and reflects an effort to maintain unequaled water conservation and use standards on the Monterey Peninsula without causing further damage to the economy of the Peninsula. The diversion reductions proposed in the Proposed Modified CDO will severely stretch the communities' water conservation capabilities, and therefore this Application is made with the understanding and on the condition that the SWRCB adopt an order amending the CDO that is materially the same as the terms and conditions in the Proposed Modified CDO in Attachment 1. Petitioners reserve all rights and remedies to protect the water supply necessary to maintain

In summary, the Proposed Modified CDO would extend the deadline for CAW to terminate all unlawful diversions from the Carmel River until December 31, 2021 to allow additional time to complete development of a replacement water supply. The moratorium on new connections and increased uses at existing connections that is described in more detail below would be maintained during the extension period. The Proposed Modified CDO would require CAW to make an immediate reduction of 1,360 afa from the existing diversion limit that is in place under Order WR 2009-0060 for Water Year 2015-16, resulting in a diversion limit for that year of 8,310.<sup>4</sup> If Petitioners meet annual milestones that are directly tied to demonstrable progress on completing a new water supply during the extension period, then this diversion limit (8,310 afa) would be maintained for the entire extension period. If Petitioners fail to meet a milestone and the SWRCB does not grant an exception, then the diversion limit for the subsequent Water Year would be reduced by 1,000 afa and such reduction would remain in force until after the milestone was met. The Proposed Modified CDO includes provisions describing the possibility of carrying over limited volumes of water from one Water Year to another where CAW produces less than the diversion limit in place for a given Water Year. It also includes modifications to how water that is diverted to Aquifer Storage and Recovery (“ASR”) is treated with respect to the diversion limit, which modifications are aimed at promoting maximum utilization of ASR to offset CAW’s unlawful diversions. The Proposed Modified CDO also establishes a reporting structure through which Petitioners and other stakeholders would provide annual updates to the SWRCB on progress towards developing a new water supply and the status of the Carmel River fishery and habitat.

Petitioners also request cooperation and assistance from the SWRCB regarding certain applications, permits, and grant funds to implement projects that will reduce unauthorized diversion from, and increase the water in, the Carmel River, particularly during drier months of

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health and safety of the Monterey Peninsula, and do not intend with this Application to waive any rights or remedies necessary to protect an adequate water supply for the public welfare of the Monterey Peninsula.

<sup>4</sup> The diversion limit of 8,310 afa, is derived by using a five year average of CAW’s actual Carmel River production for the period ending with Water Year 2014-15.

the year. With the SWRCB's support for those projects and modification of Order WR 2009-0060, Petitioners can commit to carry out the actions, plans and projects described in Sections IV.A and IV.B, which include:

- Continued development and implementation of efficiency and conservation measures;
- Continued development and implementation of projects to develop alternative and supplemental water supplies; and
- Continued development and implementation of fish and wildlife protection and enhancement measures.

While not signatories to this Application, many other stakeholders participated extensively in the development of this Application. Petitioners thank each of these groups and request that the Board recognize them for their efforts to collaborate with Petitioners. Without them, this Application would not be as robust and well-reasoned as it is today. These groups include the Sierra Club, the Carmel River Steelhead Association, PCL, Quail Lodge, Bernardus Lodge, and the Carmel Valley Ranch, among others. Included in Attachment 2 are letters of support from several stakeholder entities, each of whom participated in the development of this Application.

Petitioners would also like to acknowledge the significant efforts and collaboration by Staff of the SWRCB in the development of this Application. In the face of the worst drought in California's history, SWRCB Staff professionally and cooperatively worked with Petitioners over a two year period to provide feedback, to help drive consensus among stakeholders and to assist in the development of this Application and the Proposed Modified CDO. The Board should recognize the efforts and professionalism of its Staff members and their contributions to this Application.

### **III. The SWRCB has Authority to Modify the CDO**

The SWRCB has broad discretion to modify a CDO and to revise a schedule of compliance contained in a CDO. *See* Order WR 2010-0002. Petitioners make this Application pursuant to Water Code section 1832, which states, in relevant part: "The board may, after notice

and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to this chapter.” For the reasons set forth below, including the fishery protection and enhancement measures that will be implemented by Petitioners, Petitioners submit there is good cause for the SWRCB to modify the schedule and conditions in Order WR 2009-0060.

**IV. It Is Reasonable and In the Public Interest To Modify the CDO As Requested**

**A. CAW and Petitioners Have Diligently and Aggressively Implemented Measures To Comply With the CDO.**

**1. Efficiency and Conservation Measures**

Prior to and since the issuance of the CDO, Petitioners have dedicated tremendous resources to implement efficiency and conservation measures to control and reduce customer demand and system losses within CAW’s Monterey district, such that the community is currently outperforming the Carmel River diversion reduction targets set forth in the CDO. These include the following specific measures:

**a. Moratorium on New Connections and Increased Uses at Existing Connections**

CAW has implemented and diligently enforced a moratorium on new service connections within its Monterey district. CAW applied for, and the CPUC approved on March 24, 2011, a moratorium on new service connections and an increased use at existing connections caused by a change in use.<sup>5</sup> See CPUC Decision D.11-03-048. The moratorium has remained in effect since it was approved, and would be maintained during the requested extension period under the Proposed Modified CDO.

**b. Revised Conservation and Rationing Plan**

On July 14, 2015 CAW submitted an application to the CPUC to modify revised Rule No. 14.1.1 in CAW’s CPUC tariff, Water Conservation and Rationing Plan for the Monterey

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<sup>5</sup> Prior CPUC decisions require CAW to seek CPUC authorization prior to denying service to any customer within its service area.



District. CAW filed this application, with support and cooperation from MPWMD, in recognition that Rule 14.1.1, which is based upon the MPWMD Regulation XV, Expanded Water Conservation and Standby Rationing Plan, is outdated since it was last reviewed by the CPUC in a 2007 proceeding. A prehearing conference was held by the CPUC Administrative Law Judge on September 8, 2015 to discuss the parties' proposed schedule and scope of the proceeding. On November 4, 2015, the CPUC filed a scoping memo that sets the schedule for a decision on CAW's application by approximately October 2016.

**c. Water Conservation Programs**

CAW and MPWMD have implemented a variety of customer water conservation and efficiency programs, including programs targeting large commercial customers such as laundries, hotels, and car washes. CAW's efficiency standards have placed it in the lowest residential per-capita usage tier under the SWRCB's recently adopted emergency urban water conservation regulations. CAW and MPWMD have also implemented programs targeting reductions in outdoor irrigation, including replacement of irrigated turf with drought tolerant landscaping or artificial turf, incentives for installation of weather-based irrigation controllers, mandatory installation of rain sensors on irrigation systems, and mandatory water efficiency requirements for all non-residential customers and certain residential customers. *See* MPWMD Regulation XIV. In February 2010, CAW implemented, with CPUC approval, a new tiered conservation rate structure with increases directed at the top tier users to promote conservation practices and reduce overall water usage. Compared to the five year historical tier 4 and 5 usage, tier 4 and 5 usage was down approximately 71% in Water Year 2014-2015. *See* Table Nine in CAW's 4th Quarterly Report for the 2014-2015 Water Year to SWRCB pursuant to Order WR 2009-0060.

**d. Infrastructure and Operational Improvements to Reduce System Losses and Customer Leaks**

CAW has implemented and continues to implement programs to detect and reduce non-revenue system losses, including: replacement of older water mains and service lines in areas shown to be more leak prone; water meter replacement; active leak detection; technological

solutions to manage lost water; and operational fixes such as pressure reduction. In addition, CAW is currently conducting a pilot test with a group of Monterey customers using remote technology that enables participants to receive real time water consumption data for their residential water account on their smart phone. The technology can be used to set up an alert if consumption is indicative of a water leak or if use increases. This allows customers the ability to detect water leaks as they occur and to monitor their water use closely, further encouraging water conservation.

2. **CAW Is Diligently Pursuing Development of a Primary Alternative Water Supply**

As directed by Order 95-10 and the CDO, Petitioners have diligently pursued the MPWSP, which will produce the replacement water supply necessary to eliminate unauthorized diversions from the Carmel River.

a. **Application for Approval of MPWSP and Permitting Activity**

On April 23, 2012, CAW filed an application to the CPUC for approval of the MPWSP. The MPWSP includes the following components: (1) a desalination plant and associated source-water slant wells and conveyance system, which can produce up to 9,752 afa for system demand; (2) an ASR project to store water lawfully diverted from the Carmel River in the Seaside Groundwater Basin for subsequent recovery, with an expected long term average yield of 1,300 acre-feet annually; and (3) a GWR Project that could treat recycled water and replenish up to 3,500 afa in the Seaside Basin. The GWR Project is being developed by the MPWMD and MRWPCA and could result in a down-sized desalination plant. The joint EIR/EIS for the MPWSP is not expected until November, 2017, with the CPCN approving the MPWSP following sometime thereafter..

Significant progress has been made on the MPWSP. CAW has undertaken – and continues to advance – as many aspects of the project as can be done without regulatory permits. In that regard, CAW acquired a 45-acre parcel of land near the City of Marina to serve as the desalination plant site. CAW reached an agreement with CEMEX, Inc. that provides a

temporary easement to construct and operate a test slant well as well as an option to purchase a permanent easement for purposes of constructing and operating a full scale subsurface seawater intake system. CAW has awarded a design-build contract to CDM Smith to construct the desalination plant once all necessary permits have been obtained. CAW has procured and signed contracts for delivery of all major components of the distribution system improvements and source water wells, and is awaiting CPUC approval to commence construction.

On April 30, 2015, the CPUC released its Draft Environmental Impact Report (“DEIR”) for the MPWSP pursuant to the California Environmental Quality Act (“CEQA”). The release of the DEIR began a 60-day public comment period, which was subsequently extended through September 30, 2015. On September 8, 2015, the CPUC issued a statement that it will revise and recirculate the MPWSP DEIR as a joint DEIR/Draft Environmental Impact Statement (“DEIS”). The joint DEIR/DEIS will meet the requirements of the National Environmental Policy Act (“NEPA”), and will be coordinated with the Monterey Bay National Marine Sanctuary (“MBNMS”) as the federal lead agency. MBNMS’s parent agency, the National Oceanic and Atmospheric Administration (“NOAA”), published a *Notice of Intent to Prepare Environmental Impact Statement* on August 26, 2015 under NEPA for the MPWSP and held a related scoping meeting on September 10, 2015. Unfortunately, on March 17, 2016, the CPUC issued a new schedule for the joint EIR/EIS, delaying release of the DEIR/DEIS for public comment to December 21, 2016. Certification of the Final EIR/EIS is not expected until November 8, 2017.

Despite the CPUC’s delay of the MPWSP, substantial progress is also being made on the GWR Project, which could supply up to 3,500 acre feet of water per year to CAW customers as early as 2018. When operational, the GWR Project should result in significant compliance toward eliminating CAW’s unauthorized diversions of Carmel River water. Accordingly, Petitioners have crafted the Proposed Modified CDO to provide that in any year that CAW delivers water from the GWR Project to its customers, the Effective Diversion Limit shall be reduced by one acre foot for every acre foot of GWR Project water so delivered.

On April 23, 2015, MPWMD and MRWPCA released the GWR Project DEIR for a 45-

day public comment period that closed on June 5, 2015. On October 8, 2015 MRWPCA certified its final EIR for the GWR Project. CAW and 17 other parties are presently seeking from the CPUC authorization of the GWR Project Water Purchase Agreement and expedited construction of the Monterey Pipeline and pump station facilities. The Joint Motion to the CPUC is Attachment 4 hereto.

**b. Senate Bill 936 for Partial Public Financing**

In September 2014, Governor Jerry Brown signed Senate Bill (SB) 936, authored by Senators Bill Monning and Anthony Cannella and Assemblymen Mark Stone and Luis Alejo. This legislation allows the MPWSP to utilize partial public financing if it is available at a lower rate than conventional, private project financing.

**c. Test Slant Well Project**

In addition, a new test slant well located on the CEMEX property in Marina, California was completed in March 2015. The test well was put into long term operation on April 22, 2015. Data from the test well and an associated network of monitoring wells is posted weekly on CAW's MPWSP website (<http://www.watersupplyproject.org/>). Preliminary test well results have been promising and indicate that the test well is operating as designed. CAW and the California Coastal Commission also successfully defended the Coastal Development Permits underlying the test well in two separate lawsuits challenging their validity.

**3. Petitioners Have Implemented Other Projects To Replace and Authorize Carmel River Diversions**

Petitioners have developed, permitted and implemented supplemental water supply projects to reduce unauthorized Carmel River diversions. Petitioners have also facilitated or supported efforts by other entities to complete multiple projects and water right transactions that will permit beneficial uses within CAW's service area.

**a. Table 13 Water Rights**

CAW pursued and satisfied the requirements under SWRCB Decision 1632 to obtain additional appropriative water rights under SWRCB Permit 21330 to lawfully divert up to 1,488

afa from the Carmel River, subject to the same by-pass flow requirements as ASR water. In Water Year 2014-2015, CAW was able to divert 42.2 AF under the Permit, and reduce unauthorized diversions by an equal amount.<sup>6</sup>

**b. Pebble Beach Wastewater Reclamation Project**

CAW has been a participant with PBC, the Carmel Area Wastewater District (“CAWD”), the Pebble Beach Community Services District (“PBCSD”), and MPWMD in accomplishing perhaps the most renowned golf course recycled water irrigation project in the country. The CAWD-PBCSD Wastewater Reclamation Project (as it is known) treats wastewater at the CAWD plant to a tertiary level, with advanced level micro-filtration which is then distributed by PBCSD and MPWMD as recycled water to irrigate all of the Del Monte Forest golf courses. This project is presently supplying an average of 1,000 afa of recycled water to the golf courses, conserving that amount of diversions from the Carmel River. In addition to MPWMD’s conservation programs, this project is one of the largest water saving projects operating on the Monterey Peninsula. In return for its financial commitment (of which PBC has funded over \$22 million in operating shortfalls and debt service) which made the project possible, PBC (with other Del Monte Forest landowners) received the Pebble Beach Water Entitlement, which was fully recognized in SWRCB Order WR 2009-0060, as modified by Order WR 2010-0001.

**c. Additional Aquifer Storage and Recovery Capacity**

As required by the Order, CAW and the MPWMD expanded the Carmel River ASR Project to fulfill the Small Project requirement in Ordering Paragraph 3.a.(5). CAW and MPWMD jointly hold water right Permit 20808C that allows for up to 2,900 afa to be diverted from the Carmel River during periods of excess flow and then injected into the Seaside Basin as part of the ASR program.<sup>7</sup> CAW and MPWMD have completed two new wells (ASR Wells #3

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<sup>6</sup> Decision 1632 Condition 10 provides an opportunity for the persons named in Table 13 of Decision 1632 to obtain a water right permit with a priority superior to the MPWMD’s Permit 20808. Decision 1632 delegates authority to the Chief of the Division of Water Rights to modify the quantities identified in Table 13.

<sup>7</sup> The “face” amount of Permit 20808C presumes Carmel River flows meet or exceed minimum instream flow requirements each day of the 183-day diversion season and that diversions occur each day at the maximum instantaneous rate allowed under the Permit.

and #4) at the Seaside Middle School since the CDO was issued. The addition of ASR Well #3 gives CAW and MPWMD the ability to store and recover an expected long term average of more than 500 afa, and was completed to satisfy Condition 5 of the CDO. The addition of ASR Well #4 provides the opportunity for CAW and MPWMD to realize an estimated additional 500 afa available for diversion under the associated Permit.

**d. Carmel River Floodplain Restoration and Environmental Enhancement Project and Interim Water Use Agreement**

CAW supported and facilitated a water right change petition submitted by the Clint Eastwood and Margaret Eastwood Trust (“Eastwood Trust”) and approved by the SWRCB on July 3, 2015 in Division Decision 2015-0001. This project includes a significant donation of land by the Eastwood Trust to the Big Sur Land Trust as an important component of the Carmel River Floodplain Restoration and Environmental Enhancement Project. The Carmel River Floodplain Restoration and Environmental Enhancement Project will, among other potential things, restore the historic floodplain and wetlands and improve flood protection in the lower Carmel River and increase riparian habitat.

The Eastwood Trust agreed to permanently dedicate 46 afa of its existing water right to instream flows, and to grant temporary use of up to 85 afa to assist CAW to reduce its unauthorized diversions from the Carmel River. CAW and the Eastwood Trust expended significant time and effort to complete this transaction and expect to begin replacing CAW diversions with water available through the associated water right (License 13868A) in the immediate near term. Based upon an agreement with the Eastwood Trust, the SWRCB has ordered that all municipal water pumped under License 13868A during 2015 will be used to offset CAW’s Carmel River Diversions, and that at least 50 af and 25 af will be used to assist CAW to reduce its unauthorized diversions from the Carmel River in 2016 and 2017, respectively. Until the MPWSP is brought online and unauthorized diversions from the Carmel River eliminated, the agreement with the Eastwood Trust authorizes CAW to use all water under License 13868A that is not used by Eastwood pursuant to the License amendment.

**e. Carmel River Instream Flow Enhancement Program**

CAW has proposed to the SWRCB the Carmel River Instream Flow Enhancement Program, whereby CAW will compensate Carmel River water rights holders to implement conservation measures to reduce water diversions from the river in order to increase instream flows for the benefit of fish and wildlife in the Carmel River. On September 8, 2015, CAW submitted a Notice of Intent to Implement the Carmel River Flow Enhancement Program to the SWRCB describing the proposed program which would temporarily modify the water users' water rights to allow for the instream use of water in the Carmel River.

**f. City of Pacific Grove Recycled Water Project**

The City of Pacific Grove certified an EIR for its Local Water Project to reduce irrigation on the City's municipal golf course and El Carmelo Cemetery. MPWMD provided a feasibility funding grant to assist planning this effort. Clean Water State Revolving Fund ("SRF") financing for this effort was approved by the SWRCB on November 17, 2015. The Project's final design is nearly complete and the City expects to begin construction in June 2016. CAW also has actively supported this project throughout the proposal and approval process.

**4. CAW and Petitioners Have Implemented and Propose Additional Measures To Enhance and Improve Conditions For Fish and Wildlife Resources**

Petitioners have permitted and implemented significant measures to enhance and improve conditions for fish and wildlife resources in the Carmel River watershed, and to minimize and avoid potential impacts to fish and wildlife during the extension period for the CDO sought through this Application.

**a. Funding for Carmel River Mitigation Projects**

Pursuant to a 2009 agreement (amended in 2014) between CAW, the National Oceanic and Atmospheric Administration (NOAA), and the California Department of Fish and Wildlife ("CDFW"), CAW made a one-time payment of \$3.5 million in 2009, annual payments of \$1.1 million per year for 2010 through 2015, and has committed to make annual payments of \$1.1

million per year through 2016 to the State Coastal Conservancy (“SCC”) for environmental protection and enhancement projects in the Carmel River watershed.

CAW’s payments, which total \$10.1 million to date, are being used to fund the following significant projects, which are designed to mitigate the impacts of CAW’s unauthorized diversions and are identified by the SCC through ongoing consultations with the NMFS, CDFW, and Carmel River stakeholders primarily through the Carmel River Task Force:

- Removal of Old Carmel River Dam to facilitate fish passage;
- Removal of Sleepy Hollow Ford to facilitate fish passage;
- Restoration of Carmel River upstream of San Clemente Dam;
- Sleepy Hollow Fish Rearing Facility Intake Improvements;
- Carmel River Lagoon Large Wood Augmentation;
- Carmel Lagoon Water Augmentation;
- Carmel Lagoon Ecological Barrier;
- Additional Fish Passage Barrier Removal; and
- Off-stream Storage of Excess Flows in Exchange for Forbearance of Summer Pumping.

Provided that NOAA and CAW mutually agree to terms for extending the 2009 agreement described above, CAW will make additional annual payments of \$1.1 million (pro-rated for any partial years) until unpermitted diversions of water from the Carmel River are replaced by legal sources of water for use on projects during the requested extension period for the CDO. Use of these funds and administrative efforts will focus, with support of CAW and other Parties, on projects that can be implemented during the extension period to mitigate potential effects of the extension. MPWMD will use its best efforts and cooperate with NOAA, CDFW, SCC and the Carmel River Steelhead Association, to identify, develop, and implement mitigation efforts that benefit the Carmel River.

**b. Carmel River Reroute and San Clemente Dam Removal Project**

CAW also has permitted, financed and completed significant construction activities to reroute the Carmel River and remove the San Clemente Dam. The *Carmel River Reroute and San*



*Clemente Dam Removal Project* is the largest dam removal project in California history, and was jointly developed and/or funded by the CAW, SCC, NOAA's National Marine Fisheries Service, the Planning and Conservation League Foundation, and the Nature Conservancy. This monumental and innovative project has accomplished the following:

- Remove the 106 foot high San Clemente Dam and implement a watershed restoration process that will bring the Carmel River back to life;
- Provide unimpaired access to over 25 miles of essential spawning and rearing habitat, thereby aiding in the recovery of threatened South-Central California Coast steelhead;
- Restore the river's natural sediment flow, helping replenish sand on Carmel Beach and improve habitat downstream of the dam for steelhead;
- Re-establish a healthy connection between the lower Carmel River and the watershed above San Clemente Dam;
- Improve habitat for threatened California red-legged frogs;
- Reduce beach erosion that contributes to destabilization of structures;
- Provide a long-term solution to the public safety risk posed by the potential collapse of the dam, which potentially threatens 1,500 homes and other public buildings in the event of a large flood or earthquake;

The various activities that have been completed to date include: complete excavation of the re-route cut, installation of the diversion dike and the stabilized sediment slope, the complete demolition of San Clemente Dam itself and the completion of the new river channel that allows for fish passage. An additional component of the project is the ultimate transfer of CAW property around San Clemente Dam to the U.S. Department of Interior Bureau of Land Management, which will create additional open space and habitat in the watershed.

***c. Los Padres Dam Downstream Fish Passage Facilities***

CAW and various stakeholders agreed to construct downstream fish passage facilities at Los Padres Dam, located at approximately River Mile 24.8 on the Carmel River. CAW owns and operates Los Padres Dam and has made various improvements to accommodate upstream fish

passage over the Dam. Currently, when lake elevations fall below the dam's spillway crest, no downstream fish passage corridor exists. To improve downstream fish passage opportunities, the following facilities will be constructed: behavioral guidance system, floating weir surface collector, fish bypass conduit, bypass access portals, and bypass outfall. Construction of these facilities began in the second quarter of 2015, and they were put into service on March 3, 2016.

***d. Los Padres Dam Long Term Planning Study***

In its April 10, 2015 *Decision Adopting the 2015, 2016, 2017 Revenue Requirement for California-American Water Company*, the CPUC authorized CAW to fund a study to determine the ultimate disposition of the Los Padres Dam and its effects on the Carmel River. CAW will fund MPWMD to continue independently studying the fate of the Los Padres Dam, including contribution from CAW of approximately \$1.0 million to assist MPWMD. Studies will include evaluating upstream steelhead passage at Los Padres Dam, whether the public trust resources of the Carmel River will be adversely affected or enhanced by removal or alteration of Los Padres Dam, what options exist to maintain physical existing surface storage in Los Padres Reservoir, and analysis of the potential geomorphic effects of a resumption or increase of the natural flow of sediment. In addition, CAW expects to work with MPWMD to develop the scope of work and award the feasibility study to a qualified environmental consultant in the near future and anticipates completing the study during 2018. CAW also will continue to fund mitigation measures pursuant to MPWMD's current mitigation program through December 31, 2021.

***e. Rancho Canada Golf Course Retirement***

On April 25, 2016, CAW and TPL executed a water diversion forbearance agreement to accomplish a reduction in pumping from the Carmel River system and to retire irrigation of the two Rancho Canada golf courses, which currently use Carmel River water. Based on the most recent ten-year water production data, approximately 381 acre-feet of water per year on average has been pumped from the Carmel River system and used to irrigate the golf courses. CAW has agreed to pay TPL for its forbearance of diversion, which will assist TPL to complete its acquisition of a substantial portion of the golf course property. In turn, TPL's forbearance of diversion will assist CAW to offset its unauthorized diversions during the CDO extension period,

by causing an increase in flow in the Carmel River and leaving up to about 1,000 acre feet of water in the Carmel River system between 2016 and 2019. This water would have been diverted and consumptively used for golf course irrigation on the property in the absence of this agreement and TPL's acquisition. Additionally, TPL intends to convert most of the acquired land to riparian habitat. The result of this agreement is that the use of Carmel River water to irrigate the golf courses will be permanently eliminated, and a substantial portion of water previously used will remain in the river.

*f. **Commitment to Fund and Implement Additional Mitigation Projects***

Upon SWRCB approval of this Application on terms substantially similar to those requested herein, and subject to final approval from CDFW, NOAA, and other agencies with permitting jurisdiction, CAW will implement up to \$2.5 million in other projects on the Carmel River to improve fish passage and habitat. These include, in order of priority and estimated costs: a pit tagging program (\$1.0 million); improvements to the existing upstream fish passage ladder and trap at Los Padres Dam (\$0.2 million); installation of a fish screen at the lower outlet pipe on Los Padres Dam (\$0.8 million); and a through-reservoir survival study for Los Padres Reservoir (\$0.5 million). Should the higher priority projects exceed the estimated amounts, funding will be pulled from the lower priority projects until the entire \$2.5 million is utilized. Additionally, the estimated cost from the above projects may be used to supplement other related projects occurring on the Carmel River (i.e., pit tagging work being contemplated by MPWMD).

**B. Factors Beyond CAW's and Petitioners' Control Prevent Petitioners From Achieving All CDO Conditions and Deadlines**

The requested modifications are necessary because factors beyond CAW's and Petitioners' control – namely the failure of the Regional Desalination Project and delays in the CPUC approval schedule for the MPWSP – make it infeasible to complete the MPWSP and entirely eliminate unauthorized Carmel River diversions within the current CDO schedule (i.e., by December 31, 2016). Petitioners do not anticipate a final CPUC decision approving the MPWSP and authorizing construction before the end of 2017. But once authorized, CAW expects to begin construction of the MPWSP by mid-2018, and to begin producing potable water

to replace Carmel River diversions before the end of the requested extension period. Major infrastructure projects of this size and scope are often subject to delays and litigation, but this anticipated schedule reflects Petitioners' best judgment if delays are kept to a minimum.

Taking into account the commitments, efforts and accomplishments described above, Petitioners request that the SWRCB modify the CDO as shown in Attachment 1. Petitioners' make this request upon the express understanding and condition that the hearing record developed and adduced before the SWRCB for Orders WR 2009-0060 and WR 2010-0001 are incorporated within the proceedings on this Application, for all purposes. Further, this Application is made upon the express understanding and condition that Petitioners each shall preserve, and not waive, their collective or individual rights to petition for relief from any provision of the order amending and restating the CDO, for any reason, upon a claim that the order amending and restating the CDO causes a threat to public health or safety or otherwise jeopardizes the water supply for the Monterey Peninsula. Should the SWRCB consider adoption of an order amending and restating the CDO on terms or conditions different from the Proposed Modified CDO submitted as Attachment 1 to this Application, Petitioners request that the SWRCB not take action thereon until Petitioners have been provided notice of the draft order not less than 30 days prior to any meeting to adopt the order, and provided an opportunity to augment the record of proceedings with respect to the Application.

**V. Petitioners Request Assistance From the SWRCB**

Taking into account the commitments, efforts and accomplishments described herein, Petitioners request that the SWRCB commit to use reasonable efforts to assist Petitioners' efforts to eliminate unauthorized Carmel River diversions as follows:

1. Support (a) before the CPUC the Joint Motion for a Separate Phase 2 Decision (Attachment 4 hereto), filed on April 18, 2016 by eighteen parties requesting that the CPUC authorize the Water Purchase Agreement for the GWR Project and expedited construction of the Monterey Pipeline and pump station, and also address limited financing and cost recovery for the Monterey Pipeline and pump station facilities; and (b)

- expedited permitting of the GWR Project and Monterey Pipeline needed for the GWR Project and ASR, including support for the required coastal development permits;
2. Support (a) before the CPUC the proposed desalination plant component of the MPWSP and remaining infrastructure not addressed in connection with the GWR Project, Monterey Pipeline and pump station; and (b) expedited permitting before the California Coastal Commission and other agencies with permitting authority, including support for the required coastal development permits;
  3. Cooperate with the Parties to secure prioritization of the MPWMD/MRWPCA GWR grant request pursuant to Chapter 9 of AB 1471 (2014 Proposition 1);
  4. Support, including expedited review of, water rights Application 32263 of Monterey County Water Resources Agency, and any amendments thereto, to facilitate the GWR Project; and
  5. Recognize (a) the diligent efforts of the parties to arrange for agreements to forbear diversion and dedicate water for instream purposes; (b) that the use of water under such a forbearance agreement for instream purposes is a reasonable and beneficial use of water and is encouraged by and consistent with State policy and water rights law; and (c) that the temporary dedication of water for such instream uses pursuant to a forbearance agreement will not prejudice the subject rights that exist at the time of the forbearance agreement.

**VI. Conclusion**

For the reasons stated herein, Petitioners respectfully request modification of Order WR 2009-0060 as set forth in Attachment 1.

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Respectfully Submitted,

Dated:

CALIFORNIA-AMERICAN WATER COMPANY

By: \_\_\_\_\_

MONTEREY PENINSULA REGIONAL WATER  
AUTHORITY

By: \_\_\_\_\_

MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT

By: \_\_\_\_\_

PEBBLE BEACH COMPANY

By: \_\_\_\_\_

CITY OF PACIFIC GROVE

By: \_\_\_\_\_

# **ATTACHMENT 1**

## Attachment 1 to Application to Modify SWRCB Order WR 2009-0060

### PROPOSED ORDER AMENDING AND RESTATING ORDER WR 2009-0060

**NOW, THEREFORE, IT IS ORDERED THAT** as of the effective date of this Order,<sup>1</sup> Cal-Am shall cease and desist from the unauthorized diversion of water from the Carmel River in accordance with the following schedule and conditions.

1. Cal-Am shall diligently implement actions to terminate its unlawful diversions from the Carmel River and shall terminate all unlawful diversions from the river no later than December 31, 2021.<sup>2</sup>
2. Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date.<sup>3</sup>
3. Cal-Am shall adjust its diversions from the Carmel River in accordance with the following:
  - a. **Effective Diversion Limit.** The limits set forth in this Condition 3.a., as may be further reduced or increased pursuant to the terms and conditions of this Order, is referred to as the "Effective Diversion Limit."
    - (1) Immediate Reduction: Commencing on October 1, 2015 (Water Year 2015-2016), the Effective Diversion Limit shall be 8,310 afa.<sup>4</sup> This Effective Diversion Limit shall be maintained through December 31, 2021, subject to the terms and conditions in this Order.

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<sup>1</sup> The effective date of this Order shall be the date of issuance. As of the effective date, this Order shall supersede the ordering provisions of State Water Resources Control Board ("State Water Board") Order WR 2009-0060. All other provisions of Order WR 2009-0060 and all other State Water Board orders concerning Cal-Am's diversions from the Carmel River shall remain in effect until terminated by law or action of the State Water Board.

<sup>2</sup> Cal-Am lawfully diverts 3,376 afa under a legal basis of water right.

<sup>3</sup> Multiunit residential, commercial or industrial sites may currently be served by a single water meter. The installation of additional meters at an existing service will not be viewed as a new service connection provided that the additional metering does not result in an increase in water use.

<sup>4</sup> Each Water Year runs from October 1 to September 30 of the following year.



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### (2) Adjustments to the Effective Diversion Limit

- i. **GWR Project Offset.** In any year that CAW delivers water from the Pure Water Monterey Groundwater Replenishment Project (“GWR Project”) to its customers, the Effective Diversion Limit shall be reduced by one acre foot for every acre foot of GWR Project water so delivered.<sup>5</sup>
- ii. **Seaside Groundwater Basin Limitations.** The Effective Diversion Limit shall not apply to any exceedance that Cal-Am, the Monterey Peninsula Regional Water Authority (“MPRWA”), the Monterey Peninsula Water Management District (“MPWMD”) the Pebble Beach Company (“PBC”), and /or the City of Pacific Grove (collectively “Petitioners”) establish was necessary to meet reductions required by mitigation measures imposed pursuant to the Seaside Basin Watermaster’s Seawater Intrusion Response Plan or by the court pursuant to the Seaside Groundwater Basin Judgment in response to a detection of seawater intrusion within the Seaside Groundwater Basin.
- iii. **Carryover:** After October 1, 2015 if Cal-Am’s actual diversions during a given Water Year are less than the Effective Diversion Limit for that Water Year, Cal-Am shall be credited for the difference between the Effective Diversion Limit and Cal-Am’s actual diversions. Any such credit may be carried over to offset any exceedance of the Effective Diversion Limit in future Water Years, subject to the restriction in Paragraph 3.a.(2)(iv) below.
- iv. **Cap on Carryover:** Notwithstanding the provision on carryover in Paragraph 3.a.(2)(iii), in any Water Year the sum of (a) Cal-Am’s diversions of non-ASR<sup>6</sup> water from the Carmel River and (b) water recovered from ASR storage shall not exceed the Effective Diversion

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<sup>5</sup> This GWR Project Offset is conditioned on (1) GWR Project water being placed in the Seaside Groundwater Basin, and (2) CPUC providing authorization to CAW to construct the Monterey Pipeline and other related improvements to deliver water to its customers.

<sup>6</sup> “ASR water” means Carmel River water diverted to underground Aquifer Storage and Recovery (“ASR”) storage pursuant to State Water Board Permits 20808A and 20808C, as discussed in Paragraphs 3.a.(3), 3.c., and 4 of this Order.

**Attachment 1 to Application to Modify SWRCB Order WR 2009-0060**

Limit then in effect plus 750 afa.

- v. **Milestones:** For purposes of calculating a reduction to the Effective Diversion Limit, the following Milestones and Deadlines will apply:

	<b>Milestone</b>	<b>Deadline<sup>7</sup></b>
1. (WY 2017-2018)	Issuance of a Certificate of Public Convenience and Necessity to Construct the Monterey Peninsula Water Supply Project (“MPWSP”) by the California Public Utilities Commission and/or start of construction of the Pure Water Monterey <sup>8</sup> project, meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work.	September 30, 2018
2. (WY 2018-2019)	Start of construction for any of the Cal-Am Components of the MPWSP, <sup>9</sup> meaning commencement of physical work after issuance of required regulatory permits and authorizations to begin work. <sup>10</sup>	September 30, 2019
3. (WY 2019-2020)	(1) Drilling activity for at least one MPWSP source water production well <sup>11</sup> complete; (2) foundation and structural framing complete for MPWSP pretreatment, seawater reverse osmosis, and administration buildings at desalination plant; (3) excavation complete for MPWSP brine and backwash storage basins; and (4) 25% of MPWSP transmission pipelines installed based on total length. <sup>12</sup>	September 30, 2020

<sup>7</sup> Milestone Deadlines are based on and flow from the CPUC’s revised schedule setting the completion date for certification of the MPWSP Final EIR/EIS, and Notice of Determination and Record of Decision, for November 8, 2017. If the CPUC accelerates its schedule and issues a CPCN approving the MPWSP before September 30, 2018, Petitioners shall use best efforts to accelerate each Milestone Deadline by an equal amount of time.

<sup>8</sup> The Pure Water Monterey project is a proposed advanced water recycling project, jointly developed by two public agencies – the MPWMD and the Monterey Regional Water Pollution Control Agency (“MRWPCA”).

<sup>9</sup> For purposes of this proposal the Cal-Am Components of the MPWSP include: source water production wells; desalination plant; brine disposal system; and transmission pipelines.

<sup>10</sup> Such work may include, among other things, any of the following: desalination plant site grading and preparation; electric utility installation; yard piping; subsurface excavation for structural foundations; transmission pipeline installation.

<sup>11</sup> Not including the MPWSP Test Well completed in 2015.

<sup>12</sup> For transmission pipeline installation Cal-Am will prioritize installation of the “Monterey Pipeline and other ASR related improvements,” which will facilitate increased ASR diversion during high flows and other improved operations that will increase the amount of water in the Carmel River during dry months.

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4. (WY 2020-2021)	(1) 50% of drilling activity complete for MPWSP source water production wells based on total number of wells required; (2) mechanical systems for MPWSP brine and backwash storage basins complete; (3) construction of MPWSP filtered water tanks and finished water tanks complete; (4) 50% of MPWSP transmission pipelines installed based on total length, including 100% installation of the “Monterey Pipeline and other ASR related improvements” (See Footnote 12.)	September 30, 2021
5. (WY 2021-2022 and beyond)	Substantial completion of the Cal-Am Components of the MPWSP, meaning the Cal-Am Components are sufficiently complete and appropriately permitted to allow delivery of MPWSP produced potable water to Cal-Am’s Monterey Main system, eliminating further Cal-Am diversions of Carmel River water without valid basis of right	December 31, 2021

vi. **Reductions to the Effective Diversion Limit Based on Missed**

**Milestones:** The following reductions to the Effective Diversion Limit shall apply if an applicable Milestone Deadline is not met:

Water Year	Milestone Missed	Reduction in Effective Diversion Limit	Date Reduction Assessed
Oct. 1, 2017– Sept. 30, 2018	1	1000 AFA	Oct. 1, 2018
Oct. 1, 2018– Sept. 30, 2019	2	1000 AFA	Oct. 1, 2019
Oct. 1, 2019– Sept. 30, 2020	3	1000 AFA	Oct. 1, 2020
Oct. 1, 2020– Sept. 30, 2021	4	1000 AFA	Oct. 1, 2021
Oct. 1, 2021– Dec. 31, 2021	5	1000 AFA	Dec. 31, 2021

If a Milestone is not achieved by its Deadline but is subsequently achieved, the corresponding reduction to the Effective Diversion Limit shall be reversed on the first day of the Water Year following achievement of the Milestone. Once a Milestone has been achieved, any corresponding reduction will not be assessed in subsequent Water Years.

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- vii. **Illustration:** The following table illustrates the effect of the reduction in the Effective Diversion Limit over the term of this Order, and assumes no Deadlines have been met and no carryover credits have been applied under Paragraph 3.a.(2)(iii), and no additional water rights have been obtained pursuant to Paragraph 6. The result is an elimination of unauthorized diversions from the Carmel River on December 31, 2021.

Water Year	Effective Diversion Limit if Milestones Missed, No Credits Applied, No Additional Water Rights Obtained
Oct. 1, 2015– Sept. 30, 2016	8,310 AFA
Oct. 1, 2016– Sept. 30, 2017	8,310 AFA
Oct. 1, 2017– Sept. 30, 2018	8,310 AFA
Oct. 1, 2018– Sept. 30, 2019	7,310 AFA
Oct. 1, 2019– Sept. 30, 2020	6,310 AFA
Oct. 1, 2020– Sept. 30, 2021	5,310 AFA
Oct. 1, 2021– Dec. 31, 2021	4,310 AFA
Thereafter	3,376 AFA

- viii. **Joint Annual Report.** At least 120 days prior to each Milestone Deadline described in Condition 3.a.(2)(v), Petitioners shall submit a joint report to the Deputy Director, Division of Water Rights, describing progress towards that Milestone, whether Petitioners expect the Milestone to be achieved by its Deadline and, if not, whether the Milestone will be missed for reasons beyond Petitioners' control. Within fifteen days of receiving the joint report by the Petitioners, the Deputy Director, Division of Water Rights shall submit a Staff Report to the State Water Board that attaches the joint report. Within 60 days of receipt of the Staff Report, the State Water Board shall receive, at a regularly scheduled meeting, written and oral reports from Petitioners, the Deputy Director, Division of Water Rights, and the public on progress towards

## **Attachment 1 to Application to Modify SWRCB Order WR 2009-0060**

Milestones. If Petitioners' joint report indicates that a Milestone is likely to be missed, the State Water Board shall determine during that meeting whether the cause for delay is beyond or within Petitioners' control. If the State Water Board determines that the cause is beyond Petitioners' control, it may suspend any corresponding reductions under Condition 3.a.(2)(vi) until such time as the Petitioners can reasonably control progress towards the Milestone.

- ix. **Status of Steelhead Fishery Report.** During the extension period CAW will provide funding in an amount not to exceed \$175,000 per year for the preparation of an annual report that evaluates the status of the threatened South-Central California Coast Steelhead Distinct Population Segment ("SCCC Steelhead DPS") in the Carmel River ("Status of Steelhead Fishery Report"). Petitioners and various stakeholders agree that, if possible, the annual Status of the Steelhead Fishery Report will be prepared by the National Marine Fisheries Service ("NMFS") Southwest Fisheries Science Center ("SWFSC"). Petitioners and various stakeholders further agree that if NMFS West Coast Region finds a significant change in the status of the SCCC Steelhead DPS since the previous report (or, in the case of the first report, since the effective date of this Order), NMFS West Coast Region may provide recommendations for additional adaptive management measures to be taken with respect to the SCCC Steelhead DPS in the Carmel River. If SWFSC cannot complete the Status of the Steelhead Fishery Report for any or all years during the extension period, Petitioners and other stakeholders will work expeditiously and in good faith to designate another individual or entity with requisite expertise to complete the report. If the NMFS West Coast Region cannot review the Status of the Steelhead Fishery report in any or all years, Petitioners and other stakeholders will work expeditiously and in good faith to develop an alternative system for making adaptive management recommendations. Petitioners, stakeholders, and the preparer of the Status of the Steelhead Fishery Report will endeavor to deliver the report in a cost effective and efficient manner, to share

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resources, and to avoid duplication of effort to lower the cost of the report to the extent practicable. The Status of the Steelhead Fishery Report and any adaptive management recommendations shall be submitted to the SWRCB by Petitioners each year with the corresponding joint annual report.

- (3) ASR Project: The amount of water diverted to underground storage under State Water Board Permits 20808A and 20808C as of May 31 of each year shall be included in Cal-Am's annual production of Carmel River water that is subject to the Effective Diversion Limit, up to a maximum of 600 afa. On June 1 of each year, Cal-Am shall submit an operating plan to the Deputy Director for Water Rights specifying the quantity of water it intends to supply from the ASR Project for its customers after May 31 of each year. As described in Paragraph 4 below, after the first 600 afa have been recovered in a given Water Year, the Effective Diversion Limit for that Water Year shall be reduced by the amount of ASR water recovered in that Water Year.
- (4) Sand City Desalination Plant: Any volume of water that is produced by the Sand City Desalination Plant and not served to persons residing within the City of Sand City shall be subtracted from the Effective Diversion Limit for the Water Year in which it is produced.
- (5) Pebble Beach: Within 90 days following adoption of State Water Board Order WR 2009-0060, PBC certified, under penalty of perjury, the total quantity of water annually used under its water entitlement from MPWMD (for the funding assurances provided for the construction and expansion of the CAWD-PBCSD wastewater reclamation project). This amount was 36.352 afa. Ten percent (10%) of the amount reported, or 3.635 afa was to be added to the Effective Diversion Limit to allow Cal-Am to divert water from the river to supply water for PBC water entitlements initiated in the 12 months following adoption of State Water Board Order WR 2009-0060. Thereafter, PBC has annually submitted and shall continue to annually submit, on September 30, a report to the Deputy Director for Water Rights accounting for any additional water that is diverted from the Carmel River as the result of an increased use of its MPWMD water

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entitlement. Increased diversions from the river by Cal-Am to satisfy PBC entitlements from MPWMD shall be added to the Effective Diversion Limit, and are not subject to Paragraph 2 of this Order. Water diverted from the river by Cal-Am for PBC entitlements can only be served to properties that have received a PBC entitlement from MPWMD and which are located in Cal-Am's service area. After December 31, 2021, Cal-Am shall not illegally divert water from the river to supply the holders of PBC entitlements.

- (6) The Forbearance Agreement: Prior to the adoption of this Order, CAW executed a voluntary agreement with certain Carmel River water rights holders for the temporary forbearance of lawful diversion of riparian water rights during calendar years 2016, 2017, 2018 and 2019, resulting in the dedication of substantial amounts of water to instream purposes. The State Water Board recognizes the diligent efforts of the parties to reach this forbearance agreement, and that the use of water under the agreement is a reasonable and beneficial use of water for instream purposes and is encouraged by and consistent with State policy and water rights law. The temporary dedication of water for such instream purposes pursuant to a forbearance agreement, in the circumstances of this particular transaction, will not prejudice the subject water rights that exist at the time the parties entered into the voluntary forbearance agreement.
- (7) Supplemental Water Rights and Acquisitions: Provided Cal-Am is able to identify suitable and willing transacting parties, Cal-Am will exercise reasonable additional efforts to acquire supplemental Carmel River water rights at acceptable costs, and/or will pursue other Carmel River water acquisitions and water right changes in order to increase flows in the Carmel River and decrease Cal-Am's unauthorized Carmel River diversions ("Carmel River Flow Enhancement Program"). Cal-Am will use best efforts to implement the Carmel River Flow Enhancement Program to the extent it can negotiate acceptable agreements with water right holders and provided participation will not negatively affect the rights of potential participants. Such acquisitions or water right changes may include leases and purchases of water rights along the Carmel River on a temporary or permanent basis, and may include water

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right change approvals or permits (permanent or temporary) from the State Water Board to increase opportunities to increase lawful diversions or reduce unauthorized diversions during periods of lower flow on the Carmel River. Fifty percent of water available under any Carmel River water right that is acquired by Cal-Am after the effective date of this Order shall be dedicated to instream use, and the remaining fifty percent shall be used to increase the Effective Diversion Limit in effect at the time a transaction is completed. The State Water Board recognizes that in some circumstances the temporary non-diversion and consumptive use of water specifically for the purpose of improving flows and instream habitat may be considered a reasonable and beneficial use of the water involved, and that the reasonable and beneficial use of water for instream purposes pursuant to a forbearance agreement is encouraged by and consistent with State policy and water rights law. Such temporary transactions, if appropriately documented and consistent with the substantive standards applicable under Water Code section 1707, should not prejudice the subject rights that exist at the time parties enter into such forbearance agreements.

- (8) Malpaso Water Company: Water provided on an interim basis by the Malpaso Water Company LLC to Cal-Am under SWRCB License No. 13868A shall be added to the Effective Diversion Limit for the Water Year in which the water is provided to Cal-Am.
- (9) Additional Conservation Measures: In consideration for this Order modifying certain provisions of State Water Board Order WR 2009-0060, and subject to final approval from the California Department of Fish and Wildlife, the National Oceanic and Atmospheric Administration, and any other agencies with permitting jurisdiction, Cal-Am shall implement \$2.5 million in other projects on the Carmel River to improve fish passage and habitat. These include, in order of priority and estimated costs: a pit tagging program (\$1.0 million); improvements to the existing upstream fish passage ladder and trap at Los Padres Dam (\$0.2 million); installation of a fish screen at the lower outlet pipe on Los Padres Dam (\$0.8 million); and a through-reservoir survival study for Los Padres Reservoir (\$0.5 million). Should the higher priority projects exceed



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the estimated amounts, funding will be applied from the lower priority projects and utilized until the entire \$2.5 million is exhausted. Additionally, the estimated cost from the above projects may be used to supplement other related projects occurring on the Carmel River.

- (10) Los Padres Fish Passage. Cal-Am has committed to the installation of downstream fish passage facilities at Los Padres Dam, and the facilities are now substantially complete. Cal-Am will also endeavor to remove the Old Carmel River Dam and the Sleepy Hollow Ford before September 30, 2017.
  - b. Either Cal-Am or the MPWMD may petition the State Water Board Deputy Director for Water Rights for relief from reductions imposed under this Order. No relief shall be granted unless all of the following conditions are met: (1) Cal-Am continues the moratorium on new service connections pursuant to Water Code section 350, and any orders from the CPUC prohibiting new connections pursuant to Public Utility Code section 2708, and the MPWMD continues a moratorium on new service connections under its authority; (2) the demand for potable water by Cal-Am customers meets all applicable conservation standards and requirements; and (3) a showing is made that public health and safety will be threatened if relief is not granted. Any relief granted shall remain in effect only as long as a prohibition on new service connections remains in effect, and compliance with applicable conservation standards and requirements remains in effect.
  - c. ASR Project water stored in the Seaside groundwater basin under State Water Board Permits 20808A and 20808C shall be used to mitigate the effect of Cal-Am's illegal diversions from the river. ASR water should be supplied to Cal-Am customers only during months when water is most needed in the river to preserve steelhead.
4. Cal-Am shall reduce its illegal diversions from the river at the same rate ASR water is recovered from the groundwater basin. After the first 600 afa have been recovered in a given Water Year, the Effective Diversion Limit for that Water Year shall be reduced by the actual amount of ASR water recovered in that Water Year.

## **Attachment 1 to Application to Modify SWRCB Order WR 2009-0060**

5. In State Water Board Order WR 2009-0060, Cal-Am was required to implement one or more small projects that, when taken together, totaled not less than 500 afa to reduce unlawful diversions from the river. Cal-Am was required to identify to the Deputy Director for Water Rights within 90 days of State Water Board Order WR 2009-0060 the projects that it would implement, and to implement those projects within 24 months of entry of State Water Board Order WR 2009-0060. Cal-Am satisfied this requirement by completing ASR Well #3. To the maximum practicable extent, Cal-Am shall continue to operate this small project to reduce illegal diversions from the river during the months when surface flow in the river begins to go dry and through the months when surface flow in the river disappears below river mile 6.5.
6. Cal-Am shall continue to post quarterly reports on its website and file the quarterly reports with the Deputy Director for Water Rights. The quarterly reports shall include the following:
  - a. Monthly summaries of the quantity of water it diverts from the river.
  - b. Monthly summaries of the quantity of ASR project water diverted from the river under State Water Board Permits 20808A and 20808C and stored in the Seaside ground water basin. The monthly reporting shall also state the quantity of ASR water recovered from aquifer storage, and the current balance of water in storage.
  - c. Monthly summaries of the quantity of water being produced by the Sand City desalination plant. The reporting shall identify new service connections within Sand City and thereafter report the quantity of water being delivered to the new connections. The monthly reports shall specify the quantity of water used to reduce diversions from the river during the reporting period.
  - d. Monthly summaries of the quantity of water saved by reducing system losses.
  - e. Monthly summaries of reductions in demand for potable water due to conservation actions such as increased water rates, MPWMD's retrofit program, efforts to reduce potable water for outdoor water use and demand reduction initiatives.
  - f. Monthly summaries identifying all new service connections. The report shall include the Cal-Am account number, the service address, the name of each authority granting any approval required for connecting to Cal-Am's system and the name of each authority granting any approval required before commencing

## Attachment 1 to Application to Modify SWRCB Order WR 2009-0060

construction; the issuer of the each approval and the date of each approval shall be separately listed for each service address.

- g. Monthly summaries identifying existing service addresses that receive an increased supply of water due to a change in zoning or use. The report shall include Cal-Am account number, the service address and the name of each authority authorizing a change of use or of zoning and the date of such change.
  - h. Each quarterly report submitted by Cal-Am shall be certified under penalty of perjury and shall include the following declaration: *“I declare under penalty of perjury, under the laws of the State of California, that all statements contained in this report and any accompanying documents are true and correct, with full knowledge that all statements made in this report are subject to investigation and that any false or dishonest statement may be grounds for prosecution.”*
7. Cal-Am shall file quarterly reports of its diversions under Paragraph 5 (small project) of this Order.
  8. The Deputy Director for Water Rights is authorized to modify the timing and the content of the reporting required by all of the provisions of this Order to more effectively carry out the intent of this Order.
  9. As of its effective date, this Order supersedes the ordering provisions of State Water Board Order WR 2009-0060, but does not supersede or render moot any of the analysis or discussion contained in State Water Board Order WR 2009-0060. Cal-Am shall comply with all requirements of State Water Board Order 95-10, except as modified pursuant to State Water Board Order WR 2009-0060 or this Order.
  10. The Deputy Director for Water Rights is directed to closely monitor Cal-Am’s compliance with State Water Board Order 95-10 and this Order. Appropriate action shall be taken to insure compliance with these Orders including the issuance of additional cease and desist orders under Water Code section 1831, the imposition of administrative civil liability under Water Code section 1055, and referral to the Attorney General under Water Code section 1845 for injunctive relief and for civil liability. If additional enforcement action becomes necessary, the Deputy Director is directed to consider including in such actions all Cal-Am’s violations of Water Code section 1052

**Attachment 1 to Application to Modify SWRCB Order WR 2009-0060**

since the adoption of Order 95-10.

11. The conditions of this Order and 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.

**Attachment 1 to Application to Modify SWRCB Order WR 2009-0060**

**CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on \_\_\_\_\_.

AYE:

NAY:

ABSENT:

ABSTAIN:

---

Clerk to the Board

# **ATTACHMENT 2**



April 28, 2016

Barbara Evoy, Deputy Director  
Division of Water Rights  
SWRCB  
PO Box 1000  
Sacramento, California 95812

This letter is to inform the State Water Resources Control Board that the Planning and Conservation League and the Sierra Club now support California American Water Company's Modified Application to Amend the Cease and Desist Order WRO 2009-0600 dated April 28, 2016.

Our support is based on several factors including:

Progress on implementation of the Ground Water Replenishment project that could provide as much as 3,500 acre feet of water that would replace CALAM's Carmel diversions 1 for 1 by the year 2018.

The forbearance agreement related to the conversion of the Rancho Canada Golf course that would keep from 250 to 300 acre feet of water annually in the Carmel River.

Continued progress on the Aquifer Storage and Recovery Project.

Inclusion of meaningful milestones with water diversion penalties for non performance. These will serve as continuing incentives for CALAM to complete these projects.

Successful implementation of these measures will allow CALAM to eliminate most of its illegal diversions as early 2018.



Jonas Minton,  
Senior Water Policy Advisor, Planning and Conservation League



Rita Dalessio on behalf of the Ventana Chapter, Sierra Club



Larry Silver, Esq.  
Counsel to Ventana Chapter, Sierra Club



**ANTHONY LOMBARDO & ASSOCIATES**

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November 17, 2015

Ms. Barbara Evoy  
Deputy Director, Division of Water Rights  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Re: Application to Modify Terms of Cease and Desist Order

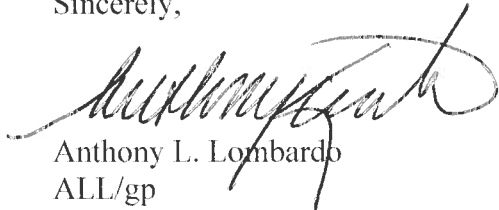
Dear Ms. Evoy:

As you may recall, our firm represents Quail Lodge, Carmel Valley Ranch Resort and Bernardus Lodge which are plaintiffs in the litigation involving the Cease and Desist Order.

We have reviewed the proposal to modify the terms of the Cease and Desist Order which is being presented to you by California American Water Company and my clients wholeheartedly endorse the request contained therein.

If you have any further questions regarding my clients' position in this matter, please do not hesitate to contact me.

Sincerely,



Anthony L. Lombardo  
ALL/gp

# **ATTACHMENT 3**



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February 26, 2016

Via First Class Mail and E-mail

Tom Howard  
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State Water Resources Control Board  
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[Additional Addressees Attached]

Re: San Clemente Dam Removal and Carmel River Re-Route Project

Dear Messrs. Howard and O'Hagan, Mmes. Evoy and Aue, State Water Resources Control Board Members, and Interested Parties:

As you are likely aware, the removal of the San Clemente Dam and rerouting of the Carmel River is substantially complete. Water now flows freely through the river's new route, resulting in an unimpeded migration path for steelhead. Attached is an informative article, recently published in *The Herald*, describing the project and noting the recent observance of an adult steelhead migrating upstream past the former dam site.

We are also pleased to provide you with a link to a short video presented by California American Water and its project partners, the Coastal Conservancy and NOAA Fisheries, providing an overview of the dam's history and documenting with time-lapse footage the dam removal and river reroute work. The video is available at <https://www.youtube.com/watch?v=hNANijh-7sU#t=26>. We hope you enjoy it.

Sincerely,

Robert G. MacLean  
President

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# Monterey County

# The Herald

Sunday, February 21, 2016

## New hope, scrutiny for Carmel River in wake of dam removal, rerouted channel



NOAA research ecologist Dr. David Boughton walks along the new Carmel River channel with step pools and resting pool at the former San Clemente Dam site on Thursday. (Vern Fisher - Monterey Herald)

By Jim Johnson

Carmel Valley >> An adult steelhead was spotted in the Carmel River earlier this month, migrating upstream past the point where two white stripes of concrete on steep canyon faces mark the site of the old San Clemente Dam.

Redds or nests that female steelhead build for their eggs have been seen above the dam removal and river reroute site, evidence the threatened species is moving upriver unimpeded for the first time in nearly a century.

Water flowed freely through the Carmel River's new route about midway up the 36-mile river during a visit to the site on Thursday. It rushed over a series of step pools and swirled into resting pools along a quarter-mile stretch of the river specifically designed to provide the best possible passageway for the fish to swim upstream and allow the river's crucial downstream habitat to begin the recovery process. The river's new banks are festooned with fledgling willow trees and other of the some 100,000 plantings at the site. Massive log barriers are set up to protect them from

a huge rainstorm-driven rush of river water if the promise of El Niño weather conditions ever comes through. Piles of silt and gravel are strategically placed to slowly peel off and feed the sediment-starved downstream stretches.

Further upstream, though, the river's other dam — the newer Los Padres Dam — remains as an obstacle to steelhead during their journey upriver, though fish passage improvement projects are aimed at easing the species migration both upstream and downstream.

Hopes are high for the previously at-risk river's future and the species that rely on it for survival in the wake of last year's major completion of the largest dam removal project in state history. The \$83 million undertaking by a public-private partnership of dam owner California American Water, NOAA and the state Coastal Conservancy included both the removal of the 104-foot-high seismically unsafe dam built in 1921 and the rerouting of the river to avoid the mountain of sediment that had built up behind the dam. This year, the old Carmel River Dam built in the 1880s will also be removed and the Sleepy Hollow ford will be replaced with a bridge.

Experts are already at work studying both the effect on the river of the San Clemente Dam removal and river reroute project, and the various options for the future of Los Padres Dam.

Carmel River Watershed Conservancy executive director Lorin Letendre said he's thrilled to see the river running unimpeded down the new route and the promise of a restored river for steelhead. Letendre's organization was created in 1999, the same year the Carmel River was declared one of North America's 10 most endangered rivers. It has been working with the Carmel River Steelhead Association and others on a variety of river habitat restoration efforts since, including creation of a watershed assessment and action plan. The watershed conservancy heads up the Carmel River Task Force, which includes more than two dozen nonprofit organizations and government agencies as members focused on the river work.

"It's just really fantastic to see the river flowing through the new channel, and I'm getting very excited that we're going to get the kind of steelhead run we've been hoping for for years now," Letendre said.

How quickly and effectively the river will be restored from the project site and downstream is the focus of a series of studies led by a collaboration between NOAA's National Marine Fisheries Service, the U.S. Geological Survey, the Monterey Peninsula Water Management District, and CSU Monterey Bay's Division of Science and Environmental Policy.

The studies will range from habitat assessment and sediment management to evaluating steelhead populations and fish passage. They will include computer simulation modeling. They're expected to continue for the foreseeable future, as long as funding is available.

During Thursday's visit to the project site, NOAA fisheries research ecologist David Boughton said the dam removal and river reroute project could serve as a precedent for some of the state's other dams, 200 of which are one-third to one-half full of sediment.

"To me, this is the future, and that's why it's important to see if it functions like it's supposed to," Boughton said, noting that past dam removals had been ecologically ineffective largely because of sediment buildup. "If we can (address sediment) we should have the fish come back."

CSUMB professor Doug Smith called the project a "world-class example of stream construction" offering a "great research and educational opportunity."

As for the future of the project site, Letendre said the federal Bureau of Land Management, which will assume ownership of the surrounding property from Cal Am, has indicated it wants to transfer the land to the Monterey Peninsula Regional Parks District to allow the public access. He said there is also discussion about commemorating the project with a concrete sculpture near the site or at Garland Ranch Regional Park.

Meanwhile, 6½ miles upstream, the newer Los Padres Dam is also filling up with sediment, though the earthen dam and concrete spillway built in the late 1940s is still capable of storing about 1,640 acre-feet of water, more than half its original capacity.

The dam presents neither the seismic safety or flooding-risk issues that the San Clemente Dam did, but does still present a barrier for migrating steelhead. That has prompted the current effort to consider its future.

NOAA fisheries administrator Joyce Ambrosius said the agency asked Cal Am a few years ago to conduct a feasibility study aimed at determining the pros and cons of removing the dam given its impact on steelhead and river habitat. The key question, Ambrosius said, is whether the dam's benefits including the ability to control the flow of water downstream during dry periods to help steelhead and

habitat offsets the possibility of a free-flowing river if the dam is removed.

Peninsula water management district engineer Larry Hampson said the dam also plays a key role in the area's water supply, and is linked to about two-thirds of Cal Am's authorized river water right. Its removal could have an impact on other river water rights holders he said.

As a result, Hampson said the water management district mounted a successful bid to conduct the feasibility study instead of Cal Am, and the study is expected to be complete by 2018.

An earlier study of the dam conducted by The Shibatani Group and completed in 2014 recommended removing the dam in exchange for a smaller dam on a Carmel River tributary for water storage, but district officials don't appear to be considering that option at this point.

Meantime, Cal Am is nearly finished with a \$5 million downstream fish passage project that includes a floating collector and pipeline to deliver steelhead from the reservoir to the river below the dam, avoiding a long slide down the concrete spillway and drop into the river. Cal Am has also proposed an upgrade to the existing upstream "trap and truck" fish ladder designed to more effectively move steelhead from below the spillway to the reservoir. Both projects are considered mitigation as part of Cal Am's pending application to modify the state-ordered cutback in pumping from the river.

With the San Clemente Dam relegated to history, and the future of Los Padres Dam uncertain, Letendre said he's looking forward to the completion of the Monterey Peninsula Water Supply Project portfolio of water initiatives from the desalination plant to recycled water to aquifer storage and recovery designed to cut Cal Am's river production by about two-thirds.

"Then, hopefully, the river can flow year-round," he said. "That would be incredible."

*Jim Johnson can be reached at 831-726-4348.*

# **ATTACHMENT 4**



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

Application 12-04-019  
(Filed April 23, 2012)

**JOINT MOTION FOR A SEPARATE PHASE 2 DECISION**

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

Application 12-04-019  
(Filed April 23, 2012)

**JOINT MOTION FOR A SEPARATE PHASE 2 DECISION**

**I. INTRODUCTION**

Pursuant to Article 11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and the November 17, 2015, *Administrative Law Judge’s Ruling Setting Evidentiary Issues and Schedule to Complete the Record for Phases 1 and 2* (“ALJ Ruling”), California-American Water Company (“California American Water”), City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, LandWatch Monterey County, Marina Coast Water District, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District (“MPWMD”), Monterey Regional Water Pollution Control Agency (“MRWPCA”), Office of Ratepayer Advocates, Planning and Conservation League Foundation, Public Trust Alliance, Public Water Now, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation (collectively “Joint Parties”) hereby submit this motion for a separate Phase 2 decision.<sup>1</sup> Specifically, the Joint Parties request that the Commission address the following issues in a separate Phase 2 decision: (1) the Water Purchase Agreement between California American Water, MPWMD and MRWPCA, (2) California American

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<sup>1</sup> Pursuant to Commission Rule 1.8(d), the Joint Parties have authorized California American Water to sign this motion on their behalf.

Water's construction of the Monterey pipeline and pump station in advance of a decision on the Certificate of Public Convenience and Necessity ("CPCN") for the Monterey Peninsula Water Supply Project ("MPWSP"), and (3) financing and ratemaking related to the Monterey pipeline and pump station facilities.

## **II. NEED FOR A SEPARATE PHASE 2 DECISION**

It is undisputed that the Monterey Peninsula faces substantial water supply shortages in light of the impending deadline in the 2009 Cease and Desist Order ("CDO") issued by the State Water Resources Control Board that would greatly reduce California American Water's ability to withdraw water from the Carmel River. The Commission's recent announcement that the Final Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") for the MPWSP will not be available until late 2017 has caused further significant delay in the Commission's consideration of California American Water's request for a CPCN for the MPWSP.

In light of this delay and the need for alternative sources of water for California American Water customers, the Commission should issue a separate decision in Phase 2 on the issues identified above, which could allow California American Water to take full advantage of two alternative water sources: (1) the MPWMD/MRWPCA Pure Water Monterey Groundwater Replenishment Project ("GWR Project") and (2) Aquifer Storage and Recovery ("ASR").

The GWR Project could supply up to 3,500 acre feet to the community as early as 2018. MRWPCA certified the GWR Project's Environmental Impact Report ("EIR") on October 8, 2015 and no litigation was filed challenging the GWR Project's EIR within the statute of limitations. As MPWMD and MRWPCA have noted, however, the GWR Project cannot go forward without a Water Purchase Agreement with California American Water. Thus, prompt authorization for California American Water to enter into the Water Purchase Agreement is essential. Similarly, an expeditious decision on the GWR Project Water Purchase Agreement is critical to take advantage of the 1% interest rate available through the Clean Water State

Revolving Fund (“CWSRF”), which would result in savings for California American Water’s ratepayers.

Additionally, California American Water asserts that the Monterey pipeline is necessary for full deliverability of GWR Project water to California American Water’s customers from the GWR Project. California American Water also asserts that the Monterey pipeline would also be used to transport water for ASR and the Monterey pump station would allow California American Water to maximize its existing ASR facilities.<sup>2</sup> Assuming a normal-to-wet rainy season, California American Water asserts the Monterey pipeline and pump station facilities would allow it to get the most out of its current ASR operating permits and potentially enable it to inject an additional 1,000 acre feet of winter water from ASR in the winter of 2017-2018.

If the Commission issues a timely decision in Phase 2, California American Water would be able to complete construction of the Monterey pipeline and pump station by December 2017. Before California American may proceed with the Monterey pipeline and pump station, however, the Joint Parties request that the Commission address the associated financing and ratemaking.

Although Commissioner Sandoval pledged at the recent prehearing conference to introduce a resolution to address CDO milestones, that is no reason to delay a decision on these three issues identified by the Joint Parties. As discussed in more detail below, it is possible to treat the Phase 1 and Phase 2 issues reasonably and fairly in separate decisions. Moreover, the public interest is served by acting quickly and efficiently to reach a decision on these issues.

### **III. PHASE 1 AND PHASE 2 ISSUES CAN BE TREATED REASONABLY AND FAIRLY IN SEPARATE DECISIONS**

The ALJ Ruling directs any party seeking a separate Phase 2 decision to explain how the Phase 1 and Phase 2 issues, which the Ruling characterizes as “substantially if not inextricably intertwined,” could be reasonably and fairly treated in separate decisions.<sup>3</sup>

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<sup>2</sup> The Monterey pump station would not be used in connection with the GWR Project.

<sup>3</sup> ALJ Ruling, p. 11.

Moving forward with a decision in Phase 2, however, would not pre-judge California American Water's request for a CPCN for the MPWSP.

The GWR Project is a stand-alone project with independent utility from the MPWSP. The GWR Project is pertinent to the MPWSP in this proceeding only because the availability of the GWR Project's product water means that California American Water could build smaller desalination facilities than would be needed if the GWR Project did not exist. Similarly, the ASR wells have already been constructed and are in use, and thus they already exist completely independent of the MPWSP.

Authorizing the construction and use of the Monterey pipeline for the GWR Project and ASR and the Monterey pump station for ASR does not commit the Commission to a position on the MPWSP. The Monterey pipeline and pump station can be used independently of the MPWSP. As new facilities within California American Water's existing service territory, the pipeline and pump station do not require a separate CPCN application.<sup>4</sup> The Commission's approval can be limited to the construction of these facilities and their use for the GWR Project and ASR only.

Additionally, the potential environmental impact of the Monterey pipeline was analyzed in the GWR Project's EIR.<sup>5</sup> Issuing a decision including the Monterey Pipeline and pump station as part of Phase 2 does not commit the CPUC to the MPWSP, and does not foreclose

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<sup>4</sup> "This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations." Pub. Util. Code §1001.

<sup>5</sup> The potential environmental impacts of the Monterey pipeline were analyzed in the Consolidated Final Environmental Impact Report for the Pure Water Monterey Groundwater Replenishment Project ("GWR Project EIR"), available at <http://purewatermonterey.org/reports-docs/cfeir/>. See § 2.11 (discussion of CalAm Distribution System component of GWR Project including Monterey Pipeline); § 6.3.2.4 (discussion of alternative alignments for CalAm Distribution Pipeline, including Alternative Monterey Pipeline) and § 2.3.2.6 (comparison of GWR Project to MPWSP, noting that "The Proposed Project could provide this quantity of replacement water even if the CPUC denies CalAm's application to construct and operate a desalination plant." (*Id.* at p. 2-12.)). MPWMD and MRWPCA as necessary will prepare an EIR addendum to address the Monterey pump station.

analysis of the MPWSP project’s environmental impacts or of alternatives or mitigation measure that may reduce or avoid those impacts.

Finally, addressing limited cost recovery issues related to the Monterey pipeline and pump station in Phase 2 does not pre-approve the MPWSP or the cost recovery proposals associated with the MPWSP as a whole.

**IV. THE COMMISSION SHOULD ACT QUICKLY AND EFFICIENTLY TO RESOLVE THE PHASE 2 ISSUES**

While the ALJ Ruling did not commit to a separate Phase 2 decision, it did provide a target of July 2016 for a proposed decision and August 2016 for a final decision if separate decisions were issued.<sup>6</sup> Considering that a separate Phase 2 decision is now necessary, the Joint Parties urge the assigned Commissioner and Administrative Law Judge to retain these target dates.

Although there is already information in the record regarding the Water Purchase Agreement, the Monterey pipeline and related cost recovery, the Joint Parties recognize that it may be necessary to provide supplemental testimony to ensure a full and complete record. Additionally, to the extent that there are disputed issues of fact, a one-day hearing on the supplemental testimony may be helpful. Thus, the Joint Parties propose the following schedule:

May 9, 2016	Supplemental Testimony
May 19, 2016	Rebuttal Testimony
Week of May 23, 2016	Limited Evidentiary Hearing (if needed) and/or Possible Settlement
June 1, 2016	Opening Briefs and/or Comments on Settlement
June 8, 2016	Reply Briefs and/or Reply Comments on Settlement
July 2016	Proposed Decision
August 18, 2016	Final Decision

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<sup>6</sup> ALJ Ruling, p. 12.



**V. CONCLUSION**

For the reasons discussed above, the Joint Parties request that upon a showing the Commission issue a separate Phase 2 decision on the following issues: (1) authorizing the Water Purchase Agreement for the GWR Project, (2) moving up the construction of the Monterey pipeline and pump station, and (3) addressing limited financing and cost recovery for the Monterey pipeline and pump station facilities.

Dated: April 18, 2016

By:                   /s/ Sarah E. Leeper                    
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