EXHIBIT 16-A

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.	A.12-04-019 (Filed April 23, 2012)

JOINT OPENING BRIEF ON PLANT SIZING IN SUPPORT OF APPROVAL AND IMPLEMENTATION OF SETTLEMENT AGREEMENTS

Russell M. McGlothlin
Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo street
Santa Barbara, CA 93101
For: Monterey Peninsula Regional Water Authority
rmcglothlin@bhfs.com
(805) 963-7000

David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950-4221
For: Both the Monterey Peninsula Water Management District and the City of Pacific Grove
dave@laredolaw.net
(831) 646-1502

Sarah E. Leeper
Nicholas A. Subias
California American Water
333 Hayes Street, Suite 202
San Francisco, CA 94102
For: California-American Water
sarah.leeper@amwater.com
(415) 863-2960

Bob McKenzie
Water Issues Consultant
Coalition of Peninsula Businesses
P.O. Box 223542
Carmel, CA 93922
For: Coalition of Peninsula Businesses
jrbobmck@gmail.com
(831) 596-4206

Robert Wellington
Wellington Law Offices
857 Cass Street, Ste. D
Monterey, CA 93940
For: Monterey Regional Water Pollution Control Agency
attys@wellingtonlaw.com
(831) 373-8733

Dated: January 21, 2013

EXHIBIT 16-A

TABLE OF CONTENTS

FEDERAL CASES

STATE STATUTES

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS

OTHER AUTHORITIES

EXHIBIT 16-A

EXHIBIT 16-A

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.	A.12-04-019 (Filed April 23, 2012)

JOINT OPENING BRIEF ON PLANT SIZING IN SUPPORT OF APPROVAL AND IMPLEMENTATION OF SETTLEMENT AGREEEMENTS

I. INTRODUCTION

Pursuant to the September 25, 2013 Amended Scoping memo and Assigned Commissioner Ruling in the above-captioned matter, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District ("MPWMD"), the City of Pacific Grove, the Coalition of Peninsula Businesses, Monterey Regional Water Pollution Control Agency, and California-American Water Company ("Cal-Am") respectfully submit this brief in support of certain aspects of the proposals contained in both the Settlement Agreement[1] and the Settlement Agreement on Plant Size and Level of Operation[2] (collectively the "Settlement Agreements") for the Monterey Peninsula Water Supply Project ("MPWSP"). The brief focuses

[1] *Settling Parties' Motion to Approve Settlement [Settlement Agreement Attached]*, Attachment A, *Settlement Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, Landwatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation league Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation*, filed July 31, 2013 ("Settlement Agreement").

[2] *Settling Parties' Motion to Approve Settlement Agreement on Plant Size and Operation [Settlement Agreement Attached]*, Attachment A, *Settlement Agreement on Plant Size and Level of Operation, Entered by the Following Parties: California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, Division of Ratepayer Advocates, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, and Planning and Conservation League Foundation*, filed July 31, 2013 ("Settlement Agreement on Plant Size and Level of Operation").

on issues relating to plant sizing.[3]

The motions, filings, exhibits, and testimony provided in this matter establish that the Settlement Agreements are reasonable, consistent with the law, and in the public interest, including on the issue of plant sizing. Without question, plans to construct the proposed desalination plant in almost any other location or community would have called for a significantly larger facility. Only because of the Monterey Peninsula's extensive, long-term commitment to conservation and the cooperation and compromises between numerous stakeholders, from ratepayer advocates to local governments and business interests to the public utility supplying water, could the carefully considered, modest sizing called for in the Settlement Agreements be achieved. That agreed-upon sizing is both reasonable and necessary to provide the residents and businesses on the Monterey Peninsula with sufficient water to comply with State Water Resources Control Board ("SWRCB") orders mandating reduced reliance on diversions from the Carmel River and to furnish adequate service for Cal-Am's customers in the Monterey County District.[4]

II. THE DESALINATION PLANT AS CURRENTLY SIZED IS REASONABLE AND NECESSARY

A. Current Standards And Historical Use Confirm The Agreed-Upon Sizing Is Reasonable And Necessary

The MPWSP's proposed desalination plant is sized to supply 9.6 million gallons per day ("MGD") and 9,752 acre-feed per year ("AFY"). As described in the Settlement Agreements, the proposed desalination plant is part of a portfolio approach for supplying water to customers in Cal-Am's service area on the Monterey Peninsula. In addition to the desalination plant, that portfolio includes contributions from (1) permitted diversions from the Carmel River, (2) aquifer storage and recovery ("ASR"), (3) Cal-Am's adjudicated rights to the Seaside Basin ,

[3] The recent December 2, 2013 settlement hearing, which occurred after submission of motions, responses to written questions from Administrative Law Angela K. Minkin, and additional materials all relating to the Settlement Agreements, raised just a handful of issues, including plant sizing.

[4] As proposed in the Application, California American Water will serve customers in the main system, and , depending on developments with the Seaside Basin Adjudication, may be used to serve the Bishop, Hidden Hills, and Ryan Ranch service areas.

and (4) the Sand City Desalination Plant.[5] A water purchase agreement for water from the Groundwater Replenishment ("GWR") Project is also being considered as a potential aspect of the portfolio. If the GWR Project meets certain criteria, water it provides could reduce the need for water from the MPWSP's desalination plant, allowing for a reduction of the plant's size from 9.6 MGD to either 6.4 or 6.9 MGD, depending on the amount of water available through GWR.

California's regulations on sizing are focused on the water supply emanating from the system as a whole, rather than on the supply from any specific individual component of the system. Such standards generally require consideration of the system's ability to satisfy projected demand based upon a ***ten-year*** historical average.[6] In Cal-Am's Monterey service area, the ten-year average historical demand is 15,162 acre-feet per year ("AFY"). This historical demand does not include the additional demand that is projected to arise from development of lots of record, the Pebble Beach entitlement, and tourism bounce-back.[7] Factoring in that additional demand, the ten-year average would suggest plant sizing of 11,623 AFY to compliment other future sources available to Cal-Am. If we were to ignore demand for lots of record, the Pebble Beach entitlement, and tourism bounce-back, which is not appropriate for the reasons described herein, the requisite supply from the desalination plant, alone, based on a 10-year historical average would be 9,618 AFY.

Moreover, sizing the plant based on "industry standard" practices would require a "look 30 years out into the future" with the plant sized to meet the 30-year demand projection. Typically, under that standard, "when you turn the plant on, you're operating [at] less than 50 percent."[8] Here, by contrast, in its early operation, and under the current sizing, the plant will

---

[5] The approach also includes the City of Pacific Grove Project, which will provide non-potable water for irrigation purposes. RT 2107:8-2108:16 (Frutchey/Pacific Grove).

[6] RT 2092:16-20, 24 - 2093:3 (Svindland/CAW). General Order 103-A, p. 11, *available at* <http://docs.cpuc.ca.gov/PUBLISHED/Graphics/107118.PDF> (as of January 17, 2014).

[7] *See* Exh. CA-30, Plant Sizing Data.

[8] RT 2121:1-6 (Svindland/CAW). Thus, under the Ten-State Standard, used by several states, "you project out your maximum demand and you meet that at the end of your planning horizon." (RT 2121:9-17 [Svindland/CAW].) And by way of further example, in Virginia, "you're at a moratorium when you reach three consecutive months in the summer at 80 percent of your plant capacity." (RT 2121:27-2122:3 [Svindland/CAW].)

operate at a capacity of "98 percent almost year round."[9] Thus, the plant has been kept "about as small as [Cal-Am would] want to go to still meet the maximum month" demand.[10] Indeed, parties such as the Office of Ratepayer Advocates ("ORA," formerly DRA) have recognized that even if demand were to go down, "DRA would recommend keeping the sizes the same and having just a slightly lower running capacity."[11] As a result of negotiations, and the Peninsula's recent extensive conservation efforts, the agreed-upon size reflects demand in line with a ***five-year*** average, which is lower than the ten-year average demand.[12] In addition to relying on the five-year average to size the desalination plant, Cal-Am also considered the sizing of the previously approved project – 8800 AFY.[13] However, noting that certain relevant factors had been omitted in reaching that demand projection, Cal-Am ultimately determined that it must size the desalination plant to produce 9,752 AFY to contribute to a portfolio that must meet a demand estimated at 15,296 AFY. This estimate is comprised of the average five-year demand of 13,291 AFY, 1,180 AFY to supply lots of record, 325 AFY to supply the Pebble Beach entitlement, and 500 AFY to account for a tourism bounce-back.

Based on these needs, the plant has been sized on the "razor's edge" in terms of its conservative size. That modest size of the plant could only be reached because of the settled-upon water supply portfolio, including ASR and possibly GWR, combined with California American Water's remaining water supply.[14] But that approach, which adds flexibility, also requires that the sizing of the plant take into consideration that elements of the portfolio, such as ASR, may be more limited in their reliability.[15] The desalination plant must be the reliable linchpin.

Thus, based on current standards, historical use, and the need to account for the

[9]RT 2120:8-11 (Svindland/CAW).
[10]RT 2120:17-20 (Svindland/CAW).
[11] RT 1983:23-27 (Rose/DRA).
[12] RT 2085:7-8 (Svindland/CAW).
[13]RT 2085:12-13 (Svindland/CAW).
[14] RT 2121:18-21 (Svindland/CAW).
[15] RT 2091:19-23 (Svindland/CAW) (Water from ASR may not always be available because it is dependent on natural conditions).

specific elements of the water portfolio, the plant has been reasonably sized.

B. Plant Sizing Must Account For Lots Of Record

1. Owners Of Lots Of Record Have A Right To Develop Their Properties

The record reflects that "legal lots of record" is defined as a lot resulting from a subdivision of property in which the final map has been recorded in Cities and Towns, or in which the parcel map has been recorded in Parcels and Maps or Records of Surveys.[16] In sizing the desalination plant, 1,180 AFY of water were allocated to lots of record.[17] That number was determined based on studies commissioned by the MPWMD and conducted by a third party.[18] The number is extremely conservative because it omits those lots in the unincorporated county areas, which comprise over 30 percent of Cal-Am's service area.[19] This estimate was also relied on in the Coastal Water Project EIR.[20]

---

[16] RT 2100:14-27 (Stoldt/MPWMD).

[17] *See* CA-30, Plant Sizing Data.

[18] RT 2103:7-11 (Stoldt/MPWND). MPWMD began the study of legal lots of record in 1998. It hired the consulting firm Land Systems Group ("LSG"). RT 2103:16-24 (Stoldt/MPWND). LSG performed two phases of study through 2002. The first phase was titled "Legal Lots Study of Vacant Parcels and 10-Year Projection of Anticipated Remodels." The second phase was titled "Vacant Legal Lot Study, Phase II: Vacant Lots on Improved Parcels" and was delivered in draft form in June 2002. The first phase considered vacant buildable lots and remodels. The second phase evaluated buildable spaces on already improved lots. The second phase document was never finalized. RT 2103:25 - 2104:4 (Stoldt/MPWND).

[19] RT 2103:25-1, 2104:1-4 (Stoldt/MPWND).

[20] In the Cal-Am Coastal Water Project Final EIR (Section 2.3.2.2) the figure of 1,181 acre-feet for legal lots of record was included, based on a 2001 MPWMD analysis. That figure has continued in use, even though the June 2002 report produced a higher number. RT 2104:6-19 (Stoldt/MPWND). The data was derived first from surveys of the cities of Carmel, Del Rey Oaks, Monterey, Pacific Grove, San City, and Seaside, along with the Monterey Peninsula Airport District. LSG also analyzed aerial orthoimagery. RT 2103:21 (Stoldt/MPWND).

	Number	Water Requirement
Vacant Lots on Vacant Parcels	1,783	729.9 AF
Vacant Lots on Improved Parcels	736	288.2 AF
Anticipated Remodels	4,278	192.8 AF
TOTAL		1,210.9 AF

RT 2152:16-22, 25-2153:15 (Stold/MPWND).

The total water requirement of the 2002 report is 1,211 acre-feet which is in excess of the 1,181 utilized in the EIR, and still did not include the unincorporated County lots. RT 2153:17-19 (Stoldt/MPWMD).

The location of the Vacant Lots were determined as follows:

MPWMD has been clear that lots of record are "not growth and this is not optional…. These are already approved lots."[21] The "lots are buildable and have the approval of the local land use jurisdiction…. And they have the legal right for water service."[22] Moreover, they are not synonymous with general plan build-out.[23] The current number for general plan build-out is 3,514 AFY, of which only 1,180 is for lots of record. The additional 2,333 AFY is growth for general plan build-out that is not accounted for in the plant sizing.[24]

In accounting for lots of record, Cal-Am noted its concern that when the moratorium is lifted, the owners of those lots will request meters.[25] Both the Regional Water Authority and MPWMD echoed that there "is a lot of pent-up demand."[26] At the settlement hearing, witnesses for these agencies testified that they expected when the moratorium is finally lifted, a number of lot-of-record owners would line up "that day asking for a service connection."[27]

There have been numerous public meetings on the tradeoffs involved in the sizing

---

Jurisdiction	Vacant Lots on Vacant Parcels	Vacant Lots on Improved Parcels
Airport	15	0
Carmel	55	3
Del Rey Oaks	5	0
Monterey	277	106
Pacific Grove	124	55
Sand City	464	501
Seaside	208	71
County	635	n/a

RT 2129:7-12 (Stoldt/MPWMD).

Lots were evaluated based on zoning and expected type of use. Demand was derived by assuming water use factors of .286 acre-feet for a single-family unit, .134 acre-feet for a multi-family unit, and .755 acre-feet for a commercial/industrial unit. These were considered buildable, legal lots of record. The lots were identified as being buildable and legal at the time of the study. RT 2153:17-26 (Stoldt/MPWMD).

[21] RT 2100:14-20 (Stoldt/MPWND).
[22] RT 2100:28-2101:6 (Stoldt/MPWND); 2101:15-16 (Stoldt/MPWND).
[23] RT 2101:22-23 (Stoldt/MPWND).
[24] RT 2105:7, 12-18 (Stoldt/MPWND).
[25] RT 2097:8-14 (Svindland/CAW).
[26] RT 2099:20 - 2100:11 (Burnett/MPRWA).
[27] RT 2097:28 - 2098:5 (Burnett/MPRWA).

of the desalination plant, including the risks of both under-sizing and over-sizing the plant.[28] There is great concern that a failure to account for reasonably foreseeable demand, such as that generated by lots of record, would result in an inadequate system and would force the community and Cal-Am to come "back to the … Commission seeking an additional project."[29] Such an untenable outcome would not only result in more delay and expense but also far less efficiency, such as that provided by the economies of scale inherent in the desalination plant.[30] Therefore, the parties to this brief respectfully request the Commission to adopt the sizing of the desalination plant set forth in the Settlement Agreements so as to avoid forcing the community into another moratorium right after the plant comes online.[31]

2. A Failure To Sufficiently Size The Plant Could Harm Cal-Am's Ability To Provide Adequate Service

The size of the desalination plant must reflect Cal-Am's statutory duty to serve. Cal-Am, as a regulated public utility, is required to furnish water to customers within its service area.[32] As the Commission has recognized, this duty to serve is one of the most fundamental tenets of public utility service and regulation. "As a general rule, each regulated utility in California, as a condition of its monopoly franchise, has an obligation to serve all customers who ask for, and are willing to pay for, service in its service area."[33] Even the United States Supreme Court has spoken to the standard that public utilities are required to meet:

> Corporations which devote their property to a public use may not pick and choose, serving only the portions of the territory covered by their franchises which is presently profitable for them to service, and restricting the development of the remaining portions by leaving their inhabitants in discomfort without the service which they alone can render.[34]

In California, the duty to serve is set forth in the Public Utilities Code, which states "[n]o public utility shall establish or maintain any unreasonable difference as to rates,

---

[28] RT 2098:16-22 (Burnett/MPRWA).
[29] RT 2099:20 - 2100:11 (Burnett/MPRWA).
[30] RT 2138:6-21, (Svindland/CAW) ("the difference in sizing is roughly… about 22 percent [between the 9.6 and the 6.4 MGD plants]. But the difference in cost is probably less than 10 percent").
[31] RT 2102:3-9 (Svindland/CAW).
[32] *Brockmannv. Smithson Springs Water Co.* (1957) 56 Cal.P.U.C. 28.
[33] D. 89-09-030, *Anderson v. San Jose Water Co.* (1989) 32 CPUC 2d 400.
[34] *People ex rel.New York and Queens Gas Company v. McCall* (1917) 245 U.S. 345, 351 [38 S. Ct. 122].

charges, service, facilities, or in any other respect, either as between localities or as between classes of service."[35] Cal-Am has an obligation to serve ***all*** customers within its service area unless and until the Commission has determined that it has "reached the limit of its capacity to supply water," at which point it would need to determine whether the utility meets the criteria for a moratorium.[36]

Although there is currently a moratorium on new water service connections in Cal-Am's Monterey County District, that moratorium is expected to be lifted once Cal-Am completes the MPWSP and demonstrates to the SWRCB that it has complied with the Board's conditions.[37] Under Section 453 of the Public Utilities Code, Cal-Am has a duty to serve lots of record customers within its Monterey County District. If the Commission directs Cal-Am to construct the MPWSP with insufficient capacity, however, providing that service could place Cal-Am at the limit of its ability to supply water, causing it to be unable to meet its duty to serve and provoking another moratorium.

When the Commission has previously issued a moratorium on water service, it has often directed the water utility to develop a new water supply to allow the utility to meet its duty to serve. For example, in D.03-03-037, the Commission recognized California Water Service Company's duty to serve customers in its Coast Springs system and ordered the company to make certain specific improvements within three years to enable it to fulfill its duty.[38] Similarly, in D.88-09-023, the Commission addressed efforts by Citizens Utilities Company of California ("Citizens") to develop new water supplies after a moratorium on new connections had been imposed.[39] In that decision, the Commission analyzed the correct level of water that Citizens should be required to supply within its service area. The Commission rejected a lower amount proposed by Citizens as shortsighted and directed the company to

[35]Pub. Util. Code § 453(c).
[36]Pub. Util. Code § 2708.
[37] D.11-03-048, *Re California-American Water Company*, 2011 WL 1289006, **1, 18, Ordering Para. 5.
[38] D.03-03-037, Re California Water Service Company, 2003 WL 1560157, **2, 4.
[39] D.88-09-023, *Application of by Citizens Utilities Company of California (U87W) for an order pursuant to California Public Utilities Code § 2708 restricting the addition of customers to be furnished with water service in its Montara-Moss Beach District* (1988) 29 CPUC2d 214, 216-218.

develop a water supply that would be adequate for expected future demand.[40]

As it has in the past, the Commission should ensure that Cal-Am will have adequate water supply to fulfill its duty to serve, which includes sufficient water to serve lots of record within the Monterey County District. The desalination plant size agreed to in the settlement is the base minimum supply necessary to achieve this goal.

3. A Failure To Sufficiently Size The Plant To Provide For Lots Of Record Could Result In Litigation

If the MPWSP does not include sufficient water to satisfy the demands of lots of record, local landowners may allege inverse condemnation claims. At the settlement hearing, MPWMD's General Manager, David Stoldt, expressed concern that if the Commission undersized the desalination plant "there would be people who would be willing to sue us for [inverse]condemnation of their land because they could not properly develop that."[41]

Mr. Stoldt emphasized, "the bottom line is the distinguishing thing between a legal lot of record that's already been approved and serving a future lot that may be improved in the future is it's a property rights issue. And we're talking about the potential of not serving those having all the earmarks of regulatory taking because it's a property right – it's already been approved by the local land use jurisdictions..."[42] Mr. Stoldt's testimony raises the policy concern that a Commission decision causing an undersized water supply (e.g., a water supply that is not sufficient to meet reasonably anticipated requirements of property owners, including by example but not limited to lots of record and the Pebble Beach water entitlements) may somehow provide a basis for a claim that property that cannot be developed has been subjected to a "regulatory taking" in contravention of the Fifth Amendment. A regulatory taking can be alleged in accord with the precepts of *Brown v. Legal Foundation of Washington* (2003) 538 US 216, 233, [123 S.Ct. 1406]; and *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 US 302, 321 [122 S.Ct. 1465]. In general, a regulatory taking is an uncompensated

[40] D.88-09-023, *Citizens*, 29 CPUC2d 214, 216-218.
[41] RT 2102:13-17 (Svindland/CAW).
[42] RT 2128:11-20 (Stoldt/MPWND).

taking of private property that occurs from a governmental action. The United States Supreme Court in *Agins v City of Tiburon* held that specific property may be taken if governmental action "denies an owner economically viable use of his land."[43]

U.S. Supreme Court decisions indicate compensation must be paid if the court determines that governmental action amounts to a taking.[44] The Supreme Court in *Penn Central Transportation v New York City,* established an ad hoc, case-by-case approach for determining whether a regulatory taking has occurred.[45] Relevant factors include the economic impact of the governmental action on the claimant (particularly the extent to which the action interfered with distinct investment-backed expectations) and the character of the governmental action.

Mr. Stoldt explained the essence of the potential takings claim: "people who would be willing to sue… because they could not properly develop…." [46] He characterizes this circumstance as "having all the earmarks of regulatory taking because it's a property right – it's already been approved by the local land use jurisdictions…" and to "not serve them would probably have the earmarkings of a regulatory taking."[47] As such, it is critical that the Commission consider Cal-Am's duty to serve lots of record customers and other approved land uses in adopting the settled-upon desalination size.

4. Connection Fees For Lots Of Record Will Help Finance The MPWSP And Address Potential Intergenerational Inequities Amongst Customers

In Cal-Am's pending general rate case, it proposes a connection fee for its Monterey Main system that is based upon a fee per acre foot of allocation that MPWMD currently charges (a per acre foot fee of $23,567).[48] The fee would ensure greater equity among

[43] *Agins v. Tiburon* (1980) 447 US 255, 260 [100 S Ct 2138].
[44] *First English Evangelical Lutheran Church v. County of Los Angeles* (1987) 482 US 304, 318 [107 S Ct 2378]; *Nollan v. California Coastal Comm'n* (1987) 483 US 825, 841 [107 S Ct 3141]; see also *Keystone Bituminous Coal Ass'n v. DeBenedictis* (1987) 480 US 470, 473 [107 S Ct 1232].
[45] *Penn Cent. Transp. Co. v. New York City* (1978) 438 US 104, 124, 98 [S.Ct. 2646].
[46] RT 2102:14-17 (Svindland/CAW).
[47] RT 2128:15-28 (Stoldt/MPWND).
[48] A.13-07-002, *Direct Testimony of David P. Stephenson*, dated July 1, 2013, p. 18:20 – 28; *see also* RT 2154:14-25 (Stoldt/MPWND).

new and future users by requiring that new users equitably offset capital costs financed by longer-term users. The fee would potentially raise a substantial amount, which could be used toward offsetting a portion of the capital costs for the project.[49]

5. The Commission Should Be Mindful Of Unnecessarily Constraining Local Land Use Control

The parties filing this brief acknowledge the Commission's jurisdiction to establish the appropriate size of the MPWSP. However, the parties respectfully request that the Commission proceed with caution to avoid unnecessarily impairing the ability of local land use jurisdictions to manage development within their jurisdictions. As Carmel-by-the-Sea mayor, Jason Burnett testified at the settlement hearing, striking the right balance between the Commission's jurisdiction to establish the size of the MPWSP and the cities' and county's jurisdiction to make land-use and development decisions requires an effective "partnership" to plan water supply to meet local demands.[50]

The Monterey Peninsula is presently suffering through a development moratorium because of the current water shortage. This impairs the cities' and the county's abilities to manage land-use decisions for the community's welfare and, Mayor Burnett explained, "has led to perverse environmental and societal outcomes."[51] The cities and county are concerned that an undersized desalination plant may lead to another moratorium in the future.

Undersizing the desalination plant risks precluding local land use jurisdictions from being able to make essential land-use development decisions, including providing housing for low-income families and seniors, achieving redevelopment and revitalization goals, addressing blight, and facilitating other essential infill development.[52]

Precluding infill development also risks lost employment opportunities and tax revenue, which communities rely on to fund essential community services such as police and fire

[49] RT 2129:1 - 2130:18 (Stoldt/MPWND, Svindland/CAW, Burnett/MPRWA).
[50] RT 2125:1-10 (Burnett/MPRWA).
[51] *Id.*
[52] RT 2124:13-28 (Burnett/MPRWA).

programs and recreation programs for youth and senior citizens. Similarly, water shortages that constrain the critical tourism industry on the Monterey Peninsula would compromise sales taxes and transient occupancy taxes that are essential sources of municipal revenue.[53] For these reasons, the parties filing this brief respectfully urge the Commission to exercise caution to avoid undersizing the desalination plant such that it is unable to satisfy likely demands during the plant's operational life.

C. Providing For Tourism Bounce-Back Is Reasonable And A Failure To Do So Could Significantly Harm The Peninsula and Its Economy

The tourism and hospitality industry on the Monterey Peninsula is a $2 billion per year business and the second largest industry in the County. It employs approximately 23,000 people.[54] Tourism and hospitality are also critical to providing revenue to support local governments on the Peninsula. The three primary sources of revenue for local governments on the Peninsula are property taxes, sales taxes, and transient occupancy taxes. Restrictions imposed by Proposition 13 have significantly limited collections from property taxes. For example, in Pacific Grove, a typical home generates only about $40 per month in property taxes that go to the City. On the other hand, a typical hotel room in Pacific Grove generates more than that for the City in transient occupancy taxes in just two nights.[55] Thus, returning to the prior occupancy levels would generate an amount in taxes equal to 15 percent of the City's budget.[56] Likewise, sales taxes are significantly boosted by the sizable spending made by the approximately 8 million visitors each year to the area, which is similar to having an additional 700,000 residents.[57] Hence, tourism is critical to the Monterey Peninsula's economy.

The Coalition of Peninsula Businesses, which represents many in the hospitality and tourism industry, initially pushed for a much larger 15,000 MGD plant.[58] After extensive negotiations over several meetings, the Coalition "became satisfied with the process and the

[53] RT 2126:24-2127:19 (Frutchey/Pacific Grove).
[54] RT 2106:4-6 (Narigi/CPB).
[55] RT 2126:24-2127:9 (Frutchey/Pacific Grove).
[56] RT 2127:10-19 (Frutchey/Pacific Grove).
[57] RT 2174: 25-28 (Stoldt/MPWMD).
[58] RT 2105:22 - 2106:3 (Narigi/CPB).

portfolio" approach that included a 9.6 MGD desalination plant (or a potentially smaller one with GWR) that would also provide sufficient water for tourism bounce-back.[59] Tourism bounce-back refers to an increase in occupancy rates for already-existing hotel capacity to previous levels. In 2000, which was a "banner year on the peninsula" for the hospitality industry, occupancy rates hit 79 to 80 percent averaged annually.[60] Following the 9-11 terrorist attacks and multiple economic downturns, that number declined notably, but has recently reached to 67 percent.[61] The industry is working hard to bring rates back to their prior highs.

Thus, the sizing for the plant includes 500 acre-feet of water per year for tourism bounce-back. That number reflects and accounts for occupancy rates which have previously been achieved by the industry on the Peninsula, and it is based on the existing capacity of rooms and accommodations already in existence. It does ***not*** include new capacity (i.e., additional rooms) and is below the maximum current capacity.[62] Moreover, as a result of already extensive conservation efforts, there are significant limitations on the hospitality industry's ability to further limit its water use through conservation.[63]

There is no question that the tourism and hospitality industry are critical to Monterey Peninsula's economy and way of life. Despite setbacks during the prior decade, the industry has a proven history of success, and the ready and available capacity to comeback. An insufficient supply resulting from an under-sized plant could lead to "rationing [that] would be disastrous for the peninsula."[64] The parties urge the Commission to adopt the agreed-upon plant size so as to adequately account for the hospitality industry's current capacity and reasonable projections of future water demand.

---

[59] *See ibid.*
[60] RT 2106:10-14 (Narigi/CPB).
[61] *Id.*
[62] RT 2095:23-25 (Stoldt/MPWND); 2106:20-23 (Narigi/CPB); 2107:2-3 (Narigi/CPB).
[63] *See* RT 2157:16-22 (Stoldt/MPWND) (the "hospitality industry … since 2000 they've been on the hook for having to have low-flow shower heads, faucets, urinals, and so forth").
[64] RT 2106:27-28 (Narigi/CPB).

D. There Are No Significant Alternative Sources Of Supply To Make Up For An Undersized Plant

1. The Peninsula Has Already Implemented Far-Reaching Conservation Programs, Leaving Little Additional Capacity To Be Obtained Through Further Conservation

There are extensive conservation programs already in place on the Monterey Peninsula, including those established between MPWMD and Cal-Am.[65] Some are mandatory while others are voluntary.[66] There are "rebates for lawn removal, rebates for cisterns, rebates for smart irrigation controllers." There are incentive-based programs.[67] MPWMD gives "away sprinkler heads and rain sensors." There are "classes on low-water landscaping."[68] There are requirements" for a very sizeable fraction of any outdoor irrigation to be for drought-tolerant plants that can be taken off irrigation after they've established themselves…."[69] Surveys and inspections are conducted to ensure that the programs operate effectively.[70] There are mandates that if you seek to "change or repurpose your business, you have to identify water savings that you can generate from things that are outside of the legally mandated," i.e., basically going above and beyond already existing obligations.[71] There are also requirements that where "retrofits" "must take place or" there is a "water credit for which there were certain actions taken by the property owner, then those activities are actually put on the deed as a legally enforceable change…. And so a future property owner is bound by the same change."[72]

In sum, water users on the Monterey Peninsula have already incorporated all economically reasonable conservation measures.[73] Indeed, based upon the already implemented programs, "the average resident [in Monterey] uses about 70 – just under 70-gallons per person per day versus the statewide average of about 130."[74] Due to the enormous success of

[65] RT 2112:28-2113:5 (Stoldt/MPWND).
[66] RT 2157:16-22, 23-27 (Stoldt/MPWND); 2158:5-7 (Stoldt/MPWND).
[67] RT 2158:5-7 (Stoldt/MPWND).
[68] RT 2111:28 - 2112:4 (Stoldt/MPWND).
[69] RT 2115:3-8 (Burnett/MPRWA).
[70] RT 2157:1-6, 7-13 (Stoldt/MPWND).
[71] RT 2158:8-17 (Stoldt/MPWND).
[72] RT 2161:14-26 (Stoldt/MPWND).
[73] RT 2112:5-7 (Stoldt/MPWND).
[74] RT 2109:26 – 2110:1 (Stoldt/MPWMD).

conservation efforts on the Monterey Peninsula, there is likely little additional water that will be available through conservation. Further, there is evidence that conservation efforts have recently "hardened", as shown in recent studies on the elasticity of demand for the Monterey Peninsula.[75] Therefore, the MPWSP should not be sized smaller on the false hope that shortages can be avoided through additional conservation.[76]

2. Little Capacity Exists For Any Further Large-Scale Reclamation Efforts

Because of the extensive efforts already undertaken, "there is no large-scale [reclamation] program that could be put in place because of th[e] contractual commitment of the wastewater" needed for further reclamation efforts.[77] The record is clear that almost all residential and commercial wastewater connections within Cal-Am's Monterey service territory are already recycled for irrigation use and contractually committed to such.[78] That is, wastewater from the cities of Del Rey Oaks, Monterey, Pacific Grove, Sand City, Seaside, and a portion of the unincorporated County are treated to a tertiary level and used for irrigation of crops during the 7-8 months of the irrigation season through the Castroville Seawater Intrusion Project. Almost all wastewater flows from the city of Carmel and the unincorporated Carmel Valley are dedicated year round for irrigation of golf courses and a school within the Del Monte Forest.[79] In short, there are no available wastewater flows from sewered areas within Cal-Am's service territory during the irrigation season. Furthermore, the Pacific Grove project serves non-potable water for irrigation, and, importantly, service of that water gets more expensive the further it must be transported from the project's plant.[80] As MPWMD's witness testified, "even if there were [more capacity for additional advanced treatment systems] we would need to develop about 610 miles of return mains for that recycled water, which would probably be about a ***$1.4 billion***

[75] CA-10, *Supplemental Direct Testimony of Patrick Pilz*, pp. 3-10, Attachments 1-3.
[76] RT 2112:17-19 (Stoldt/MPWND).
[77] RT 2112:10-13 (Stoldt/MPWND).
[78] *Id.*
[79] "[A]ll of the sewered areas of Carmel-By-The-Sea and the unincorporated Carmel Valley are all used as part of the Pebble Beach Reclamation project." RT 2110:16-19(Stoldt/MPWND).
[80] RT 2114:1-12 (Frutchey/Pacific Grove).

project."[81] This would lead to catastrophic rate increases besides the fact that contractually all of the water is already committed.[82]

At the home- or business-owner level, some individual choice could be made to divert some wastewaters to irrigation use. However, wastewater derived from kitchen or toilet use is deemed "black water" and is not permitted for reuse, including irrigation, due to public health concerns. Other sources such as showers or laundry is considered "gray water" and allowed for reuse and irrigation by the County public health department. This source of available unsewered water has not been quantified, nor can it be reliably predicted to occur by a date-certain, since the decision to make such an investment is individually-based.[83] Therefore, this source of water cannot be considered a reliable or predictable supply in a fashion to offset the size of the desalination plant.

Hence, the potential for reduction of the sizing of the proposed desalination facility due to use of non-potable water is limited and constrained. As Mr. Stoldt concluded, "you can't make a sizing decision on a water supply project based on [these] programs… so we're kind of stuck."[84]

3. There Are Few Conceptually Feasible Additional Projects To Satisfy Future Demand, All Of Which Would Create Significant Environmental Impacts

If the MPWSP is not adequately sized to meet demand arising during its operational period, a new or additional project would need to be developed. However, there are limited additional projects that could practically be pursued. Therefore, the only conceptually feasible additional projects would be a supplementary desalinization plant or some form of importation of water from the Salinas watershed (assuming that opposition from the Salinas Valley could be overcome).

Each of these options would involve substantial environmental impacts (e.g.,

[81] RT 2110:22-28 (Stoldt/MPWND).
[82] RT 2111:2-3 (Stoldt/MPWND).
[83] RT 2111:8-12 (Stoldt/MPWND).
[84] RT 2112:17-19 (Stoldt/MPWND).

issues pertaining to source water, brine discharge, seawater intrusion, additional production and conveyance facilities, etc.), which in turn would likely increase the total cumulative environmental impacts required to satisfy the community's water demands. Therefore, the environmental impacts associated with multiple projects are likely to exceed the impacts of a single adequately sized desalination project. Further, successful completion of an additional project is highly uncertain due to the conflict that would arise from competing stakeholders, including those interests that would likely object to the environmental impacts arising from the additional project.

Having to pursue an additional future project would also raise cumulative water supply costs because the additional project would not benefit from the economies of scale realized from a single project. In sum, electing to size the desalination plant smaller than proposed in the sizing settlement agreement risks significant additional environmental impacts, increases in water supply costs, continual water shortages and future development moratoriums, all of which are detrimental to the community's broader welfare.

E. Undersizing The Plant Could Impair the Ability To Pay Back The Seaside Basin

The Seaside Groundwater Basin Judgment and legal agreements reached with the Seaside Basin Watermaster require Cal-Am to "pay back" almost 20,000 acre-feet of water that it is projected to have over-pumped between the Basin's adjudication in 2006 and the anticipated date of operation of the MPWSP.[85] Cal-Am has agreed to recharge the basin by 700 acre-feet per year for 25 years (cumulatively, 18,750 acre-feet) through the method of "in lieu" recharge – in effect reducing pumping of Cal-Am's authorized share of the Basin's safe yield by such an amount and allowing natural inflows from precipitation to refill or recharge the basin.[86] The Seaside Basin Watermaster has determined that even more recharge might be desirable to ensure protective groundwater levels and to forestall seawater intrusion, but at this time Cal-Am and the

[85] RT 2117: 8-26 (Svindland/CAW).
[86] RT 2118:11-18 (Stoldt/MPWND).

Watermaster have agreed to the 700 AF per year.[87] A failure to adequately size the desalination plant could inhibit Cal-Am's ability to pay back the Basin. The plant, therefore, must be sized with an additional 700 AFY available for potable water production to offset the lost availability from the groundwater basin.

F. The Plant Must Be Sufficiently Sized To Allow Return Of Water To The Salinas Valley Groundwater Basin, If Required

The size of the proposed 9.6 MGD desalination plant estimates 880 acre-feet that may be required to go back to the Salinas Valley Groundwater Basin (SWGB"). Section 21 of the Monterey County Water Resources Agency Act ("Agency Act") authorizes the Monterey County Water Resources Agency to enjoin the export of groundwater from the SVGB to the extent such export would upset the balance of the Basin or interfere with the Agency's efforts to control seawater intrusion. Therefore, in order to anticipate the possibility that the MPWSP may incidentally pump groundwater from the SVGB, Cal-Am proposed a measure to return such groundwater to the SVGB through the Castroville Seawater Intrusion Project or by other means ("Return Water"), as described in Cal-Am's CPCN application. The amount of Return Water, if any, has not yet been determined, but ongoing well testing, hydrogeologic studies, and modeling, in addition to future monitoring and testing, will allow Cal-Am, the Agency and other parties to determine the precise amount of Return Water that may be required on an annual basis. To plan for this contingency, the plant size includes an estimate of 880 AFY in order to satisfy possible requirements of the Agency Act.[88] This 880 AFY is approximately 4% of the total desalination feed water, or approximately 8% of the finished water, which conservatively reflects preliminary analyses.

[87] RT 2118:18 (Stoldt/MPWND).
[88] RT 2134:23 - 2135:3 (Svindland/CAW).

G. Gambling That A Smaller Plant Could Simply Be Enlarged Later Could Prove Disastrous

1. Moving Forward With A Smaller Plant Based On The Assumption It Can Simply Be Enlarged Later Would Jeopardize Financing, Permitting, And Environmental Review

The settling parties seek a CPCN for a 9.6 MGD desalination plant in Phase I of the proceeding.[89] If, in Phase II of the proceeding, criteria for the separately proposed GWR Project are met, the 9.6 MGD plant would be reduced in size to either 6.4 or 6.9 MGD. The reduced output from one of the smaller plants would then be supplemented with water from the GWR Project. For planning purposes, however, it is critical that the 9.6 MGD plant is approved in phase I. A failure to secure approval for the 9.6 MGD plant in Phase I will endanger efforts to finance, permit, and obtain environmental review for the entire MPWSP.

In terms of financing, permitting, and environmental approvals, it is typically easy to move from plans to construct an approved larger plant to a smaller one. On the other hand, it is much more difficult, and in certain circumstances could be impossible to move in the opposite direction and attempt to move up from an approved smaller plant to a larger one.[90]

That is certainly the case with the proposed desalination plant. Moving forward with the project will already require financing with four potential scenarios that involve the possibility and potential combination of Cal-Am debt, Surcharge 2, SRF debt, and securitization.[91] To move ahead with such matters, it will be necessary to "have the authorization to move forward with a full-sized plant, [to] be able to go out and seek the primary financing that we may need for this plant …."[92]

As with financing, authorization for the 9.6 MGD plant in Phase I of this proceeding is critical to permitting. No fewer than 26 permits must be obtained.[93] Cal-Am has pledged to attempt to obtain the permits for the larger plant in such a way that it will not need to

[89] Settlement Agreement on Plant Size and Level of Operation, Section 3.
[90] RT 2194:22-24 (Stephenson/CAW).
[91] RT 2209:14-23 (Stephenson/CAW).
[92] RT 2194:13-20 (Stephenson/CAW).
[93] RT 2195:6-16 (Svindland/CAW).

change them if a smaller plant is ultimately adopted.[94] That, however, could not be possible in terms of trying to permit a smaller plant and then move to a larger one. Were only the smaller plants approved in Phase I, but it later determined the 9.6 MGD plant was necessary, Cal-Am would – quite late in the process –then need to invest substantial time and effort in attempting to acquire new or expanded permits. Indeed, ther is no guarantee it could even obtain the necessary permits and no telling how long it could take.

Approval of only the smaller plants in Phase I could likewise create substantial delays and additional expenses in obtaining an environmental impact report ("EIR") if the 9.6 MGD plant must ultimately be built.[95] It would be much easier to move down from an EIR addressing the 9.6 MGD plant than it would be to move up from a smaller plant to the larger one.

Furthermore, when it comes to matters such as the EIR and permitting, it is important to know as early in the process as possible that they have been looked into and could be approved. Authorizing only the smaller plants in Phase I poses the unnecessary risk that if a larger plant is ultimately necessary, there could be serious issues in terms of permitting or the EIR that must be addressed at a stage when there is no more time for doing so.

Here, there is no question that time is of the essence. Moreover, the plant is scheduled to come online in May 2018, just before the highest demand months of June, July, and August. If, absent GWR, there "were … trains in place just to do 6.4 million gallons per day, [Cal-Am] wouldn't be able to meet demand and …[get] off the river."[96] Thus, nothing should be done that needlessly delays the project. Since it is generally feasible to permit a larger plant and then build a smaller plant, but far more difficult to do the opposite, the larger 9.6 MGD plant should be authorized in Phase I of this proceeding.[97]

---

[94] RT 2195:4-28 (Svindland/CAW). It may be possible to, where a larger plant is approved, obtain permits for that plant which also would permit approval of the smaller plant. On the other hand, it very unlikely that it would be possible to, where a smaller plant is approved, seek permits in connection with that plant that would also permit construction of a larger plant. Cal-Am will need the CPCN and the accompanying CEQA documents to approve a 9.6 MGD plant to start permitting and design for that size facility. RT 2195:1-5 (Svindland/CAW).
[95] RT 2195:6-16 (Svindland/CAW).
[96] RT 2132:3-28 (Svindland/CAW).
[97] RT 2195:6-16 (Svindland/CAW).

Further, the additional water demand planned for in the sizing settlement agreement beyond Carmel River replacement water (lots of record, Pebble Beach entitlement, tourism bounce back, Seaside Basin replenishment, and Salinas Basin return flow) only totals roughly 22 percent of the cumulative planned supply form the MPWSP. However, because of "economies of scale," the capital costs of sizing the project to satisfy this demand will only add roughly 10 percent additional capital costs to the project.[98] This approximate 10 percent of additional costs is fully justified to ensure that Cal-Am is able to satisfy the existing and likely future demand from current entitlements.

2. A Larger Plant That Operates As A Smaller One With The Assumption Demand Shortfalls Could Be Addressed Later Through GWR Decision Will Not Work

A modular approach that would authorize the larger 9.6 MGD plant but require it to operate at a reduced capacity with the additional possibility of receiving water from the GWR Project to address potential supply shortfalls is not practical. Pursuant to the Settlement Agreements, and only after lengthy negotiations, the parties agreed on a fixed period for the decision whether to proceed with a combination of either the 6.4 or 6.9 MGD plant and GWR, on the one hand, or the larger 9.6 MGD plant with no contract to purchase GWR water, on the other hand. The deadline for this decision, which is to take place in Phase II of this proceeding, was pushed out as far as possible from an engineering perspective to still ensure the efficient construction of the desalination plant.

If it turns out that GWR cannot meet the required criteria so it is not adopted in Phase II, then Cal-Am will need to move forward with the 9.6 MGD plant to meet it customer's needs.[99] Execution of a water purchase agreement for GWR water once a 9.6 MGD plant is built would no longer be prudent from a revenue perspective.[100] It would unnecessarily increase the revenue requirement to be borne by ratepayers by $8.75 million per year.[101]

---

[98] RT 2138:6 - 2139:5 (Svindland/CAW).
[99] RT 2213:11 – 17 (Svindland/CAW).
[100] RT 2213:18 – 20 (Svindland/CAW).
[101] CA-8, *Supplemental Testimony of Jeffrey T. Linam*, dated January 11, 2013, Attachment 2, p. 2.

H. The State Water Resources Control Board Orders Do Not Require Undersizing The Plant Or Ignoring Key Sizing Factors

It has been suggested that the MPWSP's desalination plant should be sized merely to account for the elimination of improper diversions from the Carmel River. That, however, would result in an undersized plant that would free the citizens of the Monterey Peninsula from one moratorium just to have another one potentially forced upon them.

Among other things, SWRCB Order No. WR 95-10 ("Order 95-10") ordered Cal-Am to (1) obtain permits for water unlawfully diverted from the Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in unlawful diversions, and/or (3) contract with another agencies having appropriative rights to divert and use water from the Carmel River.[102] It also ordered that Cal-Am maximize production from the Seaside Aquifer for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest practicable extent."[103] It did not place restrictions on the sizing of those "other sources of supply," and it did not suggest prior commitments could or should be disregarded.

On October 20, 2009, the SWRCB, in Order No. WR 2009-0060, issued the CDO mandating that by December 31, 2016 Cal-Am must reduce unpermitted diversions from the Carmel River, *i.e.*, terminate diversions in excess of 3,376 acre feet per year.[104] The CDO also prohibited diversion from the Carmel River for new service connections or for any increased use of water at existing service addresses.[105] It made clear, however, that its conditions and those of "order 95-10 shall remain in effect until … Cal-Am has obtained a permanent supply of water that has been substituted for water illegally diverted from the Carmel River…."[106] It did not place restrictions on the sizing of the "permanent supply," nor did it suggest that prior

[102] See Condition No. 2 in SWRCB Order WR 95-10, dated July 6, 1995, at p. 40, *available at* http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/1995/wro95-10.pdf (as of January 21, 2014).
[103] *Id.* at Condition No. 4 on p. 41.
[104] See Condition No. 1 in SWRCB Order No. WR 2009-0060, dated Oct. 20, 2009, at p. 57, *available at* http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2009/wro2009_0060.pdf (as of January 21, 2014).
[105] *Id.* at Condition No. 2 on p. 57.
[106] *Id.* at Condition No. 11 on p. 63.

commitments should be ignored.

A subsequent order clarifying the CDO reflects an expectation that prior entitlements were not to be ignored. The SWRCB noted that the Pebble Beach Entitlement amounts to an agreement between MPWMD and the Pebble Beach Company for service from water supplies available to Cal-Am.[107] The SWRCB stated that the entitlements do not provide a right to supply water illegally diverted from the river, but it also went on to find that the CDO effectively required that Cal-Am supply the entitlements from "a source other than its illegal diversions from the river."[108] It concluded that "[w]hen Cal-Am develops a new source of water that makes water available for new connections consistent with Order WR 2009-0060, the entitlements will apply to that order."[109] The same rationale also applies to other rights, entitlements, and obligations, such as lots of record and tourism bounce-back. That is why it is so important that they were factored into the sizing of the plant. They are preexisting obligations – not growth.

Furthermore, Order 95-10 required Cal-Am to "maximize the pumpage out of seaside basin…."[110] And it did just that. As a result "when the CDO came out" the AFY for water improperly diverted from the Carmel River was a "lower number because [Cal-Am was] maximizing the use out of the Seaside Basin…. [and] withdrew about 20,000 acre-feet out of it that has to be repaid back. And that has now been adjudicated."[111] So that water must be paid back.

The SWRCB Orders, therefore, do not require the plant be undersized. On the contrary, they do not prohibit its proper sizing and in some cases plainly support it. Further, there is no adverse effect of sizing the MPWSP to meet the projected demand from lots of record on the timing of developing the MPWSP and fulfilling Cal-Am's obligation under the CDO to

[107] SWRCB Order WR 2010-0001, dated January 5, 2010, at p. 6, *available at* http://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/orders/2010/wro2010_0001.pdf (as of January 21, 2014).
[108] *Ibid.*
[109] *Id.* at p. 7.
[110] RT 2117:8-12 (Svindland/CAW).
[111] RT 2117:15-22 (Svindland/CAW).

eliminate unauthorized diversions from the Carmel River. As was explained at the settlement hearing, the project schedule is largely driven by the time necessary to complete the EIR and obtain a Coastal Development Permit for the desalination project, both of which are unaffected by the sizing of the MPWSP to include water supply to satisfy the demand arising from lots of record.[112]

III. CONCLUSION

As Mayor Burnnett postulated at the settlement hearing, "[w]hat public policy would be served if [the desalination plant] were sized" in a way that did not mean that on "the day that the plant comes on line, Cal-Am would need to file a new application for some other water supply project that would presumably not have the economies of scale…."[113] The answer is clear: none.

The proposed sizing for the desalination plant is the product of careful analysis and planning, as well as extensive negotiations. By industry standards, it is exceptionally conservative in keeping the plant's size to a minimum in light of reasonable estimates of future demand. Of course, the many variables that will determine future demand are difficult to predict with precision. However, a reasonable degree of caution is warranted to "insure" against the numerous and significant adverse consequences of undersizing the MPWSP, including provoking another moratorium, harming the area's economy, loss of economies of scale and higher long-term water supply cost, increased environmental impacts, and unnecessary future conflicts between stakeholders in Monterey County. Moreover, any error in slightly oversizing plant would allow Cal-Am to reduce the desalination plant's operating level to closer to normal industry standards. As such, the proposed sizing for the plant should be adopted.

Dated: January 21, 2014

[s] Russell McGlothlin

Russell M. McGlothlin, Attorney
Brownstein Hyatt Farber Schreck, LLP

[112] RT 2137:24 - 2138:5 (Svindland/CAW).
[113] RT 2122:17-23 (Burnett/MPRWA).

21 East Carrillo Street
Santa Barbara, CA 93101
For: Monterey Peninsula Regional Water Authority

Dated: January 21, 2014

[s] David C. Laredo

David C. Laredo, Attorney
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950
For: Both the Monterey Peninsula Water Management District and the City of Pacific Grove

Dated: January 21, 2014

[s] Bob McKenzie

Bob McKenzie
Water Issues Consultant
Coalition of Peninsula Businesses
P.O. Box 223542
Carmel, CA 93922
For: Coalition of Peninsula Businesses

Dated: January 21, 2014

[s] Robert Wellington

Robert Wellington, Attorney
Wellington Law Offices
857 Cass Street, Ste. D
Monterey, CA 93940
For: Monterey Regional Water Pollution Control Agency (MRWPCA

Dated: January 21, 2014

[s] Sarah E. Leeper

Sarah E. Leeper, Attorney
Nicholas A. Subias, Attorney
California American Water Company

EXHIBIT 16-A

333 Hayes Street, Suite 202
San Francisco, CA 94102
For: California-American Water Company