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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  
2016-0016

SUPPLEMENTAL MATERIALS IN  
SUPPORT OF APPLICATION FOR ORDER  
MODIFYING STATE WATER BOARD  
ORDERS WR 2016-0016 and WR 2009-0060  
(CEASE AND DESIST ORDER)

SUPPLEMENT No. 2

This Supplement No. 2 to the Monterey Peninsula Water Management District's (District) Application for Order Modifying State Water Board (SWRCB) Orders WR 2016-0016 and WR 2009-0060 (Application) dated October 21, 2025 provides rebuttal to the December 19, 2025 letter sent by Robert E. Donlan of the law firm Wanger Jones Helsey PC on behalf of the California-American Water Company (Cal-Am) ("Cal-Am letter", attached as Exhibit B). That letter was addressed to Mr. Eric Oppenheimer.

The Cal-Am letter obfuscates the facts, raises the specter of unprovable possible future events, and purports to relate action on the District's Application to the successful future execution of the proposed Cal-Am Monterey Peninsula Water Supply Project desalination plant. The effect of the Cal-Am letter would cause additional and unnecessary delay in resolving water limits for the Monterey Peninsula. Cal-Am fails to address one simple question: What are today's facts, and those for the immediately foreseeable future, related to water supply and demand, and do these facts warrant continued imposition of the existing Cease and Desist Order?

The District stands by its earlier statements. There is no current trespass by Cal-Am or any other entity under Section 1052. There has been no trespass for four years. Given facts related to Monterey Peninsula water supply and water demand, determined by the California Public Utilities Commission in its Decision D.25-08-006 as modified by Decision D.25-10-001, there is no threat of a Section 1052 trespass in the immediately foreseeable future. This set of conditions is not dependent on the future construction of a desalination facility. The District's Application should be considered solely based on conditions today

This Supplement No. 2 is divided into three parts: (i) this part affirms the District has standing as an "aggrieved person"; (ii) this part addresses timing and review; and (iii) Exhibit A provides a rebuttal to statements, errors, and omissions in the Cal-Am letter.

## **I. The District has Standing as an Aggrieved Person**

Water Code section 1832 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." Further, SWRCB Resolution No. 2016-0040, which adopted the revised Order WR

2016-0016 on July 19, 2016 states in recital 4 “Water Code section 1832 states that the State Water 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 Chapter 12, Part 2, Division 2, Article 10 of the California Water Code.” Clearly, the SWRCB is open to applications from aggrieved persons.<sup>1</sup>

The SWRCB has a lengthy history of accepting petitions and applications from an “aggrieved person,” and it is a fundamental part of public involvement in not only Orders issued related to water rights, but also with respect to Regional Water Board permits and the Underground Storage Tank program.

As long ago as 1977, the SWRCB set a precedent for a broad definition of an “aggrieved person.” In the Matter of the Petition of Save San Francisco Bay Association (Order No. WQ 77-11), the State Water Board (through the Regional Water Quality Control Board) said, “The petition states that the Petitioner represents 20,000 members dedicated to the protection of San Francisco Bay. The Petitioner is well known for its efforts and concern regarding protection of San Francisco Bay... To find that this organization is not an aggrieved person and does not have standing pursuant to Water Code Section 13320 would impose an injustice on persons concerned with environmental protection.” Clearly, longstanding involvement and general interest in the outcome have been sufficient in the past to establish standing.

In the matter of the Petition of Environmental Law Fund for review of Order No. 81-14 (Order No. WQ 81-12) the State Water Board said, “The State Board has broadly construed the term “aggrieved person”. The Order then names five other public interest advocacy groups it had previously considered “aggrieved persons’ and proceeded to state “We feel that any person or group who testifies before the Regional Board or raises legitimate issues concerning Regional Board actions before the State Board, clearly qualifies as an “aggrieved person.” Again, the Board takes a broad and inclusive approach in construing the term “aggrieved person”.

Cal-Am, however, argues a different approach by citing SWRCB WRO 2005-0006-EXEC.<sup>2</sup> That Order admitted that “No procedures are provided in section 1832, and no regulations provide a

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<sup>1</sup> The Cal-Am 12/19/25 letter incorrectly uses the term “aggrieved party” on page 4, paragraph 2, line 2.

<sup>2</sup> The Cal-Am 12/19/25 letter incorrectly cites the Order as WRO 2005-0006.

distinct process. In practical effect, the procedure is in the regulations governing a petition for reconsideration.” and “[the] petition will be considered as a petition for reconsideration.” This reference is to the process, not to the definition of “aggrieved person.” In fact, nowhere does WRO 2005-0006-EXEC venture to define “aggrieved person” or to determine if the petitioner had standing as an “aggrieved person,” instead, it spends a great deal of time focused on whether the petitioner is a “party” to the Cease-and-Desist Order, which is not an issue raised by the District in its Application. In fact, Petitioners in WRO 2005-0006-EXEC requested Reconsideration on January 20, 2005, pursuant to section 1122 of the Water Code as an alternative to a Modification under section 1832. That request was timely filed within 30 days of the original Order WR 2005-0001 (January 7, 2005), well within the timeframe to seek reconsideration of the original order. Reconsideration under section 1122 is distinctly different from the concept of Modification under section 1832. Modification is apt to consider the changed facts related to current conditions. It does not make sense to construe this Application to be the same as a Motion for Reconsideration.

Nevertheless, the District is an aggrieved person. The term “aggrieved” legally describes a person whose legal rights, interests (financial, property, personal), or claims have been impacted, infringed upon, or denied by another’s actions, decisions, or laws, giving such person standing to contest or appeal. Black’s Law Dictionary defines “aggrieved” as “Having suffered loss or injury.”

The California State Legislature created the District in 1977. The District is organized and exists under the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, and found at Water Code Appendix, Section 118-1, et seq. (“District Law”). Pursuant to Section 325 of the District Law, and except as otherwise limited by the District Law, the District has the power to do any and every lawful act necessary so that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the District, including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other beneficial uses and purposes. Section 328 of the District Law provides that the District has the power, among other things, (a) to acquire public or private water systems necessary or proper to carry out the purposes of the District Law; (b) to store water in surface or underground reservoirs within or outside of the District for the common

benefit of the District; (c) to conserve and reclaim water for present and future use within the District; (d) to appropriate and acquire water and water rights, and import water into the District, and (e) to conserve and utilize, within or outside of the District, water for any purpose useful to the District.

MPWMD monitors, regulates, and controls water use through issuance and enforcement of Water Distribution Permits to distributors of water, including Cal-Am, and through issuance of Water Permits for new connections and modifications of existing connections to Water Distribution Systems within the District, including Cal-Am's ratepayers. The District's ability to regulate new water connections and modifications of existing water connections has been and continues to be impeded by the SWRCB enforcement of Orders WR 2016-0016 and WR 2009-0060. Given changed circumstances and facts that exist today, the SWRCB cannot leave the Orders in place without modification. To do so is arbitrary and capricious and is unsupported by the current evidence presented in the District's Application. The SWRCB would commit error to conclude that the District is not an "aggrieved person."

## **II. Timing and Review**

Cal-Am asks the SWRCB to either deny the District's Application or to hold it in abeyance until April 1, 2026. Cal-Am explains this is needed in order to "meet with stakeholders" and to "develop appropriate conditions for interim relief from the CDO moratorium." Cal-Am's request is inappropriate and should be rejected. The District Application was not a surprise to Cal-Am. The District informed Cal-Am since at least July 2024 that the District intended to pursue the Application. The District updated Cal-Am multiple times since that time as to the status, progress, and timing for the pending Application. During that time, Cal-Am had ample opportunity to meet with stakeholders and develop concepts. Stakeholders were also made aware of this process and have weighed in with letters of support for the District's Application (see posts on the SWRCB website). The District also included appropriate conditions for interim relief as a component of its Application.

Cal-Am's letter obfuscates Cal-Am's participation in the development and submittal of the Application. On September 30, 2025, District representatives personally met with Cal-Am's then-President and directly asked if the company would join the District in its application to

modify the CDO. Cal-Am's response was "No." Had the response been "yes," the District would have included Cal-Am in the preparation of the Application. Further, contrary to Cal-Am's letter, on October 16, 2025, the District General Manager emailed Cal-Am a link to the proposed Application. This was nine days prior to its submittal to the SWRCB. Cal-Am has been afforded ample time to review the Application, to meet with stakeholders, and to provide substantive suggestions.

Section 1832 requires "after notice and opportunity for hearing ... upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease-and-desist order." This is no small undertaking. Yet the current set of facts will not change. The California Public Utilities Commission water demand and water supply findings in CPUC Decision D.25-08-006, as modified by Decision 25-10-001, will not change. It is time to act. We urge the SWRCB to ignore Cal-Am's attempt to lull you into inaction.

### **III. Rebuttal to Statements, Errors, and Omissions in the Cal-Am Letter**

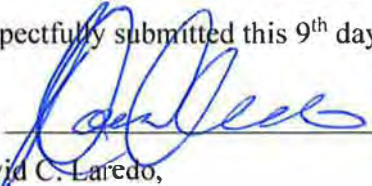
Exhibit A, attached, sets forth the District's response to specific statements, errors, and omissions that pertain to the Cal-Am letter.

The District filed the Application over two months ago; it deserves immediate action. The Cease and Desist Order continues to directly impair the ability of the community to build homes and create jobs. Cal-Am's request to hold or delay action on that Application is not warranted and should be rejected. Changed facts and circumstances warrant close review and consideration.

As the Applicant, the District asks the SWRCB to expeditiously review and act on the District's Application. Please consider expeditious review of the Application.

Respectfully submitted this 9<sup>th</sup> day of January 2026.

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

  
David C. Laredo,  
Office of General Counsel  
Applicant, MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT

## **EXHIBIT A**

### **Rebuttal to Misstatements in the Cal-Am Letter**

This Exhibit addresses several statements, misstatements, and omissions pertaining to the December 19, 2025, letter on behalf of Cal-Am by the law firm Wagner Jones Helsey PC to Mr. Eric Oppenheimer (Cal-Am Letter).

1. The Cal-Am letter states: “As you are aware, the California Public Utilities Commission (CPUC) recently found that the desalination project is necessary to deliver a permanent water supply to the Monterey Peninsula to substitute for the unauthorized Carmel River diversions and to reasonably meet Cal-Am’s projected future water demands.”<sup>1</sup>

This statement is false.

The August 18, 2025, CPUC Decision D.25-08-006 determined only the currently available supply and expected future demand. It made no determination or statements about the need for the desalination project. The statement quoted above is pure fabrication.

2. “Until the MPWSP desalination project is fully implemented, the Carmel River groundwater basin will remain the Peninsula’s only reliable and dependable water source...”<sup>2</sup>

This statement is false.

The Seaside Basin has provided a reliable water source to the Monterey Peninsula since 1955. Dependable limits for pumping from the Seaside Basin were established through a Superior Court adjudication in 2006.

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<sup>1</sup> Cal-Am Letter, page 2, beginning of paragraph 2.

<sup>2</sup> Cal-Am Letter page 2, bottom of page.

The Pure Water Monterey project provides a reliable water source to the Monterey Peninsula and has met its contractual delivery requirements since 2020.

Other smaller sources of supply provide water year in and year out:

- Malpaso LLC has reliably provided approximately 85 acre-feet per year (AFY) of availability since 2017.
  - The Sand City desalination facility has reliably provided an average production of 164 AFY over the past ten years.
  - The Aquifer Storage and Recovery (ASR) project reliably provides 1,210 AFY, on average, as determined by the CPUC in its 2025 CPUC decision, D.25-08-006.
3. “The water demands of the Monterey Peninsula historically were met entirely by water diversions from the Carmel River Groundwater Basin.”<sup>3</sup>

This statement is false, as stated in Response 2, above.

Two decades ago, Cal-Am derived approximately 66% of its water supply from the Carmel River and 34% from Seaside Basin. Today, the Carmel River accounts for only 36% of Cal-Am’s water supply.

The Expansion of Pure Water Monterey now allows over 60% of the Monterey Peninsula water demand to be met by the Pure Water Monterey project.

4. “...the Application incorrectly asserts that there is no foreseeable threat of violation of the CDO diversion limits. This statement is contradicted by the Application itself, which shows that Cal-Am's customer demands required Cal-Am to divert 97.5% of the Carmel River CDO diversion limit in 2025, nearly 99% of the diversion limits in 2024...”<sup>4</sup>

This statement is false and misleading; it is specious.

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<sup>3</sup> Cal-Am Letter, page 3, beginning of second paragraph.

<sup>4</sup> Cal-Am Letter, page 5, subsection 1.

Cal-Am should maximize the use of its Carmel River water rights. It is a measure of success to divert 97.5% to 99% of the water rights because that is Cal-Am's second-least expensive water to produce, thereby benefiting customers. The use of its Carmel River water right does not demonstrate that Cal-Am risks exceeding its legal limit. In 2025 and 2024, Cal-Am was able to bank surplus supplies from the Carmel River, using the ASR project to store those waters in the Seaside Basin. This is evidence that the exceedance of Cal-Am's Carmel River water right was never in danger.

5. "Cal-Am agrees with MPWMD that the PWM and ASR projects will reduce the risk of CDO violation when those projects become fully operational, but the PWME project is currently unproven, and both projects are vulnerable to drought and source water reductions."<sup>5</sup>

This statement is false and omits relevant data.

The Pure Water Monterey Expansion is far from unproven – it adds additional components to expand and duplicate those that have been proven through use in the pre-existing Pure Water Project since 2020. The pre-existing project has typically delivered at or around 300 Acre-feet per month. Since the Pure Water Expansion came online on October 10, 2025, water deliveries were 413 AF in October, water deliveries were 513 AF in November, and water deliveries in December were 603 AF. The Pure Water Monterey Expansion is operational and clearly demonstrates that it provides the Monterey Peninsula with a reliable supply.

The CPUC determined Cal-Am's claims of PWME and ASR drought vulnerability and/or source water reductions were unfounded. The August 18, 2025, CPUC Decision "Finding of Fact" #19 stated, "In view of M1W's position and the Amended WPA, Cal-Am has not demonstrated that it cannot reliably receive 2,250 AFY of water from M1W as part of the PWM Expansion." 2,250 AFY is the full capacity, with no discount for drought years.

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<sup>5</sup> Cal-Am Letter, page 5, subsection 2, first paragraph.

Similarly, CPUC “Finding of Fact” #14 states, “The ASR Availability and Analysis Technical Memorandum finds that over 59 years, the ASR system held an average of 1,120 AFY of available water.” That 1,120 AFY was changed to 1,210 AFY in an October 9, 2025, correction by the CPUC. 1,210 AFY is the full average annual availability, with no discount for drought years because drought years have been included in the 59-year average.

6. “Carmel River ASR diversions are available only in wetter periods when surplus conditions on the Carmel River exist.”<sup>6</sup>

This statement is false because it omits relevant data and is thus misleading.

The statement refers only to diversions from the Carmel River directed to storage in the ground via the ASR project. ASR stands for “Aquifer Storage and Recovery.” The full scope of available water supply must include and account for water available in real time, both from the river, plus additional water available from supplies that were previously stored. The CPUC found that Cal-Am’s own ASR Availability and Analysis Technical Memorandum shows the ASR system holds an average of 1,210 AFY of available water per year.

7. The Pure Water Monterey Expansion “source is likewise reduced when influent sources to the water treatment plant are limited by climatic conditions and drought, and other competing demands for the wastewater influent. (See attached: [cites 4 letters included as an attachment to the Cal-Am Letter].”<sup>7</sup>

This statement is false and omits relevant data.

The same letters attached to the Cal-Am Letter were made available to the CPUC in its evaluation of supply and demand. The CPUC ruled that the full 2,250 AFY from the Pure

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<sup>6</sup> Cal-Am Letter, page 5, subsection 2, first paragraph.

<sup>7</sup> Cal-Am Letter, page 5, subsection 2, first paragraph.

Water Monterey Expansion will be available. Cal-Am is attempting here to re-litigate issues already ruled upon by the CPUC.

8. “Moreover, production from all sources stored in the Seaside Basin are currently restricted by water quality, public safety, and regulatory constraints, and Cal-Am does not know when these restrictions will be lifted. There are nine wells in the Monterey system that are designed to extract ASR and PWM&E water from the Seaside Basin. Several of those wells are impacted by water quality issues, including ASR Wells 1 and 2, which are owned by the MPWMD and currently cannot be used for extraction due to basin residence times resulting from proximity to PWM injection wells. The largest production well in the basin, the Paralta Well, also is located near the PWM injection sites; as additional injection of water from the PWME project occurs, the Paralta Well is being closely monitored and regulated to ensure that residence times for the injected water does not impact Cal-Am's ability to extract from the well. ASR Well 4 is currently offline while Cal-Am commissions a new treatment facility necessary to treat groundwater for naturally occurring mercury.”<sup>8</sup>

This statement is false because it omits relevant data and is thus misleading.

Cal-Am conflates actual conditions in the Seaside Basin. Cal-Am has known since 2017 that if the Pure Water Monterey Expansion was built (which it has), ASR Wells 1 and 2 would no longer be available for extraction (note: only one well can be used in extraction mode at a time). The Paralta Well has been the subject of extensive modeling and five years of actual PWM operations and has been determined to have no prospective risk from the Pure Water Monterey project. The decision to take ASR Well 4 offline was a discretionary decision by Cal-Am; the treatment facility is actually installed, and zero mercury has been detected. Cal-Am is able to restore the well to production in short order. Finally, in Q2 of 2026, Cal-Am expects to bring two new Seaside Basin wells online to produce Pure Water Monterey, Seaside Basin native water, or ASR withdrawals.

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<sup>8</sup> Cal-Am Letter, pages 5-6, subsection 2, second paragraph.

9. “MPWMD's proposal does not accurately define "available supply" because it does not account for other existing and unknown regulatory and engineering constraints on Cal-Am's ability to pump and/or deliver water stored in the Seaside Basin (including ASR and PWM&E supplies) to customers on the Monterey Peninsula.”<sup>9</sup>

This statement is false and omits relevant data.

The District provided monitoring triggers and formulae in its proposed revision to the CDO in Attachment A of the District’s Application. Exhibit B of Attachment A defines “Available Supplies.” In Exhibit B, it is stated that available supplies shall be revised from time to time under the following circumstances:

- a) A new source of supply comes online;
- b) An existing source of supply is retired or unavailable for an extended period;
- c) Additional storage is accrued; and
- d) When an “in-lieu” recharge program is enacted in the Seaside Groundwater Basin that affects Cal-Am’s production rights.

These circumstances, especially item “b)”, appears to directly address Cal-Am’s concerns over changes in regulatory and engineering constraints that can affect the availability of supplies.

10. “Moreover, the Application's proposal does not consider how practical "reinstatement of the moratorium" would or could be accomplished after the fixed new demands associated with the new developments have been approved by local land use agencies and fixed annual demand has increased. The Application also puts the SWRCB Deputy Director in the unenviable position of having to decide whether to reinstate the moratorium after fixed demands have increased, or whether to authorize Cal-Am to exceed the CDO diversion limits...”<sup>10</sup>

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<sup>9</sup> Cal-Am Letter, page 6, subsection 3.

<sup>10</sup> Cal-Am Letter, pages 6-7, subsection 3.

This statement is false and omits relevant data.

The whole purpose of the District's Application is to allow "fixed new demands associated with the new developments," as stated above. The Application most definitely anticipates early warning triggers based on both a most recent year test of demand v. 80% of Available Supplies, as well as a calculation of trailing (historical) 5-year average growth rate in water demand. Such triggers are designed to allow the moratorium to be put back into place before the Carmel River water right might be tested. These guardrails are designed to make sure growth in new demand never meets or exceeds available supplies. Nothing in the District's Application suggests the modifications to the CDO should allow the SWRCB to decide whether or not to authorize Cal-Am to exceed the CDO diversion limits.

11. "MPWMD's Application provides insufficient guardrails to ensure that relaxation of the moratorium will not redirect impacts to the Carmel River and its fishery, or to Cal-Am's existing customers."<sup>11</sup>

This statement is false and omits relevant data, as discussed in Response to Item 10, above.

12. "The Application, as currently proposed, places Cal-Am and the community at significant risk of water rationing or additional pumping of the Carmel River to meet essential water needs in the community."<sup>12</sup>

This statement is false.

Cal-Am has provided no evidence to support this claim. There is no significant risk of water rationing or violation of legal water rights if the proposed triggers and monitoring are followed.

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<sup>11</sup> Cal-am Letter, page 3, first paragraph.

<sup>12</sup> Cal-Am Letter, page 7, "Conclusion," first paragraph.

13. “Responsible, data-driven water demand forecasting must consider trends and changes in current customer behavior, existing and new governmental regulations, growth and development projections and demands, shifts in commercial activity, climatic variability, and climate change. Urban water supply and demand modeling is a complex process that cannot be over-simplified without the risk of redirected or exacerbated impacts to other resources.”<sup>13</sup>

This statement is false and omits relevant data

The referenced considerations were precisely considered by the CPUC in its proceeding to determine supply and demand on the Monterey Peninsula. Having reviewed “responsible, data-driven water demand forecasting,” the CPUC rendered its decision D.25-08-006 as modified by Decision 25-10-001. Those results from the CPUC decision and Order were included in the affirmative argument of the District in its Application before the SWRCB.

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<sup>13</sup> Cal-Am Letter, page 7, “Conclusion,” second paragraph.

## EXHIBIT B

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December 19, 2025

#### Via Electronic Mail

Mr. Eric Oppenheimer, Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento CA 95814

**RE: Response of the California-American Water Company to MPWMD's Application for Order Modifying WRO 2016-0016 Cease and Desist Order (CDO), and Precedents WRO 2009-0060 and Order 95-10**

Dear Mr. Oppenheimer:

This letter is submitted on behalf of the California-American Water Company (Cal-Am) in response to the Monterey Peninsula Water Management District's (MPWMD) October 21, 2025 "Application for Order Modifying WRO 2016-0016 Cease and Desist Order (CDO), and Precedents WRO 2009-0060 and Order 95-10" (Application). Cal-Am is reviewing MPWMD's Application and the attachments and has been coordinating with stakeholders regarding potential options for relief from the moratorium condition in the State Water Resources Control Board's (SWRCB) CDO. The purpose of this letter is to request the SWRCB deny MPWMD's Application or hold it in abeyance to provide Cal-Am time to meet with stakeholders and fish agencies to develop appropriate conditions for interim relief from the CDO moratorium.<sup>1</sup> Cal-Am will report back to the SWRCB not later than April 1, 2026 regarding progress, at which time we further request the SWRCB consider holding public workshops or meetings to discuss options and conditions for amending the CDO moratorium.

<sup>1</sup> This letter also responds to several misstatements and omissions in the MPWMD Application.

## **WANGER JONES HELSLEY PC**

Mr. Eric Oppenheimer

December 19, 2025

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Cal-Am provides safe, clean, reliable water supply to more than 100,000 residents on the Monterey Peninsula, and to more than three million visitors each year. Cal-Am has been working diligently and in good faith with local partners and community leaders and stakeholders to diversify and increase the Peninsula's water supplies through the MPWSP, which includes: (1) the Pure Water Monterey and Expansion (PWM&E) projects, a recycling and reuse project operated by Monterey One Water in the Seaside Basin; (2) an aquifer storage and recovery (ASR) project, which relies on diversions from the Carmel River during high flow events for storage and recovery in the Seaside Basin; and (3) the desalination project, which will deliver up to 4.4 million gallons per day (nearly 5,000 acre-feet per year) of desalinated seawater produced from slant wells in the City of Marina and a treatment plant in unincorporated Monterey County. Cal-Am is already implementing the PWM and ASR projects, and water from the PWME project is expected to become available in 2026. The desalination project is in the final phases of permitting.

As you are aware, the California Public Utilities Commission (CPUC) recently found that the desalination project is necessary to deliver a permanent water supply to the Monterey Peninsula to substitute for the unauthorized Carmel River diversions and to reasonably meet Cal-Am's projected future water demands. The CPUC projected Cal-Am's water demands to be 13,732 acre-feet by 2050, and it confirmed the need for all three of Cal-Am's sources — the Carmel River, the Seaside Basin projects, and desalination - to meet that projected demand. Accordingly, at this time Cal-Am's primary goal and focus is to obtain final permits to bring the desalination project online, which will allow Cal-Am and the SWRCB to make the findings necessary to lift the CDO.

Cal-Am takes very seriously its obligations to protect Carmel River fish and wildlife resources, an obligation that appears to be ignored in MPWMD's Application. Over-pumping of the Carmel River groundwater basin has the potential to adversely impact fish and wildlife resources, which carries substantial risk of fines and penalties that increase customer costs and erode consumer confidence. Both the National Marine Fisheries Service (NMFS) and California Department of Fish & Wildlife (CDFW) have expressed concern with the potential impact of diversions on federally-listed South Central California Coast Steelhead (SCCC Steelhead), including Cal-Am's operation and maintenance of Los Padres Dam, management of groundwater diversions in the watershed, and long-term planning for incidental take authorization for SCCC Steelhead.

Since 2001, Cal-Am and NMFS have entered into a series of agreements to protect and conserve the SCCC steelhead, which required Cal-Am to eliminate unauthorized diversions and implement certain measures for the benefit of the SCCC steelhead at substantial cost. Most recently, in 2024 Cal-Am and NMFS initiated a process to develop an ambitious Habitat Conservation Plan (HCP) for Cal-Am's Carmel River operations. The HCP will provide long-term protection and enhancement to the Carmel River steelhead fishery and restore and enhance the habitat conditions in the Carmel River, and will provide legal protection for Cal-Am's Carmel River operations. We are concerned that MPWMD's Application could jeopardize this process.

Until the MPWSP desalination project is fully implemented, the Carmel River groundwater basin will remain the Peninsula's only reliable and dependable water source and, in the event of

## **WANGER JONES HELSLEY PC**

Mr. Eric Oppenheimer

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shortages from the Seaside Basin sources, the Carmel River will remain the only means for Cal-Am to avoid severe rationing of existing customers. Until the MPWSP becomes fully operational, Cal-Am and the SWRCB must balance the water needs of the Carmel River and fisheries resources with the needs for additional housing and economic development on the Peninsula. Although the CDO's moratorium results in significant burdens on Cal-Am in terms of supplying water to meet new water demands on the Peninsula, MPWMD's Application provides insufficient guardrails to ensure that relaxation of the moratorium will not redirect impacts to the Carmel River and its fishery, or to Cal-Am's existing customers.

### **CDO Background**

The water demands of the Monterey Peninsula historically were met entirely by water diversions from the Carmel River Groundwater Basin. In WRO Order 95-10 (1995) the SWRCB found that the Carmel River groundwater basin is a "subterranean stream flowing in a known and definite channel" under Water Code section 1200, and it concluded that much of Cal-Am's groundwater extractions in the Carmel River watershed were subject to the SWRCB's surface water permitting authority. Although Cal-Am's diversions at the time exceeded 14,000 acre feet per year (afy), the SWRCB found that Cal-Am had surface water rights to only 3,376 afy. The SWRCB ordered Cal-Am to reduce its Carmel River groundwater pumping and directed Cal-Am to develop supplemental water supplies to meet the water needs of its customers.

Following the failure of multiple water supplementation projects, in 2009 and 2016 the SWRCB issued additional cease and desist orders directing Cal-Am to reduce its diversions from the Carmel River. Both of those subsequent orders, WRO Order 2009-0060 and WRO Order 2016-0016, imposed numerous conditions on Cal-Am, including a moratorium on permits for new connections and expansion of existing uses within Cal-Am's service area, until such time that "***(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 concurs, in writing, with the certification.***" (SWRCB WRO 2009-0060, Condition 11, p. 63, ***emphasis added***; *See also*, SWRCB WRO 2016 – 0016, Condition 15, p. 27). While Cal-Am has successfully supplemented its water supply portfolio and reduced its Carmel River diversion, it has not, and cannot at this time, certify that it has obtained a ***permanent supply of water to replace its Carmel River diversions***, nor is there documentation to support such a certification.

### **Request for Denial or Abeyance of the MPWMD Application**

Cal-Am respectfully requests the SWRCB deny MPWMD's Application or, in the alternative, hold the Application in abeyance to allow Cal-Am to continue consultation with SWRCB staff, MPWMD management, NMFS, CDFW and other stakeholders about appropriate interim relief from the CDO moratorium, including protective conditions to minimize risk of CDO violations and other redirected impacts and consequences.

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Cal-Am did not participate in the preparation of MPWMD's Application nor the requested CDO amendments, and MPWMD did not seek Cal-Am's input on the Application before it was submitted to the SWRCB.<sup>2</sup> Prior to MPWMD seeking approval from its board to submit the Application, the only discuss that occurred between Cal-Am and MPWMD as a high-level non-detailed conversation between MPWMD's General Manager and Cal-Am's past-President several weeks before MPWMD's board meeting. Indeed, when Cal-Am learned that MPWMD was seeking approval from its Board to submit the Application to the SWRCB, Cal-Am submitted a letter to MPWMD, dated October 20, 2025, outlining its concerns with the proposed Application and seeking additional discussions. MPWMD did not respond. Consequently, Cal-Am has not had an opportunity to fully consider the Application and consult with stakeholders to develop appropriate conditions and protections for amending the CDO moratorium condition, including guardrails to ensure that new water demands associated with relief from the moratorium do not result in impacts to the Carmel River or violation of other CDO conditions.

MPWMD does not have standing under Water Code Section 1832 to submit an application to amend the CDO because MPWMD is not an "aggrieved party" under the statute. MPWMD's Application does not explain, nor attempt to explain, how MPWMD is in any way "aggrieved" by the CDO for purposes of Water Code section 1832. The Application notes only that MPWMD was identified as a "co-applicant" in WRO 2016-0016.<sup>3</sup> But that designation, which is akin to an "interested party" designation under SWRCB regulations, does not make MPWMD "aggrieved" under Water Code section 1832. (See, eg., SWRCB WRO 2005-0006). In fact, MPWMD is not aggrieved by the CDO in any way – MPWMD has no legal exposure to additional cease and desist orders or administrative civil liability if the CDO is violated today, and it would have no exposure to such orders or penalties if the CDO is violated in the future as a result of lifting the moratorium as requested in the Application. WRO Order 2016-0016 is directed solely at Cal-Am, not at MPWMD, and all operative terms and conditions in the CDO are directed at Cal-Am or require action and implementation by Cal-Am. And all penalties for violation of CDO terms and conditions are and will be imposed against Cal-Am alone.

Thus, while Cal-Am has standing and the right to seek an amendment to the CDO, MPWMD does not. For these reasons, we respectfully ask the SWRCB to reject MPWMD's application or, in the alternative, hold the Application in abeyance as requested herein.

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<sup>2</sup> In fact, MPWMD did not even serve the Application on Cal-Am; Cal-Am received a copy of the Application, a week after it was filed, when Cal-Am requested it from SWRCB staff.

<sup>3</sup> To the extent MPWMD was aggrieved by WRO 2016-0016, its remedy was to petition for reconsideration within 30 days of the SWRCB adopting WRO 2016-0016 (see Water Code § 1122 et seq), or by timely challenging WRO 2016-0016 by writ of mandate (see Water Code § 1126 et seq).

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### **Corrections to Mistatements and Omissions in the Application**

#### ***1. The Application Incorrectly states that there is no foreseeable threat of violation of the CDO diversion limits in the near term***

Cal-Am agrees with the Application that there have been no violations of the CDO diversion limits for the past four years, and Cal-Am further agrees that the primary reason for CDO compliance is the water conservation and tiered rate structure implemented by Cal-Am and MPWMD. However, the Application incorrectly asserts that there is no foreseeable threat of violation of the CDO diversion limits. This statement is contradicted by the Application itself, which shows that Cal-Am's customer demands required Cal-Am to divert 97.5% of the Carmel River CDO diversion limit in 2025, nearly 99% of the diversion limits in 2024, and 116% of the current CDO limits in 2022.<sup>4</sup> Although successful implementation of the PWM&E project will reduce the risk of CDO exceedances, it is incorrect and irresponsible for MPWMD to state that there is no threat of violation of the CDO, particularly if Cal-Am's Seaside Basin supplies remain constrained by production limitations and its water demands increase as a result of relaxation of the CDO moratorium.

#### ***2. The Pure Water Monterey Expansion Project Remains Unproven and both the PWM and ASR Projects are Vulnerable to Drought and Source Water Reductions***

A substantial percentage of Cal-Am's current water supply comes from three sources reliant on the Seaside Groundwater Basin – native Seaside Basin groundwater, stored water from Cal-Am's Aquifer Storage and Recovery (ASR) project in the Seaside Basin, and advanced treated wastewater from the PWM&E projects in the Seaside Basin. Cal-Am agrees with MPWMD that the PWM and ASR projects will reduce the risk of CDO violation when those projects become fully operational, but the PWME project is currently unproven and both projects are vulnerable to drought and source water reductions. Carmel River ASR diversions are available only in wetter periods when surplus conditions on the Carmel River exist, and the PWM&E source is likewise reduced when influent sources to the water treatment plant are limited by climatic conditions and drought, and other competing demands for the wastewater influent. (See attached: (a) letter from Monterey County Water Resources Agency (MCWRA) to CPUC, dated September 27, 2022; (b) letter from Monterey County Farm Bureau (MCFB) to Erik Ekdahl, SWRCB, dated August 2, 2024; (c) letter from MCFB to CPUC, dated August 22, 2024; and (d) letter from MCWRA to MPWMD, dated January 15, 2025).

Moreover, production from all sources stored in the Seaside Basin are currently restricted by water quality, public safety and regulatory constraints, and Cal-Am does not know when these restrictions will be lifted. There are nine wells in the Monterey system that are designed to extract ASR and PWM&E water from the Seaside Basin. Several of those wells are impacted by water quality issues, including ASR Wells 1 and 2, which are owned by the MPWMD and currently

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<sup>4</sup> In 2022 the CDO diversion limit was higher than the current limit, so Cal-Am did not exceed the CDO limit as it existed at that time.

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cannot be used for extraction due to basin residence times resulting from proximity to PWM injection wells. The largest production well in the basin, the Paralta Well, also is located near the PWM injection sites; as additional injection of water from the PWME project occurs, the Paralta Well is being closely monitored and regulated to ensure that residence times for the injected water does not impact Cal-Am's ability to extract from the well. ASR Well 4 is currently offline while Cal-Am commissions a new treatment facility necessary to treat groundwater for naturally occurring mercury. Two additional wells currently are impacted by hydrogen sulfide, which has a Secondary Maximum Contaminant Level for taste and odor. And yet another well is scheduled to be abandoned due to the presence of PFOA and PFAS compounds at or above new drinking water standards.

Cal-Am is optimistic that each of these water quality issues will be efficiently remedied, and Cal-Am is also constructing two new extraction wells in the Seaside Basin and is in the planning stages for additional wells. However, the regulatory process and permitting for the new well projects require review and approvals from numerous agencies, which will take time to be constructed and put into service. Until full access to the supplies in the Seaside Basin is restored, Cal-Am cannot rely on these sources as "available storage" for customer use, and the Application is misleading to the extent it proposes otherwise.

The reality of these current production constraints is at odds with the Application's assertion that three years of compliance with the CDO's Carmel River pumping limits demonstrates no likelihood of violations of the CDO pumping limits in the foreseeable future. Given the complex technical, hydrogeological and water quality conditions in the Seaside Basin, and the presence of natural and introduced contaminants, the SWRCB's consideration of modifications to the moratorium condition should be based on an accurate understanding of actual current and future production capabilities. The Application ignores and glosses over these very real operational and regulatory constraints.

### ***3. The Application would create irreversible demand increases without any safeguards to protect the Carmel River and existing customers***

The Application proposes an unqualified lifting of the moratorium subject to annual monitoring, most of which Cal-Am already performs and submits to the SWRCB. Based on the monitoring data, the Application proposes that if the "prior year production" exceeds 80% of Cal-Am's "available supplies," the Deputy Director of the Division of Water Rights may determine "if a reinstatement of [the CDO moratorium Condition] should be made." As explained above, MPWMD's proposal does not accurately define "available supply" because it does not account for other existing and unknown regulatory and engineering constraints on Cal-Am's ability to pump and/or deliver water stored in the Seaside Basin (including ASR and PWM&E supplies) to customers on the Monterey Peninsula. Moreover, the Application's proposal does not consider how practical "reinstatement of the moratorium" would or could be accomplished after the fixed new demands associated with the new developments have been approved by local land use

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agencies and fixed annual demand has increased.<sup>5</sup> The Application also puts the SWRCB Deputy Director in the unenviable position of having to decide whether to reinstate the moratorium after fixed demands have increased, or whether to authorize Cal-Am to exceed the CDO diversion limits if Seaside Basin supplies are restricted and not available for delivery to customers on the Peninsula, as is the current condition. Finally, the Application would put Cal-Am in the position of potentially needing to impose rationing on its existing customers or violating the CDO diversion limitations as a result of an action that Cal-Am has not requested.

### Conclusion

The Carmel River is recovering thanks to the actions of Cal-Am, MPWMD, and the community to develop new water supplies, and as a result of removal of the San Clemente Dam ten years ago. Work continues to restore the river environment and protect the species that live there. The water supply reality on the Peninsula is such that supplies from the ASR program, while vital, are susceptible to drought and regulatory restrictions in the Seaside Basin. Likewise, the PWM&E source water supply is susceptible to drought and source water supply reduction, which are likely to become more (not less) pronounced in the future. So, while the PWM&E and ASR projects offer some solutions until the desalination project begins operations, those supplies are unproven and vulnerable to a variety of regulatory and engineering issues. Increasing allocations for new or expanded uses, in reliance on these unproven and vulnerable sources is risky and contrary to the intent of the CDO and years of collaborative water planning. The Application, as currently proposed, places Cal-Am and the community at significant risk of water rationing or additional pumping of the Carmel River to meet essential water needs in the community. Over-pumping the Carmel River could lead to environmental and habitat impacts when river flows are at their lowest, and could result in penalties to Cal-Am and its customers from state and federal regulators. Although Cal-Am supports the idea of relief from the CDO moratorium, the Application does not define a reasonable and defensible program for doing so, and it requires more work and input from Cal-Am and stakeholders.

California American Water is eager to lift the moratorium and the CDO, but responsible water management requires planning for future droughts, facility outages and regulatory uncertainty, and providing reasonable margins of safety to ensure there is enough water supply available for delivery to meet the Peninsula's water demands without redirecting impacts. Responsible, data-driven water demand forecasting must consider trends and changes in current customer behavior, existing and new governmental regulations, growth and development projections and demands, shifts in commercial activity, climatic variability, and climate change. Urban water supply and demand modeling is a complex process that cannot be over-simplified without the risk of redirected or exacerbated impacts to other resources.

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<sup>5</sup> The MCWRA, which manages and regulates water supply and use throughout Monterey County, shares this concern. (See attached letter from MCWRA to MPWMD, dated January 15, 2025, expressing concerns about MPWMD's proposal to allocate PWM&E supplies with uncertain source water constraints.)

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There are no shortcuts or workarounds, and it is irresponsible for municipal water suppliers to plan only for best-case scenarios. Responsible planning for the Monterey Peninsula's water future requires a rational look at supply and demand forecasts using a range of realistic and conservative scenarios – independent of political agendas. While relaxing the CDO moratorium is certainly appealing to Cal-Am, we must be careful not to return to past conditions of water scarcity or water rationing on the Peninsula. Making long-term decisions based on unproven and non-resilient water supplies would hurt current and new customers, and our community.

Cal-Am intends to continue the conversation with MPWMD and other stakeholders about how to prudently evaluate Cal-Am's new and planned water supplies and current production and delivery constraints. The protection of the Carmel River and long-term reliability of supplies for residents of the Monterey Peninsula are paramount.

We respectfully ask the SWRCB to deny MPWMD's October 21, 2025 Application or, in the alternative, to hold the Application in abeyance to allow time for Cal-Am to work with MPWMD, NMFS, CDFW, and SWRCB staff, to develop a responsible and effective proposal for relief from the CDO moratorium, including appropriate safeguards to avoid or minimize redirected impacts and unintended consequences.

Sincerely,



Robert E. Donlan

Wanger Jones Helsley,

on behalf of California American Water

encl.

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