

## EXHIBIT 2-A



December \_\_, 2020

Eileen Sobeck  
Executive Director  
State Water Resources Control Board (SWRCB)  
1001 I Street  
Sacramento, CA 95814

RE: November 17, 2020 SWRCB Letter to California American Water regarding Order WR 2016-0016, Ordering Paragraph 3.b.viii – 2020 Joint Annual Report

Dear Ms. Sobek:

On November 17, 2020 you issued a letter to California American Water (Cal-Am) stating that "regardless of control or fault, the 1,000-acre-foot Effective Diversion Limit reduction is an appropriate and intended consequence of Cal-Am's missing Milestone 5."<sup>1</sup> The Monterey Peninsula Water Management District (District) and other Monterey Peninsula jurisdictions, were copied on the letter.

The letter appears to be in response to an October 21, 2020 letter by Cal-Am to the SWRCB which included several spurious and debunked claims, as well as the outrageous accusation that it was the District's fault Cal-Am missed Milestone 5.

The District wishes to respond to your letter and some of the factually incorrect assertions made by Cal-Am in its letter to you. The District respectfully suggests that:

- There was inadequate consultation with Cal-Am's fellow Applicants.
- The SWRCB may be misinterpreting who is responsible for requesting a hearing under Ordering Paragraph 3.b.viii.
- Missing Milestone 5 was not the cause of, or within the control of, any of the Applicants.
- The Effective Diversion Limit reduction should be waived.

Your letter notes that "Cal-Am clarified that it does not request the State Water Board schedule such a presentation or make such findings or actions regarding Milestone 5." and "Cal-Am is prepared to meet customer demands and to comply with the reduced Effective Diversion Limit in Water Year 2020-2021."<sup>2</sup> However, that decision is not Cal-Am's alone to make. As you

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<sup>1</sup> SWRCB letter of November 17, 2020 page 2, line 28

<sup>2</sup> Ibid, page 2, paragraph 2

correctly state at the top of page 2 of your letter, the Order has a provision under which the request to make a presentation is to be made in consultation with Cal-Am's fellow Applicants. Cal-Am made no effort whatsoever to engage its fellow Applicants on this matter, and the District as one of those original Applicants disagrees with Cal-Am's unilateral approach.

Ordering Paragraph 3.b.viii requires a Joint Annual Report which is to indicate "whether Applicants expect the Milestone to be achieved by its Deadline and, if not, whether the Milestone will be missed for reasons beyond Applicants' control." This was submitted June 4, 2020 and stated that Milestone 5 would likely be missed and that it was beyond the control of the Applicants: "In light of the stay imposed by the Superior Court, and the delay in the Coastal Commission's hearing on Cal-Am's application for a coastal development permit, Cal-Am will not be able to meet Milestone 5."<sup>3</sup> The Report said nothing about the District being the cause of the missed milestone.

Ordering Paragraph 3.b.viii also states "If requested, Cal-Am, in coordination with Applicants, shall present written and/or oral comments on the progress towards Milestones at a regularly scheduled State Water Board meeting that falls at least 60 days after submission of the report." This provision does not spell out who may request such a presentation. The District, as one of the original Applicants hereby requests the opportunity to make such a presentation of evidence to support its request that the SWRCB suspend any corresponding reductions under Condition 3.b.vi.

Contrary to Cal-Am's spurious claims in its October 21, 2020 letter – which contradicts the June 4, 2020 Joint Annual Report – the missed Milestone 5 was not the fault of any Applicant and certainly not the District. Rather, it was simply due to the lack of a timely hearing on the Coastal Development Permit and delays imposed by the Superior Court.

There are other incorrect statements made by Cal-Am in its October 21, 2020 letter that are addressed below:

- (a) The District's water supply and demand analysis is not misleading. It's methodology is sound and its principal conclusions were confirmed by highly qualified third parties. Its sources are carefully footnoted.
- (b) The water supply and demand analysis was not "specifically rejected by the CPUC," because it was done AFTER the CPUC had issued its decision on the desalination project and closed the application;
- (c) There was never "a deliberately manipulated consultant's memorandum" to support the supply and demand analysis. We believe Cal-Am is referring to excerpts the District took from the Benito/Williams technical memorandum modeling assumptions contained in the Pure Water Monterey SEIR appendices, to show that build-up of Aquifer Storage and Recovery storage would be sufficient to meet a 5-year drought – a completely different issue than the supply and demand analysis – and that excerpt has been used on

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<sup>3</sup> Joint Annual Report, June 4, 2020, page 3, last paragraph

Ms. Eileen Sobek  
Page 3 of 4  
December \_\_, 2020

multiple occasions and cited to its authors;

(d) The District's analysis does, in fact, account for critical protections of the Seaside Groundwater Basin; and

(e) Cal-Am has never demonstrated or proven any of the District's analysis to be misleading or incorrect.

We very much appreciate your encouragement to Cal-Am "to continue to engage collaboratively with other Applicants and interested parties to resolve disputes, to secure other near-term solutions for ending Cal-Am's unauthorized Carmel River diversions by December 31, 2021, and to develop longer-term water supply solutions..." However, we also respectfully request that the SWRCB provide the forum to review the evidence under Ordering Paragraph 3.b.viii and suspend any corresponding reductions under Condition 3.b.vi.

Sincerely,

David Stoldt  
General Manager  
Monterey Peninsula Water Management District

CC: [via email]

E. Joaquin Esquivel  
[joaquin.esquivel@waterboards.ca.gov](mailto:joaquin.esquivel@waterboards.ca.gov)

Erik Ekdahl, SWRCB  
[Erik.Ekdahl@waterboards.ca.gov](mailto:Erik.Ekdahl@waterboards.ca.gov)

Steven Westhoff, SWRCB  
[Steven.Westhoff@waterboards.ca.gov](mailto:Steven.Westhoff@waterboards.ca.gov)

Richard Svindland, California American Water  
[Rich.Svindland@amwater.com](mailto:Rich.Svindland@amwater.com)

Ian Crooks, Vice President, California American Water  
[Ian.Crooks@amwater.com](mailto:Ian.Crooks@amwater.com)

Chris Cook, Director of Operations, California American Water  
[Christopher.Cook@amwater.com](mailto:Christopher.Cook@amwater.com)

Mayor Bill Peake, City of Pacific Grove  
[bpeake@cityofpacificgrove.org](mailto:bpeake@cityofpacificgrove.org)

Mayor Clyde Roberson, City of Monterey

Ms. Eileen Sobek  
Page 4 of 4  
December \_\_, 2020

[roberson@monterey.org](mailto:roberson@monterey.org)

Mayor Ian Oglesby, City of Seaside  
[ioglesby@ci.seaside.ca.us](mailto:ioglesby@ci.seaside.ca.us)

Mayor Mary Ann Carbone, City of Sand City  
[maryann@sandcityca.org](mailto:maryann@sandcityca.org)

Mayor Alison Kerr, Del Rey Oaks  
[akerr@delreyoaks.org](mailto:akerr@delreyoaks.org)

Mayor Dave Potter, City of Carmel-by-the Sea  
[dpotter@ci.carmel.ca.us](mailto:dpotter@ci.carmel.ca.us)

David Stivers, President, Pebble Beach Company  
[stiversd@pebblebeach.com](mailto:stiversd@pebblebeach.com)

Bob McKenzie, Consultant to Coalition of Peninsula Businesses  
[jrbobmck@gmail.com](mailto:jrbobmck@gmail.com)

Jeff Davi, Co-chair, Coalition of Peninsula Businesses  
[Jeff.Davi@mphtre.com](mailto:Jeff.Davi@mphtre.com)

John Tilley, Co-chair, Coalition of Peninsula Businesses  
[theamswim@yahoo.com](mailto:theamswim@yahoo.com)