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June 9, 2025

TO: Chair Riley, Members of the Board and General Manager Stoldt

FROM: David C. Laredo, Counsel

RE: General Report of Pending Litigation effective June 9, 2025

This memo presents a public summary of litigation matters that are deemed to be open and active. This is a recurring memo; the newly updated data is shown in *highlighted text*.

1 – Monterey Peninsula Taxpayers Association (MPTA) cases:

The series of separate cases filed by Monterey Peninsula Taxpayers Association (MPTA) over a period of years that challenged aspects of the District's Water Supply Charge are now settled whereby the District agreed the Settlement Fund of \$3,353,245, from the supply charge proceeds; shall be used to pay attorney's fees, refund administrative costs, and the remainer of which shall be paid to ratepayers. Refund checks not been cashed within one year from issuance shall be paid to the Cal-Am Hardship Benefit Program controlled by the United Way and used to reduce burdens on Cal-Am ratepayers facing impending water-shut offs due to non-payment. No remaining portion of net Settlement Funds shall revert to the District. The Settlement also provides the District will forbear, until June 30, 2026, from imposing, levying or collecting new Prop 218 fees or charges that did not exist as for February 2025.

2 – MPWMD v. Cal-Am; 23CV004102

This lawsuit embodies District efforts to fulfill the electoral mandate of Measure J to acquire ownership and operation of Cal-Am's Monterey Division water supply facilities by eminent domain. Cal-Am's Dec. 16, 2024 Answer contends the District lacks the power to both acquire the water system, or to operate a retail potable water system. The District disputes Cal-Am's contentions and objections.

Judge Ian Rivamonte, appointed to Department 13A; has been assigned to this case in place of Judge Vanessa Vallarta.

Town of Apple Valley v. Apple Valley Ranchos Water, Case No. S289391

In April, 2025, the CA Supreme Court granted a Petition for Review in a case regarding the appropriate standard for a court to review a public entity's right to take public utility property (*Town of Apple Valley v. Apple Valley Ranchos Water*, Case No. S289391). Specifically, the Supreme Court agreed to resolve

the following question:

When a public entity files an eminent domain action seeking to take privately held public utility property, and the owner objects to the right to take, what is the proper standard of judicial review for the trial court to apply to determine whether the property owner has rebutted the presumptions under Code of Civil Procedure sections 1245.250, subdivision (b) and 1240.650, subdivision (c)?

Although Cal-Am states it intends to seek a stay of proceedings in the Superior Court to until the California Supreme Court clarifies applicable law for the pending case of <u>Town of Apple Valley v. Apple Valley Ranchos Water</u>, Case No. S289391, no motion to this effect has yet been filed. When these matters are filed, likely to include cross motions for Summary Judgment and Summary Adjudication, the court is likely to hold related hearings on these matters on Dec. 12. 2025. It is anticipated that a firm schedule will be set by early July.

3 – MPWMD v. Local Agency Formation Commission (LAFCO); Cal-Am; 22CV000925 6th Dist. Court of Appeal H051849

The District brought this lawsuit to challenge LAFCO's conduct and administrative decisions regarding exercise of District powers to acquire Cal-Am water system facilities in accord with the voter mandate in Measure J. On December 7, 2023 Judge Thomas Wills ruled in favor of the District, and against LAFCO. The matter is now on appeal before the Sixth District Court of Appeal.

MPWMD's Opening brief is due on August 11, 2025

4 - City of Marina; MPWMD, et al, v. California Coastal Commission (CCC); Cal-Am; 22CV004063

Following a trial on the merits held in December, 2024 and January, 2025, Judge Wills issued a final decision ruling in favor of the Coastal Commission (CCC) and Cal-Am, as Real Party in Interest. The Court found the CCC did not exceed its jurisdiction or abuse its discretion, and that CCC action was supported by substantial evidence.

Petitioning parties (City of Marina, the Marina Coast Water District (MCWD), the MCWD Groundwater Sustainability Agency and MPWMD) are evaluating merits of an appeal. Notice of Entry of Judgment was served on the parties on June 2, 2025, which started the 60-day deadline for an appeal.

5 – Matters Pending before the California Public Utilities Commission (CPUC) Actions pertaining to the Cal-Am Water System

The following actions are separate pending proceedings in which MPWMD is involved due to their impact on the Monterey area or upon the Cal-Am water system.

5.a A.21-11-024 Cal-Am Amended Water Purchase Agreement

This action deals with Cal-Am's water purchase from the Pure Water Replenishment Project, and updates Cal-Am system supplies and demand estimates.

A Proposed Decision (PD) related to Supply & Demand (Phase 2) was circulated on Friday, May 9, enabling parties to discuss the PD with Commissioners in ex parte meetings. Further action on the pending decision is anticipated this week and next. The CPUC also considered an order to extend its internal deadline to complete review of this case from June 30 to October 321, 2025.

5.b A.22-07-001 Cal-Am 2022 General Rate Case (GRC)

This case addresses Cal-Am's triennial (three-year rate cycle) request that the CPUC approve its rates and charges and authorize changes to Cal-Am's operating system. GRCs are massive filings. Cal-Am filed 40 exhibits and sponsored 25 witnesses; eight other parties participated, including MPMWD.

On May 23, 2025, acting on Cal-Am's Application for Rehearing (CPUC Decision 25-05-032), the Commission denied several of Cal-Am's special requests particularly the "decoupling mechanism" also known as a Water Revenue Adjustment Mechanism (WRAM) by which Cal-Am sough to recover revenue it alleges to have "lost" due to conservation. Key elements of this decision included denial of Cal-Am's requests for:

- A Full Decoupling Mechanism¹
- A Full Cost Balancing Account²
- Consolidation of Transmission and Distribution Costs³
- A Chemical Cost Balancing Account⁴

Conclusion

This concludes Cal-Am's three-year rate cycle GRC request which began in 2022. Cal-Am is due to submit its next rate request in July, 2025. MPWMD participation in these General Rate Case proceedings has proven to benefit Cal-Am's Monterey District customers.

¹ Cal-Am sought for a full decoupling mechanism but failed to show sufficient causal connection to conservation savings to justify full decoupling. mechanism. Instead, Commission authorized a Conservation Adjustment for Rate Tier Designs Mechanism (CART Designs), the new name for the M-WRAM. Cal-Am has the opportunity to raise this issue again as soon as July 1st when it files its 2025 General Rate Case.

² Cal-Am sought a full cost balancing account (FCBA) for Monterey due to alleged "water supply variabilities determined by hydrogeological conditions beyond its ability to predict or control." This would shift the risk for bad forecasting from Cal-Am's shareholders to its customers. The Commission denied the request but authorized a Supply Source Cost Memorandum Account "to track and record costs related to extraordinary events outside of its control that adversely impact Cal-Am's ability to use a particular supply source." Cal-Am may renew its attempt in its July 1st filing.

³ Cal-Am sought to consolidate transmission and distribution (T&D) costs from all of its California Districts and then spread the cost on a per capita basis. This is contrary to cost causation principles that customers who cause the utility to incur the expense are the customers who pay the expense. The Commission found that Cal-Am failed to justify deviating from the cost causation principle.

⁴ The chemical market experienced significant volatility and Cal-Am requested a new Chemical Cost Balancing Account. Cal-Am's own witnesses proved volatility caused by COVID had abated; the Commission denied the request.

5.c R.22-04-003 CPUC Acquisition Rulemaking

This action deals with CPUC Rulemaking that impacts statewide public utility systems with particular impact on the Cal-Am system. The scope of the proceeding focuses on proposed rules to provide a framework for Public Water System Investment and Consolidation. The effect of these rules may promote or discourage transfer of local costs which would impose subsidies of local costs to non-local systems. The scope of these regulations may affect purchase prices for distressed assets and impose subsidies on local ratepayers.

Workshop Issues are listed below:

Workshop #1: Options for Inadequately Operated and Maintained Systems.

Workshop #2: How to set fair market value of a water utility acquisitions? What appraisal process should apply to utility acquisitions? Should this include overall system value? How should potential liabilities and deferred maintenance be considered? Should water rights be valued and considered?

Workshop #3: How to examine ratepayer impacts regarding water utility acquisitions? What tests and criteria; what information to evaluate ratepayer impacts? Should rate impacts from previous acquisitions be assessed for a proposed acquisition? Should the Commission consider expanding the gain on sale rules? What cost-sharing mechanisms between ratepayers and shareholders should be considered for acquisitions?

Workshop #4: How should the Commission consider grant funding in water system acquisitions, and should investor-owned utilities be required to take grant funding if available? Should this process be coordinated with the State Water Resources Control Board (SWRCB)? Commission reporting requirements for proposed acquisitions; Framework to timely resolve acquisitions issues (e.g., proceedings or advice letters); how to evaluate acquisitions of mutual and municipal water systems.

It is not clear when a Proposed Decision will be issued by the assigned ALJ or when the matter may be submitted for consideration by the full Commission. The Statutory Deadline, extended by the Commission on Sept 12, 2024 to March 30, 2025, was further extended at Commission's December 19, 2024 meeting to September 30, 2025.

In addition to pending matters of active litigation referenced above, two matters of threatened litigation exist. as referenced below.

6 - Cal-Am v. MPWMD and Monterey One Water (action threatened by not yet filed)

By letter, Cal-Am threatened to file a breach of contract action relating to the Aquifer Storage & Recovery (ASR) Agreement among the parties. The dispute relates to the status of ASR Well.

The parties continue to cooperatively resolve their concerns and have entered into seven consecutive agreements to toll (extend) filing deadlines and facilitate their ability to reach a mutually acceptable settlement.

Cal-Am's most recent comment states it "has been working diligently to address both extraction and injection concerns relating to ASR-04. Due to a variety of technical and several DDW-related procedural issues we now believe that this will not be fully resolved for several months and perhaps up to a year."

7 - MPWMD v. SWRCB. Case No. 1-10-CV-163328 (Santa Clara County Superior Court) 10/27/2009.

Background. This matter was filed in 2010 to challenge the Cease & Desist Order (CDO) issued by the SWRCB. The case asserted four causes of action against the SWRCB related to the Cease & Desist Order. Originally filed in Monterey County, the case was transferred to Santa Clara County.

Trial was postponed by the parties due to the pendency of CPUC proceedings related to Cal-Am's "Monterey Peninsula Water Supply Project." The tolling period later passed without renewal.

Dismissal. On May 6, 2025, the Sierra Club and Carmel River Steelhead Association (CRSA), parties to this action, filed Notice of a Motion to Dismiss this Case No. 2010-10-CV163328 for Want of Prosecution. No parties challenged the requested dismissal and the moving parties have asked the court to dismiss the matter, with prejudice.

This case had been filed to contest SWRCB issuance of the CDO. Dismissal will not prohibit a later challenge that might allege the SWRCB wrongfully failed to lift or modify the CDO due to changed circumstances. An alternate claim could be based on an allegation that the SWRCB failed equitably regulate water limits for the Monterey Peninsula or treated this area in a different manner from other areas that experience similar water supply limitations.

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