ITEM 5



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

FROM: David C. Laredo, Counsel

RE: General Report of Pending Litigation effective September 15, 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 - 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 Rivamonte (Department 13A) is assigned as presiding judge for this case.

Both MPWMD and Cal-Am have filed motions to narrow the scope of contested issues (MPWMD Motion for Summary Adjudication) and (Cal-Am Motion for Summary Judgment). Both motions are presently set for hearing before Judge Rivamonte at 8:30 a.m. on December 12, 2025. Earlier, on October 28, 2025, a Case Management Conference has also been set in this case to address progress issues such as pending discovery efforts and to clarify the trial calendar as the matter proceeds. Discovery efforts are continuing.

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

The District successfully challenged LAFCO's decisions affecting and limiting MPWMD's power to acquire Cal-Am water system facilities as directed by the voter mandate in Measure J. LAFCO and Cal-Am then appealed the 2023 decision of Judge Thomas Wills. The matter is on appeal before the Sixth District Court of Appeal. Appellants LAFCO and Cal-Am have filed opening briefs; Respondent MPWMD's brief is to be filed by October 10, 2025.

3 – City of Marina; MPWMD, et al, v. California Coastal Commission (CCC); Cal-Am; Trial Case 22CV004063; 6th District Appellate Case H053560

The trial court entered judgment in this case on May 29, 2025, finding found the CCC did not exceed its jurisdiction or abuse its discretion in this matter. Parties City of Marina, Marina Coast Water District

(MCWD), and MPWMD have jointly filed a Notice of Appeal on July 24, 2025. Appellants are jointly represented by T. Peter Pierce of Richards, Watson Gershon in San Francisco. A required Mediation Statement has been timely lodged with the Appellate Court.

4 – Matters before the California Public Utilities Commission (CPUC) pertaining to Cal-Am.

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

4.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.

The Proposed Decision (PD) related to Supply & Demand (Phase 2) was originally circulated in May but was continued twice to the Commission's August agenda. The CPUC or Commission issued a Final Decision (Decision) on August 14, 2025. The Decision concluded firm water supply to be 11,114 acrefeet per year (AFY) and the demand in 2050 will be 13,372 AF. (Note: MPWMD contended this amount should have been revised to 11,204).

The Commission Rules of Practice and Procedure allows several ways to challenge all or portions of any decision. Rule 16.1 allows an Application for Rehearing (AFR) of a Commission decision within thirty (30) days after the date the Commission "mails the decision." The latest date to file and serve an AFR is September 17, 2025.

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

This section addresses our final report relating to Cal-Am's 2022 General Rate Case (CRC). The CPUC issued Decision 25-05-032 on May 23, 2025, and later modified that decision, but denied Cal-Am's request for rehearing. Key elements related to this case on which MPWMD prevailed are:

Full Decoupling Mechanism Denied

Cal-Am's request for a full decoupling mechanism was denied. Modifications the original decision (D.24-12-001) clarified the Monterey Water Revenue Adjustment Mechanism (M-WRAM) is <u>not</u> a full decoupling mechanism because it does not fully sever the water utility's revenues from its water sales. Cal-Am failed to show a sufficient causal connection to conservation savings to justify a full decoupling mechanism. The CPUC instead authorized a Conservation Adjustment for Rate Tier Designs Mechanism (CART Designs) under a new name for the M-WRAM.¹

Cal-Am nonetheless may again raise this issue as part of its 2025 General Rate Case.

¹ M-WRAMs are designed to compare revenue requirements using single block (flat-rate) design versus tiered rate design. Tiered rates result in conservation by raising the cost of water in each tier. So, if the revenue requirement using a flat rate structure is \$1,000,000 but the utility only collects \$990,000 from its tiered-rate structure, the shortfall is more likely attributable to the rate design.

Full Cost Balancing Account Denied

Cal-Am also asked for a full cost balancing account (FCBA) in Monterey and several other California Districts to address "water supply variabilities determined by hydrogeological conditions beyond its ability to predict or control." If successful, recovery would have automatically allowed costs that exceeded Cal-Am's revenue forecast, shifting risk from Cal-Am's shareholders for bad forecasting to its customers who would pay the additional cost. The CPUC denied this request but did authorize 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 failed to provide sufficient evidence to support this claim but may again raise this issue as part of its 2025 General Rate Case.

Consolidation of Transmission and Distribution Costs Denied

Cal-Am asked to consolidate transmission and distribution (T&D) costs among all its California Districts to spread the costs 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. Cal-Am argued that because T&D costs are expensive and causes rate shock in small water systems, it should be allowed to spread the cost statewide. The CPUC found Cal-Am failed to justify deviating from the cost causation principle but may again raise this issue as part of its 2025 General Rate Case.

Chemical Cost Balancing Account Denied

Cal-Am asserted chemical market volatility justified creation of a Chemical Cost Balancing Account. MPWMD showed Cal-Am's own testimony, coupled with cross-examination of witnesses, proved the COVID-caused volatility had abated. The CPUC denied the request that would have caused Monterey customers to pay Cal-Am's inaccurate forecasting.

Conclusion

MPWMD's participation and collaboration with California Advocates has improved results for Cal-Am's Monterey District customers. This report is our final review of activities related to Cal-Am's 2022 General Rate Case (CRC).

4.c A.25-07-003 Cal-Am 2025 General Rate Case (GRC)

Cal-Am filed its latest triennial rate request with the CPUC on July 1, 2025. This request is part of the regular three-year rate cycle by which the CPUC reviews and authorizes Cal-Am's rates and charges, and also by which the CPUC authorizes Cal-Am to modify its operating system. MPWMD has been granted full party statis in this proceeding, with the right to undertake discovery, and to present witnesses and evidence in forthcoming evidentiary hearings. MPWMD staff and counsel continue to assess issues presented by Cal-Am and points raised by opposing parties.

District Counsel attended a Prehearing Conference in San Francisco on Friday, August 29, 2025. Commissioner Matt Baker and Administrative Law Judge (ALJ) Rafael Lirag presided with Cal-

Am, Cal Advocates and California Water Association attending. The City of Thousand Oaks did not attend. ALJ Lirag was assigned to this case following the Commission's granting the Peremptory Challenge motion filed by the Public Advocates Office to Reassign against ALJ Long.

Future proceedings in this case will include a Public Participation Hearing (PPH) in Monterey, likely to be held in January 2026. Cal Advocates testimony is due January 23, 2026, and MPWMD testimony will be due February 6, 2026.

Evidentiary Hearings will probably be held in San Francisco (remote appearances have been discontinued) between April 20 – May 1, 2026. A Scoping Memo to be issued in the next few weeks will confirm these and other dates.

4.d R.22-04-003 CPUC Acquisition Rulemaking

This action is a statewide CPUC Rulemaking matter that addresses statewide public utility system policy, that has specific impact on the Cal-Am system. It is unclear when a Proposed Decision will be issued or when the matter may be submitted for consideration by the full Commission. The CPUC's internal Statutory deadline has been extended to September 30, 2025.

In addition to pending matters of active litigation referenced above, one matter of threatened litigation exists as referenced below.

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

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.

In July the Sierra Club (Sierra) and Carmel River Steelhead Association (CRSA) requested the action be dismissed. No parties challenged the request for dismissal and the Court subsequently granted that request.

Thereafter, on August 28, Sierra and CRSA submitted a letter demand for attorney's fees. The MPWMD Board will review this demand in closed session and provide direction to staff and counsel.

6 - CITY OF MARINA & MARINA COAST WATER DISTRICT v. RMC LONESTAR and CAL-AM - Case No. 20CV001387 (Monterey County Superior Court)

MPWMD is not a party to this action which focuses on Cal-Am's access to water and water rights. As this matter may potentially involve District interests, staff and counsel are tracking this matter.

https://delaylaredo-my.sharepoint.com/personal/dave_laredolaw_net/Documents/General Report of Pending Litigation Sept 15 (DCL2)(ml).docx