

**Amended and Restated
Aquifer Storage and Recovery
Management and Operations Agreement
between
California-American Water Company
and
Monterey Peninsula Water Management District**

This Amended and Restated Aquifer Storage and Recovery Management and Operations Agreement (“Agreement”) between California-American Water Company (“Cal-Am”), and Monterey Peninsula Water Management District (“District”) is entered into as of September __, 2020 (the “Effective Date”). Cal-Am and the District are collectively referred to herein as the “Parties” and individually as a “Party.” All capitalized terms used herein but not otherwise defined shall have the meaning set forth in Section 1 of this Agreement.

R E C I T A L S

WHEREAS, Cal-Am is an investor-owned public utility providing water service to the Monterey Peninsula; and

WHEREAS, the District is a public agency, authorized in 1977 by the California Legislature (Chapter 527 of the Statutes of 1977, as amended, found at West’s Water Law Appendix, Section 118-1, et seq.). The voters of the Monterey Peninsula ratified creation of the District in June 1978. The District holds comprehensive authority to integrate management of the ground and surface water resources in the Monterey Peninsula area; and

WHEREAS, the Monterey Peninsula has an insufficient supply of water available to it, and whereas this lack of water supply has been exacerbated by the effects of State Water Resources Control Board (“SWRCB”) Order WR 95-10, the listing of the California red-legged frog and steelhead as threatened species under the federal Endangered Species Act, SWRCB Order 2009-0060, and SWRCB Order 2016-0016; and

WHEREAS, Cal-Am and the District desire to define and clarify means by which they may cooperate and operate Aquifer Storage and Recovery (“ASR”) facilities to augment the supply of water available to the Monterey Peninsula for the benefit of Cal-Am’s customers, and the constituents of the District; and

WHEREAS, Cal-Am and the District have a mutual desire to expand and clarify the operations of existing ASR facilities, and to accelerate implementation of future ASR facilities; and

WHEREAS, the California Division of Drinking Water requires that an agreement between Cal-Am and the District clarify and define responsibilities relating to the long-term operation of the ASR facilities; and

WHEREAS, in March 2006, the Parties entered into the Aquifer Storage and Recovery (ASR) Management & Operations Agreement with an effective date of April 1, 2006 (the “Original Contract”), and the Parties now desire to amend, restate, and replace the Original Contract.

NOW, THEREFORE, BE IT RESOLVED the Parties hereby enter into this Agreement as follows:

1. Definitions.

- a. “ASR Expenses” means any costs incurred by the District in performing its portion of ASR Facilities Operations. ASR Expenses does not include any costs associated with any capital improvement projects relating to ASR Facilities.
- b. “ASR Facilities” means infrastructure and land that is dedicated to ASR well operations and not part of the Cal-Am-owned distribution system. ASR Facilities includes all pumps, motors, piping and appurtenant ASR equipment located outside the points of connection to the Cal-Am water distribution system piping. This reference shall include land and rights of way in the City of Seaside and upon former Fort Ord lands relating to Existing ASR Facilities.
- c. “ASR Facilities Operations” means any activities required by the District, who is responsible for injection at the ASR Facilities, or by Cal-Am, who is responsible for extraction at the ASR Facilities, as further described in Exhibit A to this Agreement. ASR Facilities Operations does not include any capital improvement projects relating to ASR Facilities.
- d. “Existing ASR Facilities” means ASR Facilities at the Santa Margarita Site and the Seaside Middle School Site.
- e. “Fitch Park Site” means the site where ASR Wells 5 and 6 are to be located.
- f. “Future ASR Facilities” means ASR Facilities at the Fitch Park Site.
- g. “Santa Margarita Site” means the site where ASR Wells 1 and 2 are located.
- h. “Seaside Middle School Site” means the site where ASR Wells 3 and 4 are located.

2. **Purpose.** This Agreement is intended to set forth general facts and assumptions concerning ASR facilities and operations, and to amend, restate and replace the Original Contract. This Agreement clarifies areas of joint effort and cooperation between the Parties to facilitate present and future actions. The Parties agree to cooperate in order to optimize operation of the Existing ASR Facilities for present use and benefit to the customers of Cal-Am, and the constituents of the District. The Parties agree to further cooperate to facilitate expansion or use of Existing ASR Facilities and to plan for the creation and operation of Future ASR Facilities.

3. **Parties.** The sole parties to this Agreement are Cal-Am and the District. This Agreement does not confer upon any person or entity, other than the Parties, any rights or remedies, and shall not be enforceable by any third parties.

4. **ASR Facilities Ownership.** The District shall solely and exclusively own all ASR Facilities at the Santa Margarita Site, and Cal-Am shall solely and exclusively own all ASR Facilities at the Seaside Middle School Site. The Parties agree to meet and confer, and engage in joint decision-making, with respect to any capital improvement, facility modification, and repair or maintenance effort for the ASR Facilities.

5. **ASR Facilities Operations.** The Parties shall be jointly responsible for ASR Facilities Operations as set forth in Exhibit A to this Agreement. Operations shall conform to all requirements set by the California Public Utilities Commission (“CPUC”) and the SWRCB Division of Drinking Water to meet the needs of the Cal-Am service area.

6. **Water Rights.** Cal-Am and the District jointly own and hold SWRCB water rights permit Nos. 20808A and 20808C, which authorize diversion and use of Carmel River water for ASR purposes. Cal-Am and the District agree to cooperate in activities concerning the acquisition, protection and perfection and use of water rights permit Nos. 20808A and 20808C as needed for ASR Facilities Operations; provided that, nothing in this Agreement shall affect or limit Cal-Am’s exclusive right to determine operation of the extraction wells and facilities in the Carmel River alluvial system. Cal-Am and the District agree to cooperate and support each other’s efforts to store and extract water from the ASR Facilities consistent with ASR Facilities Operations as specified herein. This Agreement shall not convey or limit, or otherwise affect, any right of either Party to store water in, or extract water from, the Seaside Groundwater Basin; rights to store and extract water in the Seaside Groundwater Basin are managed by the Seaside Groundwater Basin Watermaster pursuant to the Amended Decision, Monterey County Superior Court Case No. M66343, dated February 7, 2007, as may be further amended.

7. **Other Permits.** Subject to the provisions of Section 6 hereof, Cal-Am and the District shall cooperate in the acquisition of all other regulatory permits or approvals required for ASR Facilities Operations. The Parties agree that they shall mutually cooperate and support each other’s efforts pursuant to this paragraph, as may relate to Existing ASR Facilities and Future ASR Facilities.

8. **Planning & Construction.** Cal-Am shall be the lead entity related to the planning and construction of all ASR Facilities, excluding Santa Margarita Site for which the District shall be the lead entity.

9. **Water Charges.** The Parties shall not charge or impose any fee or other expense upon each other, except as otherwise provided for in this Agreement, for the use of the ASR Facilities.

10. **Water Use.** All water produced from storage by either the ASR Facilities shall be held exclusively for the benefit of customers of Cal-Am.

11. **ASR Expenses.** All costs associated with operation of the ASR Facilities, including but not limited to costs of administration, operation, regulatory compliance, maintenance, repair, replacement, and insurance shall be the responsibility of Cal-Am. The District shall invoice Cal-Am on a quarterly basis for the prior three-month period of ASR Expenses. Cal-Am shall reimburse the District for all reasonable ASR Expenses incurred by the District.

12. **Extraordinary Use of ASR Facilities.** Where the ASR Facilities are utilized by Cal-Am in lieu of operating other water production facilities, and when this operation does not relate to the recovery of water as part of the ASR Facilities Operations, then Cal-Am shall pay to the District any costs the District may incur with respect to the in lieu operation, including but not limited to costs of administration, operation, regulatory compliance, maintenance, repair and

replacement. Cal-Am may operate ASR Facilities for these purposes only upon the advance written consent of the District.

13. **Effective Date.** This Agreement shall take effect on the Effective Date stated above.

14. **Term.** The term of this Agreement shall be 20 years from the Effective Date subject to the early termination provisions of Section 15 herein.

15. **Event of Default and Termination.**

- a. The District or Cal-Am may, in its sole discretion, terminate this Agreement immediately upon written notice to the other Party, with no further notice or cure opportunity, if (a) Cal-Am ceases to provide water supply for the benefit of Cal-Am's customers on the Monterey Peninsula, or (b) the District no longer holds comprehensive authority to integrate management of the ground and surface water resources in the Monterey Peninsula area.
- b. The failure of any Party to perform any material term, covenant, or condition of this Agreement, and the failure continues for more than thirty (30) days following the defaulting Party's receipt of written notice of such default from a non-defaulting Party, shall constitute an "Event of Default" under this Agreement; provided, however, that if and to the extent such Event of Default cannot reasonably be cured with such thirty (30) day period, and if the defaulting Party has diligently attempted to cure the same within such thirty (30) period and thereafter continues to diligently attempt to cure the same, then the cure period provided for herein shall be extended from thirty (30) days to one-hundred twenty (120) days. If an Event of Default occurs, any non-defaulting Party may terminate this Agreement immediately upon written notice to the other Party. A non-defaulting Party may enforce any and all rights and remedies it may have against a defaulting Party under applicable law.

16. **Disposition of Assets.** Upon the expiration or termination of this Agreement, the Parties agree to the disposition of assets as follows:

- a. **Water Rights.** Cal-Am and the District will own equal interests in SWRCB water rights permit Nos. 20808A and 20808C, and each shall have a right of first refusal to purchase or otherwise acquire, for fair market value, the water right permits from the other for continued ASR Facilities Operation of the ASR Facilities.
- b. **ASR Facilities.** Cal-Am and the District will own the ASR Facilities as described in Section 4 hereof, and each shall have a right of first refusal to purchase or otherwise acquire, for fair market value, the ASR Facilities from the other for continued ASR Facilities Operation.

17. **Limitation.** It is understood by the Parties that all agreements, obligations, debts and liabilities of Cal-Am do not constitute the agreements, obligations, debts and/or liabilities of the District, its officers, agents and employees. Further, it is understood by the Parties that all agreements, obligations, debts and liabilities of the District do not constitute the agreements, obligations, debts and/or liabilities of Cal-Am, its officers, agents and employees.

18. **California Public Utilities Commission.** Cal-Am and the District recognize and acknowledge that Cal-Am is subject to certain regulatory practices and authority of the CPUC, and that Cal-Am may require expenditure authorization from the CPUC in order to implement discrete aspects of this Agreement. The Parties agree to work cooperatively, and with due diligence, to obtain any CPUC approval necessary to implement this Agreement.

19. **Assignment.** This Agreement, and rights referenced herein, shall be assignable by either Party only upon the advance written consent of the other Party, which consent shall not be unreasonably withheld.

20. **Arbitration.** In case any disagreement, difference, or controversy shall arise between Cal-Am and the District with respect to any matter in relation to or arising out of or under this Agreement, whether as to the construction or operation thereof, or the respective rights and liabilities of Cal-Am or the District, and the parties cannot mutually agree as to the resolution thereof, then such disagreement, difference, or controversy shall be determined by arbitration under the commercial arbitration rules of the American Arbitration Association or upon such other rules as the Parties may agree, provided that the arbitrator shall be a former judge of the Superior Court or the Court of Appeal. Any arbitration hearing shall be noticed and open to the public. The submission to arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrators, provided it shall not exceed the sum of fifty thousand dollars (\$50,000), shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the arbitration, and the Prevailing Party shall be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees shall be considered costs recoverable in that proceeding and be included in any award.

21. **Litigation.** If a dispute arises relating to performance under this Agreement, where the amount or value relating to the controversy exceeds fifty thousand dollars (\$50,000), or for any arbitration award that exceeds fifty thousand dollars (\$50,000), then either Party may choose to skip any arbitration requirement in Section 19, and if already completed, that arbitration shall be deemed advisory. The dispute shall instead be resolved in a court of law competent to hear the matter. Venue for the matter shall be in the County of Monterey. The Prevailing Party shall be awarded costs of suit, and reasonable attorneys' fees and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs and attorney fees shall be considered costs recoverable in that proceeding and be included in any award.

22. **Entire Agreement.** This Agreement represents the entire agreement between the Parties and supersedes any prior written or oral negotiations and representations between the Parties.

23. **Amendment.** This Agreement may be amended or modified only by an instrument in writing duly approved and signed by each Party hereto. Any waiver of any terms or conditions must be in writing and signed by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement:

Dated:

David J. Stoldt
General Manager
Monterey Peninsula Water Management District

Garry Hofer
Vice President, Operations
California-American Water Company

EXHIBIT A
ASR FACILITIES OPERATIONS

[TO BE PROVIDED – COOK, O’HALLORAN AND LEAR TO DRAFT]