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TO: Chair Andrews, Members of the Board and General Manager Stoldt
FROM: David C. Laredo, Counsel
RE: General Report of Pending Litigation effective August 16, 2024

This memo presents a public summary of litigations matters that are deemed to be open and active. This is a recurring memo; data that is newly updated since last month's report are shown in **highlighted redline text**.

1 – Monterey Peninsula Taxpayers Association (MPTA) cases:

Cases brought by MPTA are part of a series of five (5) separate lawsuits. These five cases collectively challenge various aspects of the District's collection of the Water Supply Charge, only the last four of the cases referenced below are actively pending.

1.a MPTA I – MPTA v. MPWMD; M123512

MPTA brought an initial challenge against District collection of the Water Supply Charge on the owners served by the District. Judge Thomas Wills ruled in favor of the District, and against the challenge brought by MPTA. This matter is no longer pending and is deemed final.

**1.b MPTA II – MPTA v. MPWMD; Monterey County Superior Court 21CV003066
6th Dist. Court of Appeal H0-51128**

MPTA brought a second challenge against the District collection of the Water Supply Charge on the owners served by the District, raising different grounds as compared to the allegations in MPTA I. Judge Panetta ruled against District collection of the charge, in favor of MPTA. The matter is now on appeal before the Sixth District Court of Appeal.

The District seeks reversal of the trial court's writ compelling suspension of its annual charge contending MPTA failed to timely file a validation claim, and also that District Ordinance No. 152 properly authorizes support collection of that charge.

The appellate case has been fully briefed by all parties. Oral arguments have been set for Thursday, September 5 at 9:30 a.m. before the 6th District Appellate Court at 333 W. Santa Clara Street, Suite

1060, San Jose. **Names of the Justices assigned to this panel are not yet known. An announcement as to the Justices assigned to this panel is expected in mid-August.**

1.c MPTA III – MPTA v. MPWMD; Monterey County Superior Court 22CV002113

MPTA brought this third challenge against District collection of the Water Supply Charge on the owners served by the District, raising different grounds as compared to the allegations in both MPTA I and MPTA II.

The parties have agreed to postpone active litigation of this matter pending a ruling from the Sixth District Court of Appeal in connection with MPTA II.

1.d MPTA IV - MPTA v. MPWMD; Monterey County Superior Court 23CV002453

MPTA brought this fourth challenge against District collection of the Water Supply Charge on the owners served by the District, raising grounds similar to MPTA III but extending the term for the following applicable tax year.

As with the agreement to postpone of litigation of MPTA III, further action on this matter will pend until a ruling is issued from the Sixth District Court of Appeal in connection with MPTA II.

1.e MPTA V - MPTA v. MPWMD; Monterey County Superior Court 24CV002642

MPTA has filed this fifth challenge against District collection of the Water Supply Charge, raising grounds similar to MPTA III and IV with respect to this current tax year, but this action also includes class claims and frames a class action on behalf of property owners. **The action has been served upon the District, but the trial court signed an order to stay this class action pending resolution of the appeal by the Sixth District Court of Appeal in connection with MPTA II.**

2 – MPWMD v. Cal-Am; 23CV004102

This pending lawsuit embodies the District’s effort to fulfill the electoral mandate of Measure J to acquire ownership and operation of Cal-Am’s Monterey Division water supply facilities.

Judge Vanessa Vallarta is the presiding judge for this case. It remains at an early stage; Cal-Am has challenged aspects of the lawsuit (by demurrer) Judge Vallarta has set a second hearing on the demurrer for Friday, August 23, 2024 (Dept. 13A; 8:30 a.m.). A Case Management Conference is set for Tuesday, August 27, 2024 (Dept. 13A; 9:30 a.m.). Discovery efforts have also begun.

**3 – MPWMD v. Local Agency Formation Commission (LAFCO); Cal-Am; 22CV000925
6th Dist. Court of Appeal H0-51849**

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. Briefing schedules and any dates for oral argument have not yet been set.**

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

This pending lawsuit incorporates multiple actions by Petitioners City of Marina, the Marina Coast Water District (MCWD), the MCWD Groundwater Sustainability Agency and MPWMD that collectively challenge CCC issuance of a Coastal Development Permit to Cal-Am to grant conditioned approval of Cal-Am’s proposed Desalination Project. Cal-Am is a direct party as a real party in interest to this proceeding.

The CCC has prepared and lodged the administrative record with the Superior Court. Petitioners filed Opening Briefs on July 17th, Opposition Briefs are to be filed in late August; Reply Briefs will be filed 30 days thereafter. A hearing on the merits is anticipated in November 2024.

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 request to purchase water from the Pure Water Replenishment Project and its expansion.

Earlier phases of this case dealt primarily with Cal-Am’s request that the CPUC authorize the Company to enter into the Amended and Restated Water Purchase Agreement for Pure Water Expansion. The most recent phase has addressed the need to update water supply and water demand calculations related to the Cal-Am system.

Phase 2 briefs have been filed by all parties. It is not clear when a Proposed Decision will be issued by the assigned ALJ or when the matter may be submitted for action by the full Commission. An **Order Extending Statutory Deadline to 12/31/2024 was published 7/16/2024.**

District staff and counsel have set several ex parte meetings with staff of CPUC Commissioners to ensure they have an up-to-date understanding of issues pertaining to the proposed decision.

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

This action deals with Cal-Am triennial request that the CPUC approve both rates and charges, and changes to the Cal-Am operating system for a three-year rate cycle. The evidentiary phase of the case has been concluded. ALJ Rambo conducted the evidentiary hearing. The case has been reassigned effective 4/22/2024 from Commissioner Genevieve Shiroma to Commissioner Karen Douglas because the former Commissioner left the Commission.

Cal-Am and the Public Advocates Office have submitted a partial proposed settlement of issues, but issues which remain in dispute include, but are not limited to,

- (1) Rate design;
- (2) Special Request #1 - Monterey Water Revenue Adjustment Mechanism;

- (3) Special Request #2 - Full and Incremental Cost Balancing Accounts;
- (4) Special Request #3 - Annual Consumption Adjustment Mechanism;
- (5) Special Request #4 - Consolidation of Transmission and Distribution Net Plant Costs;
- (6) CAW's request to deviate from Uniform System of Accounts (in Special Request #5);
- (7) CAW's request to recover \$3.3 million annual earthquake insurance premiums;
- (8) Special Request #9 - Placer County Water Agency ("PCWA") Capacity Cost Recovery;
- (9) Special Request #13 - Chemical Cost Balancing Account; and
- (10) Special Request #14 to recover balances beyond the 15% WRAM cap.

Further action by the parties awaits issuance of a Proposed Decision, expected later this calendar year. An Order Extending Statutory Deadline to 9/30/2024 was received 7/1/2024.

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

This action deals with CPUC Rulemaking. It impacts statewide public utility systems and has particular impact on the Cal-Am system. The scope of the proceeding is to propose 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.

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. An Order Extending Statutory Deadline to 12/31/2024 was received 7/1/2024.

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 – *Sierra Club v. Monterey Peninsula Water Management District, et al., Case No. MI08149/M66343 (consolidated for trial); Sixth District Court of Appeal, Case No. H037286.*

On July 24, 2024, an attorney for the Sierra Club, Larry Silver, sent an email advising they will be retaining counsel to reactivate a claim for attorney's fees related to an earlier lawsuit referenced above.

The underlying dispute related to this threat relates to the Sierra Club challenge to a water distribution system permit issued by the District for the Monterey Bay Shores Ecoresort project. Both the trial court and appellate court validated all actions taken by the District in that matter. The Court of Appeal rejected the central Sierra Club argument – that the District failed to consider environmental impacts “associated with” issuance of the permit, specifically impacts on the Carmel River. Moreover, the 6th District noted the Sierra Club did not point to any evidence that indicated the conditions of approval were insufficient to insure no Carmel River Water would be used to serve the Ecoresort. The Court noted that “unsubstantiated fears and desires of project opponents do not constitute substantial evidence.”

As a notable condition of their permit, both Cal-Am and SNG agreed to reimburse costs incurred by the District for its attorney efforts, both at the trial and appellate levels. To record this obligation, MPWMD, Cal-Am and SNG entered into a Joint Defense Agreement relating to legal proceedings associated with the WDS permit. The Joint Defense was later amended by the parties to include proceedings associated with the Appeal, H037286.

District Counsel is coordinating review and response occasioned by the July 24, 2024 Sierra Club demand. Action is needed at this time with respect to the email advising the Sierra Club intends to reactivate a claim for attorney’s fees referenced above.