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18 MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT

**EXEMPT FROM FILING FEES
PER GOVERNMENT CODE §6103**

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF MONTEREY

21 MONTEREY PENINSULA WATER
22 MANAGEMENT DISTRICT,

Case No.

Judge:

23 Plaintiff,

**PLAINTIFFS' COMPLAINT IN EMINENT
DOMAIN**

24 vs.

25 CALIFORNIA-AMERICAN WATER
26 COMPANY, a California corporation; DOES 1
through 50, inclusive,

Date Action Filed: December 15, 2023
Trial Date: Not Set

27 Defendants.

1 Plaintiff MONTEREY PENINSULA WATER MANAGEMENT DISTRICT alleges as
2 follows:

3 **THE PARTIES**

4 1. Plaintiff MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
5 (“MPWMD,” “District” or “Plaintiff”) is now, and at all times mentioned herein has been, a
6 special district and public agency that manages the Monterey Peninsula’s water resources. The
7 Legislature established the MPWMD in 1977 and granted it broad powers to manage and regulate
8 water use and distribution on the Monterey Peninsula. Pursuant to its own enabling legislation,
9 the Monterey Peninsula Water Management District Act, Statutes of 1977, Chapter 527, the
10 Legislature granted MPWMD, among other powers, the power “[t]o acquire public or private
11 water systems necessary or proper to carry out” its purposes. MPWMD has the authority to
12 acquire property, including without limitation privately held water systems, by eminent domain
13 under its enabling legislation, California Water Code §§ 71693 and 71694, and California Code of
14 Civil Procedure §§ 1240.010 *et seq.* and 1240.610 *et seq.*. The California Supreme Court
15 recognized the scope of the District’s authority and power in *Monterey Peninsula Water*
16 *Management Dist. v. Public Utilities Com.* (2016) 62 Cal.4th 693, 695.

17 2. Defendant CALIFORNIA AMERICAN WATER COMPANY (“Cal-Am” or
18 “Defendant”) is now, and at all times mentioned herein has been, a California corporation, and, to
19 the best of MPWMD’s knowledge, the owner of the property interests sought to be acquired by
20 eminent domain as alleged in this Complaint and referred to as the “Subject Property Interests.”

21 3. The names of all Defendants, so far as the same are presently known to Plaintiffs,
22 are set forth in full in the caption of this Complaint, and are incorporated by this reference as
23 though fully set forth in this paragraph. Plaintiff will amend this Complaint to add additional
24 named Defendants as the same may be ascertained.

25 4. Plaintiff is informed and believes and on that basis alleges that Defendants Does 1
26 through 50, inclusive, each have or claim to have an interest in the property interests sought to be
27 acquired by eminent domain in this proceeding (“Subject Property Interests”), the exact nature of
28 which interests are currently unknown to Plaintiff. The true names and capacities, whether

1 individual, corporate, or otherwise, of Defendants Does 1 through 50, inclusive, are unknown to
2 Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiffs will amend this
3 Complaint to show their true names and capacities when the same have been ascertained.

4 **JURISDICTION AND VENUE**

5 5. Pursuant to Code of Civil Procedure § 1250.010, with certain exceptions not
6 applicable here, all eminent domain proceedings in California are to be filed in the California
7 Superior Court.

8 6. All the property interests sought to be acquired in this proceeding are located
9 within the County of Monterey and, thus, venue is proper in the Monterey County Superior Court
10 pursuant to Code of Civil Procedure § 1250.020.

11 **FACTUAL ALLEGATIONS**

12 7. At the election held on November 6, 2018, the Monterey Peninsula Water
13 Management District electorate adopted a citizen’s ballot initiative, Measure J, with 56% voting in
14 favor and 44% voting against. Measure J directed MPWMD to pursue acquisition of Cal-Am’s
15 water delivery system. Measure J specifically called for Rule 19.8 to be added to MPWMD’s
16 Rules and Regulations. In turn, Rule 19.8 directed MPWMD to investigate the feasibility of
17 acquiring portions of Cal Am’s Monterey service area and, if feasible, to pursue acquisition of the
18 same. The specific language of Measure J states that, “if and when feasible, to secure and
19 maintain public ownership of all water production, storage and delivery system assets and
20 infrastructure . . . within its territory . . . for the benefit of the District as a whole.”

21 8. Cal-Am is an investor-owned utility that operates private water systems throughout
22 California, including its Monterey system. For decades, Cal-Am has unlawfully diverted water
23 from the Carmel River to deliver water to the Monterey Peninsula. Cal-Am’s recent efforts to find
24 a new water supply, including the Carmel River Dam, Moss Landing Desalination Plant, and its
25 Regional Desalination Project all failed, resulting in significant costs that Cal-Am currently
26 recovers through the water rates that Monterey customers must pay. Due to these and other costs,
27 studies have found that under Cal-Am’s operation, the Monterey Peninsula’s water service has
28 become the most expensive water service in the entire United States.

1 9. After conducting a preliminary economic feasibility analysis on the possible
2 acquisition of Cal-Am’s Monterey Peninsula service area, MPWMD commissioned an appraisal
3 of the Monterey water system, including without limitation all Subject Property Interests.

4 10. In connection with its consideration of the acquisition, and the adjustment of
5 MPWMD’s boundary (discussed in more detail below), on October 15, 2020, MPWMD’s Board
6 of Directors certified an environmental impact report (“EIR”) pursuant to the California
7 Environmental Quality Act (“CEQA”) relating to the acquisition. The EIR analyzed the potential
8 environmental impacts of acquiring the Subject Property Interests while continuing system
9 operations in their current form. The following month, on or about November 25, 2020, Cal Am
10 filed a petition for writ of mandate in the Monterey County Superior Court, challenging the
11 certification of the EIR, in *California-American Water Company v. Monterey Peninsula Water*
12 *Management Dist.*, Monterey County Superior Court Case No. 20CV003201 (the “CEQA
13 Action”).

14 11. On or about November 19, 2021, the Monterey County Superior Court, the
15 Honorable Thomas W. Wills, Judge Presiding, issued an Order Re: Petition for Writ of Mandate in
16 the CEQA Action, denying Cal-Am’s writ petition and explaining: 1) MPWMD was not required
17 to prepare the EIR for the acquisition in the first place given that it fell within the “existing
18 facilities” exemption; and 2) even if an environmental impact report were required, MPWMD’s
19 EIR “was not inadequate.”

20 12. The Court entered judgment against Cal-Am and in favor of MPWMD in the
21 CEQA Action on or about December 10, 2021. Notice of Entry of Judgment in the CEQA Action
22 was provided on or about January 3, 2022. Cal-Am did not appeal the judgment, which judgment
23 is now final.

24 13. In addition to preparing and certifying an EIR for the proposed acquisition,
25 MPWMD also submitted an application to the Monterey County Local Agency Formation
26 Commission (“LAFCO”) to annex 58 parcels located within subdivisions adjacent to MPWMD’s
27 boundary. The annexation allowed MPWMD’s acquisition of Cal-Am’s system across the entirety
28 of the subdivisions, avoiding severance of the portions of the Monterey system to be acquired

1 within MPWMD’s former boundary from the balance of the subdivisions situated outside of
2 MPWMD’s previous boundaries. Because it submitted an application with respect to the
3 foregoing annexation request, MPWMD also concurrently applied for LAFCO’s consent to
4 activate latent powers to engage in retail water services. MPWMD did not need to do so, but
5 MPWMD included within its annexation application an additional request to formally activate
6 MPWMD’s latent powers with the intent to avoid a costly dispute with Cal-Am as to whether or
7 not such LAFCO approval was required. LAFCO’s approval would have resolved the issue as a
8 matter of law, eliminating a potential dispute as to whether such powers needed to be “activated”
9 in the first place.

10 14. On or about December 6, 2021, LAFCO approved MPWMD’s annexation
11 application and ancillary requests, but rejected MPWMD’s request that LAFCO formally
12 “activate” MPWMD’s latent powers to operate a water service for retail customers. MPWMD
13 sought reconsideration of LAFCO’s denial, which LAFCO again rejected on February 28, 2022.
14 On April 1, 2022, MPWMD timely filed its Petition for Writ of Mandate in this Court seeking a
15 writ of mandate directing LAFCO to vacate and set aside its denial of MPWMD’s request to
16 activate latent powers, in *Monterey Peninsula Water Management Dist. v. Local Agency*
17 *Formation Commission of Monterey County*, Monterey County Superior Court Case No.
18 22CV000925 (the “LAFCO Action.”)

19 15. While the LAFCO Action was pending, MPWMD’s appraisers completed their
20 appraisal of the Subject Property Interests sought to be acquired in this action and, on or about
21 April 3, 2023, MPWMD made an offer to Cal-Am to acquire the Subject Property Interests in an
22 amount equal to the full amount of its appraisal. Cal-Am rejected the offer on or about April 28,
23 2023, indicating it was not interested in selling the system.

24 16. On October 10, 2023, after providing the required notice pursuant to the California
25 Eminent Domain Law, MPWMD held a hearing to consider the adoption of a “resolution of
26 necessity” authorizing MPWMD to utilize its eminent domain power to acquire the Subject
27 Property Interests. The hearing was held to receive and consider evidence offered by MPWMD
28 staff, Cal-Am, and the public, on the following specific issues:

- 1 a. Whether the public interest and necessity require the conversion of Cal-
2 Am’s water distribution system to public ownership and operation (the “Proposed Public Use” or
3 “Project”);
- 4 b. Whether the Project is planned and located in the manner that will be most
5 compatible with the greatest public good and least private injury;
- 6 c. Whether the Subject Property Interests, described in more detail below, are
7 necessary for the Proposed Public Use;
- 8 d. Whether MPWMD is authorized by statute to exercise its power of eminent
9 domain to acquire the Subject Property Interests;
- 10 e. Whether the Proposed Public Use is a more necessary public use than
11 retention of the Subject Property Interests by Cal-Am, pursuant to Code of Civil Procedure
12 § 1240.610;
- 13 f. Whether the offer required by California Government Code § 7267.2 had
14 been made to the owner of record;
- 15 g. Whether MPWMD had complied with the California Environmental
16 Quality Act (“CEQA”) with respect to its adoption of the resolution of necessity and approval of
17 the Project; and
- 18 h. Whether any other legal or factual issues raised by Cal-Am or others were
19 relevant to MPWMD’s right and authority to acquire the MWS for the Proposed Public Use by
20 eminent domain.

21 17. At the October 10th hearing, MPWMD’s Board of Directors took evidence and
22 testimony from MPWMD staff, representatives from Cal-Am, and members of the public.
23 Testimony was received in person, and by remote Zoom participation. At the conclusion of the
24 hearing, the MPWMD Board of Directors adopted Resolution No. 2023-13 (the “Resolution of
25 Necessity”) and made each and every finding required by law to pursue acquisition of the Subject
26 Property Interests by eminent domain. The Board of Directors made 83 separate specific findings,
27 supported by evidence, in support of adopting the Resolution of Necessity. A true and correct
28 copy of the Resolution of Necessity, excluding all exhibits contained in the last section of

1 Appendix B to the Resolution of Necessity, is attached hereto as Exhibit 1. The Resolution of
2 Necessity, including Appendices A and B in their entirety, and all Exhibits and evidence contained
3 and referenced in Appendix B, are incorporated into this Complaint by this reference. Given the
4 voluminous nature of the evidence, Plaintiff has removed from Appendix B the exhibits in support
5 of the 83 findings set forth in Appendix B.

6 18. The Resolution of Necessity found and determined that LAFCO approval was not
7 required to enable the District's sale of retail water because MPWMD has provided retail sales
8 since 1994, a date that precedes the Cortese-Knox Act of 2000. The Resolution of Necessity also
9 found and determined that LAFCO approval is not required as a precursor to the District's
10 acquisition of the property interests sought to be acquired by this action.

11 19. The Subject Property Interests sought to be acquired in this proceeding by eminent
12 domain are described in detail in Appendix A to the Resolution of Necessity attached as Exhibit 1
13 to this Complaint, which Appendix A is incorporated in this Complaint by this reference and is
14 referred to throughout this Complaint as the "Subject Property Interests."

15 20. On or about October 25, 2023, the Monterey County Superior Court, the Honorable
16 Thomas W. Wills, Judge Presiding, issued its Intended Statement of Decision in the LAFCO
17 Action that stated "a peremptory writ of mandate shall issue," overturning LAFCO's decision
18 denying MPWMD's application to activate MPWMD's latent powers and remanding the matter
19 back to LAFCO for further proceedings consistent with the Court's rulings.

20 **FIRST CAUSE OF ACTION**

21 **Eminent Domain**

22 **(By MPWMD Against All Defendants)**

23 21. MPWMD incorporates by this reference each and every allegation set forth in
24 Paragraphs 1 through 20, inclusive, of this Complaint as if set forth in full here.

25 22. In this action, MPWMD seeks to acquire by eminent domain the Subject Property
26 Interests, including all real, personal and intangible property, described in detail in Appendix A to
27 the Resolution of Necessity attached hereto as Exhibit 1.

28 23. Prior to the adoption of the Resolution of Necessity, MPWMD sought Cal-Am's

1 cooperation and assistance with respect to identifying the specific assets, facilities, easements and
2 other property interests Cal-Am owns and operates within MPWMD's boundaries. Cal-Am
3 refused to so cooperate, requiring MPWMD to identify such interests through a comprehensive
4 title search, public records, filings by Cal Am with the California Public Utilities Commission
5 ("CPUC"), and physical observations. MPWMD will amend this Complaint in the event it
6 discovers certain items need to be added, modified or eliminated from the description of the
7 Subject Property Interests as identified herein.

8 24. MPWMD seeks to acquire the fullest extent of Defendants' right, title, and interest
9 in the Subject Property Interests.

10 25. MPWMD's purpose for acquiring the Subject Property Interests is to convert Cal
11 Am's privately owned and operated water distribution system into a publicly owned water
12 distribution system, and thereafter to operate that system (i.e., the "Proposed Public Use").

13 26. MPWMD appraised the Subject Property Interests and on or about April 3, 2023,
14 presented an offer of just compensation to Cal-Am for purchase of the Subject Property Interests
15 in an amount not less than the amount of MPWMD's approved appraisal, in accordance with
16 applicable requirements of law. MPWMD attempted to negotiate the acquisition of the Subject
17 Property Interests, but negotiations were not successful, requiring this acquisition by eminent
18 domain.

19 27. Prior to commencement of this action, on October 10, 2023, and after providing the
20 notice and conducting a hearing as required by Code of Civil Procedure § 1245.235, MPWMD's
21 Board of Directors duly and regularly adopted its Resolution of Necessity authorizing and
22 directing the acquisition of the Subject Property Interests by eminent domain, and declaring the
23 public interest and necessity therefor. The Resolution of Necessity was passed and adopted by no
24 less than two-thirds of the eligible members of MPWMD's Board of Directors as required by
25 Code of Civil Procedure § 1245.240.

26 28. MPWMD's Board of Directors found and determined in the Resolution of
27 Necessity, *inter alia*, that:

28 a. The public interest and necessity require the Proposed Public Use;

- 1 b. The Proposed Public Use is planned and located in the manner most
- 2 compatible with the greatest public good and least private injury;
- 3 c. The Subject Property Interests sought to be acquired are necessary for the
- 4 Proposed Public Use;
- 5 d. The Proposed Public Use is a more necessary public use pursuant to Code
- 6 of Civil Procedure §§ 1240.610 et seq.;
- 7 e. The offer required by California Government Code § 7267.2(a), together
- 8 with the accompanying appraisal in lieu of a statement of and summary of the basis for the amount
- 9 established as just compensation, was made to Cal Am;
- 10 f. MPWMD has statutory authority to acquire the Subject Property Interests
- 11 by eminent domain;
- 12 g. MPWMD has complied with all conditions and statutory requirements
- 13 necessary to exercise the power of eminent domain to acquire the Subject Property Interests;
- 14 h. The previously certified EIR continues to be sufficient for use in
- 15 conjunction with MPWMD’s consideration and approval of the Resolution of Necessity;
- 16 i. LAFCO’s approval of MPWMD’s request for formal “activation” of latent
- 17 powers to sell water to retail customers was not, and is not, required for MPWMD’s acquisition,
- 18 ownership, management and operation of the Subject Property Interests; and
- 19 j. Each and every fact, matter and thing set forth in the Resolution of
- 20 Necessity was and is true.

21 29. Subject to Paragraphs 3 and 4 of this Complaint, the names of all owners and

22 claimants of the Subject Property Interests sought to be condemned herein, insofar as they are

23 known to Plaintiff, are set forth in this paragraph. Plaintiff has set out opposite each named

24 Defendant a statement of possible interest of each defendant in the Subject Property Interests:

<u>Defendant</u>	<u>Possible Interests</u>
CALIFORNIA-AMERICAN WATER COMPANY, a California corporation	Record Owner

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- 4. For litigation expenses and costs as provided by law; and
- 5. For such other and further relief as the Court deems just and proper.

Dated: December 15, 2023

RUTAN & TUCKER, LLP
DOUGLAS J. DENNINGTON
MICHAEL RUBIN
JAYSON PARSONS
SCOTT COOPER



By: _____
Douglas J. Dennington
Attorneys for Plaintiff
MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

Exhibit 1

(The Resolution of Necessity - Excluded Here