#### ITEM: ADMINISTRATIVE HEARING

CONSIDER AMENDMENT TO BISHOP WATER DISTRIBUTION SYSTEM (CALIFORNIA-AMERICAN WATER COMPANY) TO PRODUCE AND DELIVER SEASIDE BASIN ALTERNATIVE PRODUCTION ALLOCATION TO ASSESSOR PARCEL NUMBERS: 173-121-004, 005, 023 (FORMERLY 173-121-006), AND 026 (FORMERLY 173-121-007)

**Meeting Date:** September 15, 2020

Prepared By: Gabriela Bravo

**SUMMARY:** The MPWMD staff hearing officer will consider Application #20200624BUCAW (**Exhibit A**) submitted on June 24, 2020, by co-applicants California American Water (CAW) and Bishop, McIntosh & McIntosh (BMM). (**Exhibit A**). The proposed amendment would allow a recognized Seaside Groundwater Basin Alternative Production Allocation assigned to the BMM "Recipient Parcels" (173-121-004, 005, 023 and 026) to be produced and supplied through the CAW-Bishop Unit Water Distribution System (WDS). The amendment would increase the number of Connections served by CAW-Bishop Unit by 105 and increase System Capacity permitted under WDS Permit No. M15-03-L3 by ten (10) Acre-Feet per Year (AFY). This action necessitates changes to the current Conditions of Approval for the CAW Bishop Unit.

For non-controversial WDS matters, District Rule 22 allows the General Manager, in consultation with the Board Chairperson, to direct that a hearing be scheduled before the General Manager (or his/her designee) as the sole hearing officer. Notice of the staff action shall be provided to the public via the "Appealable Decisions" section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, "Appeals." This hearing was noticed for at least ten days around the project site as well as on the District's website and office window.

**DISCUSSION:** The following paragraphs describe the proposed Findings and Conditions of Approval as required by MPWMD Rule 22.

Findings of Approval: Findings of Approval for Application 20200624BUCAW (Exhibit B) are based on evidence provided in the Application materials, including supporting documents on file at the District office. With the Findings of Approval and previous action by the Monterey County Superior Court (Adjudication Decision), District staff believes a Finding can be made that the application meets the criteria and minimum standards for approval set by District Rules 22-B and C. Specifically, this action should "not create an Overdraft or increase an existing Overdraft" (Rule 22-C-4).

<u>Conditions of Approval</u>: Permit #M15-03-L3-A results in amended Conditions of Approval for the CAW Bishop Unit shown as (**Exhibit C**). The key substantive change for the Bishop Unit is new language to allow the Recipient Parcels which have a Seaside Basin Alternative Production Allocation to receive the Alternative Production through the CAW Bishop Unit. This action

includes the ability to receive water through the emergency intertie between the Bishop Unit and the Ryan Ranch Unit.

**CEQA Compliance:** A Class 1 Categorical Exemption for minor alterations to existing facilities for an investor-owned public utility applies to this action (CEQA Guidelines 15301-b). For a Class 1 exemption, CEQA Guidelines 15301 states: "The key consideration is whether the project involves negligible or no expansion of an existing use" beyond that existing at the time of the lead agency's determination.

District staff and Counsel also reviewed the CEQA "Exceptions" (Guidelines 15300.2), which can override an exemption in certain situations. Section 15300.2(a) is for a *location* that is a "particularly sensitive environment" such as designated critical habitat for a listed species. It does not apply to Class 1 exemptions and applies only to Classes 3,4,5,6 and 11.

**RECOMMENDATIONS:** District staff recommends that the staff hearing officer take the following actions:

- 1. Adopt the MPWMD Findings of Approval for Application #20200624BUCAW for the CAW Bishop Unit McIntosh Amendment.
- 2. Amend California American Water Bishop Unit WDS (Permit #M15-03-L3-A) to produce and deliver Seaside Basin Alternative Production Allocation to Assessor Parcel Numbers: 173-121-004, 005, 023 and 026 (referred to herein as the "CAW Bishop Unit McIntosh Amendment); authorize issuance of MPWMD Permit #M15-03-L3-A. This action will result in amended Conditions of Approval for the CAW Bishop Unit.
- 3. Direct staff to file a Notice of Exemption with the County Clerk: This would be a Class 1 Categorical Exemption for existing facilities of an investor-owned public utility with negligible changes pursuant to CEQA Guidelines Section 15301(b) (Exhibit D).

BACKGROUND: The Bishop Water Company was formed in 1962 to serve 46 lots in the Laguna Seca Estates No. 1 Subdivision. By 1969, York School and the Laguna Seca Golf Couse buildings were added to the system. No limits were set by MPWMD, as the District was not formed until 1978. In May 1981, the District approved a System Capacity of 99 AFY with an Expansion Capacity of 99 connections, which included service to Laguna Seca Estates No. 2. By 1988, the System Limits grew to 200 AFY production for 194 Connections, including service to the Laguna Seca Office Park. In April 1996, the District approved the annexation of the Bishop Water Company into the CAW system, to be operated as a separate unit (CAW Bishop Unit). In October 1996, the District approved annexation of the Pasadera Subdivision (previously called Laguna Seca Ranch) which resulted in the current System Limits of 295 AFY production to serve 454 total Connections.

<u>CAW Interconnections and Main Extension</u>: As part of its General Rate Case (GRC) Decision (D.09-07-021) for years 2009-2011, CAW requested approval from the California Public Utilities Commission (CPUC) to install a 300-foot, 12-inch diameter main interconnection between the Ryan Ranch and Bishop systems. An emergency interconnection already existed between the

Monterey Main System and the Ryan Ranch Unit. The Decision approved the Bishop Unit interconnection and authorized CAW to file an advice letter for inclusion in plant in service upon completion of the interconnection project. CAW perfected the interconnection following District approval in 2015.

California Public Utilities Commission Decision 18-09-017 (Decision Approving a Modified Monterey Peninsula Water Supply Project, Adopting Settlement Agreements, Issuing Certificate of Public Convenience and Necessity and Certifying Combined Environmental Report) listed a water main extension from the Monterey Main System in the Seaside Groundwater Basin through Ryan Ranch and to the Bishop Unit as one of two main extension projects to provide adequate water supply to these systems. This was identified as Secondary Objective 3 of the Amended Application of Cal-Am Water Company, filed March 14, 2016: "Improve the ability to convey water to the Monterey Peninsula cities by improving the existing interconnections at satellite water systems..."

#### **EXHIBITS**

- A Application #202006024BUCAW received June 24, 2020
- **B** Draft Findings of Approval
- C Draft Amended Conditions of Approval
- **D** Posting Notice
- **E** Notice of Exemption





## APPLICATION for a PERMIT to CREATE or AMEND a WATER DISTRIBUTION SYSTEM or MOBILE WDS

For detailed guidance, please visit the District website at:

<a href="http://www.mpwmd.net/regulations/wells-water-systems/water-distribution-systems/">http://www.mpwmd.net/regulations/wells-water-systems/water-distribution-systems/</a>

(click on "2014 Implementation Guidelines").

For staff assistance, contact 831-658-5601 or <a href="mailto:skister@mpwmd.net">skister@mpwmd.net</a> or <a href="mailto:gabby@mpwmd.net">gabby@mpwmd.net</a>

Form received on	8/4/2020	by	Gabb	y Bravo	
Fee Received:	\$1,200 (Level 1	or 2);	XX \$	3,000 (Level 3	3)
ID# WDS-					

Please complete the table below (attach extra sheets as needed):

ř	QUESTIONS	FILL IN ANSWERS BELOW	
1	System Name	Bishop Unit of California American Water Company	
2	Assessor's Parcel ## (list all)	if multiple parcel, identify APN for well/facility location and APN of parcels receiving water from WDS or Mobile WDS. 173-121-004, -005, -006, 007	
3	Physical Address or Location	24491 Citation Court, Monterey, CA 93940	
4	Name of Applicant	California American Water/ Bishop McIntosh & McIntosh	
5		(Street or PO) Forest Lodge Rd./9599 Monterey-Salinas Highway c/o Leonard McIntosh	
6	City, State, Zip	Pacific Grove, CA 93950/ Monterey, CA, 93940	
7	Phone/fax/email:	captleo@sbcglobal.net	
8	Agent (if applicable) Cat	(i.e., person who may receive paperwork on behalf of applicant/owner)  y Hongola-Baptista / Anthony L. Lombardo	
9	Agent mailing address	555 Montgomery St., Suite 816 / 144 W. Gabilan St.	
10	Agent City, State, Zip	San Francisco, CA 94111 / Salinas, CA 93901	
11	Agent phone/fax/email4	5-293-3023 cathy.hongola-baptista@amwater.com / 831-751-2330 tony@alombardolaw	
12	Hydrogeologist (if applicable)	(e.g., licensed professional who has conducted well testing and evaluation)  N/A	
13	Hydro mailing address	N/A	
14	Hydro City, State, Zip	N/A	
15	Hydro phone/fax/email	N/A	
16	Is this an amendment to an existing WDS?	YES or NO. If yes, identify previous MPWMD permit #, if any. #	
17	Is this a Mobile WDS?	YES OR NO If yes, go to Row 42 NO	
18	is this a water Well?	YES or NO If no, go to Row 21.	



19	MCEHB <sup>2</sup> Permit # and issuance date	(One for each well) N/A		
20	DWR Well Completion	(One for each well)		
20	Report # and date	N/A		
21	Within MPWRS <sup>3</sup> ?	YES or NO. Consult with District staff if unsure; see definition in footnote.		
22	>1,000 ft. MPWRS?	YES of NO. Consult with District staff if unsure. See Section 4.0 of 2014 implementation Guidelines. See response to #21		
23	≤1,000 ft. MPWRS?	YFS or NO Consult with District staff if unsure. Staff will assess well log re-potential impacts; additional testing may be required. See Section 4.2 of 2014 Implementation Guidelines.  See response to #21		
24	Seaside Basin source?	YES or NO. If yes, Adjudication documentation and/or approval from Wetermaster are required. See Section 5.0 of 2014 implementation Guidelines. SEE ATTACHED		
25	CV Alluvium source?	YES of NO. If yes, water rights documentation is required. See Section 6.0 of 2014 Implementation Guidelines. District staff will confirm if alluvial.		
26	Fractured rock spring or seep?	YES o NO If yes, state if onsite or offsite use, and if potable (drinking water) or non-potable use. See Section 7 0 of 2014 Implementation Guidelines		
27	River/tributary direct diversion?	YES o NO If yes, water rights documentation is required. See Section 7.0 of 2014 Implementation Guidelines. Describe system.		
28	Dam/reservoir?	YES of NO if yes, water rights documentation and EIR is required. See Section 7.0 of 2014 implementation Guidelines.		
29	Desal plant?	YES of NO. If yes, describe facilities, annual production and recipients. EIR required. See Section 7.0 of 2014 Implementation Guidelines.		
30	Reclamation plant?	YES of NO If yes, describe facilities, annual production and recipients. EIR required. See Section 7.0 of 2014 Implementation Guidelines.		
31	Rainwater harvest + offsite delivery?	YES o NO If yes, describe. See Section 7.0 of 2014 Implementation Guidelines,		
32	Other water systems?	YES of NO. Describe. See Section 7.0 of 2014 Implementation Guidelines.		
33	Estimated production	Unit is acre-feet per year (AFY). See Section 2.9 of 2014 Implementation Guidelines. 10 afy total (-004= 3 afy; -005= 2 afy; -006= 2.5 afy; -007= 2.5 afy)		
34	Total acreage served	(Break out acreage of each parcel served)		
35	Type of water use?	-004= 1.397 acres; -005= 1.924 Acres; -006= 2.292 acres; -007= 1.816 at (e.g., drinking water, irrigation only)  Office Use		
36	Type of land use?	(e.g., residential, commercial, agriculture)  Commercial		
37	New subdivision?	YES OF NO. CEQA document from lead agency is required.		
38	In CAW service area?	YES OF NO. YES		
39	Active CAW service?	What is currently served by CAW on the property (e.g. home or business)? Yes, Vacant		
40	What is Zoning?	VO/B-6-UR-D-S		
41	Environmental	Describe CEQA documentation and Lead Agency, if applicable.		
	information	Annexation of Bishop System approved in 1996; Seaside Basin		

<sup>&</sup>lt;sup>2</sup> MCEHB= Monterey County Environmental Health Bureau

MCEHS- Monterey County Environmental Fleatin Bureau

MPWRS= Monterey Peninsula Water Resource System (i.e., Carmel Valley Alluvial Aquifer, Carmel River/tributaries, and Seaside Basin)

CAW = California American Water Company



42	Is Mobile WDS source within MPWMD?	YES of NO If yes, describe source and location. See Rows 21 - 32 for possibilities.	
	Wildliff Mr VVIVIS	NO	
43	is water source outside MPWMD?	YES o NO If yes, describe source and location.	
44	Source agency and approval	If outside MPWMD, identify source agency with authority. Attach written documentation that the source water may be exported to serve applicant.	
45	Describe intended use (long-term)	Mobile WDS may only be non-potable (e.g., irrigation, pools only) unless an emergency.  N/A	
46	# Parcels served?	Use Request for Exemption form if service is to 3 or fewer parcels from a source out side MPWMD	
47	Emergency drinking water service?	YES o NO If yes, describe situation.	
48	Other relevant information or unique considerations?	Refer to Question #. Attach explanatory sheets as needed.  See attached	
	ATTACHMENTS		
A1	Parcel Maps		
A2	MCEHB permit(s)	N/A	
A3	DWR Well log(s)	N/A	
A4	Well registration forms	N/A	
A5	Well meter sign-offs	N/A	
A6	Grant deed	N/A	
A7	Water rights docs.	N/A	
A8	Environmental docs.	N/A	
A9	Mobile WDS approval	NA	
A10	Application fee (check)		
A11	Other		

This Application for a Permit must be signed by the person who is identified in a recorded Deed as the owner of the parcel on which the well or other water producing facility is located. If multiple owners, at least two must sign.

Under penalty of perjury, I verify that the above information is accurate to the best of my knowledge and understanding.

Took -	6/19/2000
Signature of Applicant/System Owner	Date /
Printed name of Applicant CHRISTOSHER COOK	6/22/2020
Signature of Applicant/System Owner	Date 2020
Printed name of Applicant: FC NAIZO M CTWTOSH	Date

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#### Attachment to WDS Amendment Application

The purpose of this application is to amend Condition 13 of the Bishop subunit of the California American Water Company Water Distribution System.

Applicant requests that Condition 13 be amended to allow the emergency interconnection between the main California American system and the Bishop subunit to be used to transfer to the Bishop water system from the California American System:

- 1. Three (3.0) acre feet per year to Lot #4 (APN: 173-121-004)
- 2. Two (2.0) acre feet per year to Lot #5 (APN: 173-121-005)
- 3. Two and one-half (2.5) acre feet per year to Lot #6 (APN: 173-121-006)
- 4. Two and one-half (2.5) acre feet per year to Lot #7 (APN: 173-121-007)

The purpose of this interconnection is to allow the Seaside Groundwater Basin water approved for inclusion in the California American system in application #20150430RRB to be supplied to Bishop McIntosh on its parcels located within the Laguna Seca Office Park.

Attachment #2

governing issuance of Water Permits. Connection Capacity Fees shall be calculated based on water demand estimates using the District's water demand methodology at the time of the application. [Rule 22-D-1-g]

- Any intensification or expansion of use within the Permitted System shall require a new application and Permit pursuant to MPWMD Rules 23 and 24. [Rule 22-D-1-k]
- 12. Any new facilities, expansion of service area boundaries, changed conditions regarding water service by other entities, increase in the System Limits set in Condition #3, or other changes described in MPWMD Rule 22-E shall require a Permit to amend the Permitted System. [Rule 22-E]
- 13. No intertie between the Permitted System and any other water system intended to provide regular (non-emergency) service shall be allowed without amending this WDS Permit pursuant to Rule 22-E. An intertie between the CAW Bishop Unit and the Ryan Ranch Unit shall only be allowed during emergency events via a one-way pipeline crossing York Road as approved by the City and/or County of Monterey. The term "emergency event" means that water system facilities are not capable of providing sufficient supply to customers, typically due to failure of a facility component. Transfers of water between the Bishop Unit and the Ryan Ranch Unit must be metered and reported to the District within one week of occurrence. Use of the emergency intertie between the Bishop and Ryan Ranch Units shall be subject to MPWMD Board review if such use occurs for more than 60 days. Use of an intertie between the "main" CAW water system (i.e., draws water from the Monterey Peninsula Water Resource System) and the Bishop Unit is prohibited unless written permission is given by the District General Manager in an emergency event, including documentation that Bishop Unit supply cannot meet the required demand. The Bishop Unit Parcels may receive CAW water from any source for emergency fire service, so long as this service is documented and reported in accordance with these conditions. [Rule 22-D-1-h]
- 14. A back-flow protection device to prevent contamination of the CAW system is not required as the Bishop Unit Parcels will be served by CAW. [Rule 22-D-1-h]
- 15. Because the Permittee and Permitted System is a regulated Public Utility, compliance with California Title 22 drinking water standards is already required by the State Water Resources Control Board, Division of Drinking Water. [Rule 22-C-2]
- 16. Permittee is not required to carry out specific mitigation measures by MPWMD to offset adverse environmental impacts above and beyond those actions already required by the "Physical Solution" specified by the Superior Court in the Seaside Basin Adjudication Decision or by the Seaside Basin Watermaster. [Rule 22-D-1-i]

Enclosure 1

Attachment #3

### FINAL

## MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

#### CONDITIONS OF APPROVAL

## APPLICATION FOR ANNEXATION OF LAGUNA SECA RANCH SUBDIVISION INTO THE BISHOP WATER COMPANY SERVICE AREA

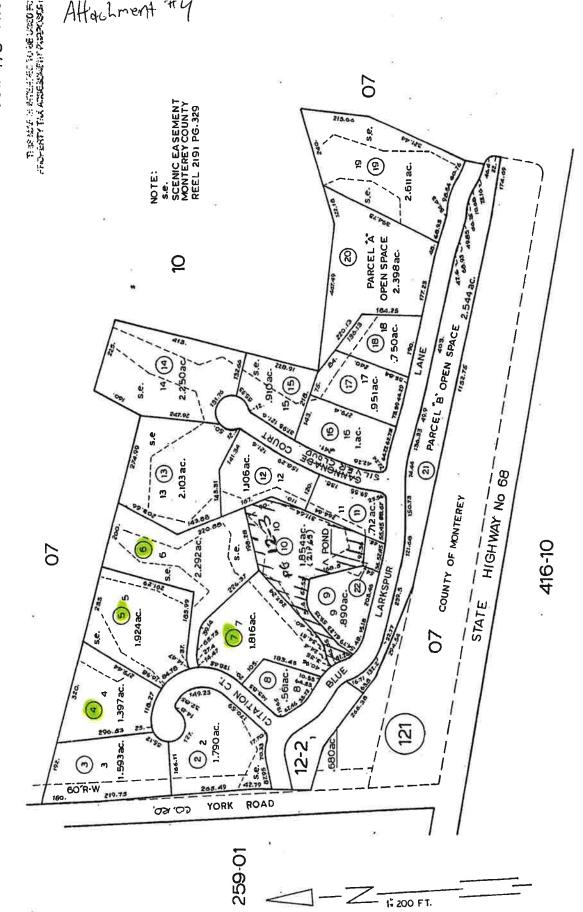
#### **OCTOBER 21, 1996**

- 1. The Bishop Water Company (BWC) service area shall be increased to include the Laguna Seca Ranch Subdivision ("Subdivision"), formerly known as the Bishop Ranch Subdivision, which is a 565-acre area currently listed as assessors parcel number 173-071-053. New assessors parcels will be established upon recordation of the final subdivision maps for the area to be annexed.
- 2. The proposed annexation shall be for the purpose of providing municipal water service from the BWC system to serve the Subdivision, comprised of 253 residential units, an 18-hole golf course, a golf-course clubhouse and open space. The golf course shall not be served by BWC as irrigation shall be provided by well(s) operated by the golf course owner in addition to use of reclaimed wastewater. The golf course wells may be interconnected with the BWC system to allow either party to use water from the other's system on a temporary basis when wells are unavailable or in cases of emergency. Reporting of production from BWC wells and golf course well(s) shall be done separately. Any water transferred from one system to the other on a temporary basis shall be clearly identified in reports to the District.
- 3. The system capacity limit of BWC shall be 295 acre-feet per year (AF/yr), and the expansion capacity limit shall be 454 connections.
- 4. The Phase III Hydrogeologic Update groundwater study of the Laguna Seca Subarea fee for this permit is \$68,730. (This fee has been calculated based on the estimated use of 158 AF/yr by the entire Subdivision at a fee rate of \$435 per acre-foot.) The fee shall be paid to MPWMD upon filing of the first final subdivision map for a residential component of the project. No individual water connection permits authorizing domestic water service by BWC for any of the Subdivision lots shall be issued by MPWMD until the fee is paid in full.
- 5. This permit shall incorporate the final Conditions of Approval for the annexation of Bishop Water Company into the California-American Water Company (Cal-Am) service territory dated April 15, 1996 as follows:

- a. The California-American Water Company shall operate the BWC as a subsidiary unit of the Cal-Am system. Metered monthly production and delivery for BWC shall be reported separately from the balance of the Cal-Am system.
- b. There shall be no use of emergency interties to the BWC from the Cal-Am system that draws from the Monterey Peninsula Water Resources System.
- c. A program to encourage drought tolerant landscaping shall be initiated after annexation by Cal-Am, if a program is not already in place. District requirements for installation of low-flow plumbing fixtures to reduce average per-unit consumption shall be repaired with the goal of reducing system losses to seven percent or less of production by July 1997.
- d. Cal-Am shall monthly measure water table levels in each active and inactive BWC well and shall transmit these data annually to the District in August along with the Annual Water Distribution System Report. Active wells shall not be pumped for 24 hours prior to water table measurement. The reference elevation of the measuring point at each well shall be surveyed and recorded.
- e. Cal-Am shall record monthly production records for each BWC well. These records shall be submitted annually in August along with the Annual Water Distribution System Report.
- Cal-Am shall conduct a water quality sampling program once every year during October and transmit the results the following August along with the Annual Water Distribution System Report. Each active BWC production well shall be sampled and analyzed by a state-certified water quality laboratory to include as a minimum the following parameters: ammonia nitrogen, nitrate, calcium, sodium, magnesium, potassium, bicarbonate, sulfate, hydrogen sulfide, chloride, iron, manganese, selenium, water temperature, pH, total dissolved solids, and specific conductance.
- g. Cal-Am shall require, and each unit shall install, water closets with a capacity of 1.6 gallons or less, and shower heads with a maximum flow of 2.5 gallons per minute for new construction and remodels served by BWC. In addition, all new construction and remodels shall install instant hot-water recirculating systems.
- h. Each new connection that increases the expansion capacity limit of the BWC must be approved by the District Board, and must receive a water connection permit from the District Permit Office prior to setting of the water meter. Prior to final approval of each new connection, each applicant shall provide proof of Use Permit approval from the Monterey County Planning & Building Inspection Department, and pay applicable fees for (1) the water connection permit, and (2) the study to update the water supply evaluation of the Laguna Seca Groundwater Subbasin.

6.	The annexation approset forth above is not	val granted by this met in full.	permit is subjec	t to revocation	if any condition
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TAX RATE AREA 139-031



 subarea be required to reduce their Groundwater Extractions. In such case, those Parties exercising an Alternative Production Allocation shall reduce their pumping in an amount correlative to each other in accordance with the California law pertaining to allocation of rights to Overdrafted Groundwater basins between overlying landowners.

TABLE 2

## **Alternative Production Allocations**

Party:	Coastal Subarea	
Seaside (Golf Courses)	540 afa	
SNG	149 afa	
Calabrese	14 afa	
Mission Memorial	31 afa	
Sand City	9 afa	<del></del>

Producer:	Alternative Production Allocation
Pasadera	251 afa
Bishop	320 afa
York School	32 afa
Laguna Seca County Park	41 afa*

\* The County of Monterey possesses certain water rights based upon its use of water from the aquifer for maintenance of Laguna Seca Park. Its historic Production of Groundwater has averaged 41 afy. It has not joined in the stipulation of the other Producers, but is entitled to draw up to 41 afy from the Laguna Seca Subarea as if it were a party to the Alternative Production Allocations.

At any time prior to the expiration of the initial three-year operating period of this Decision, as designated in Section III.B.2, any of the aforementioned Parties, except the County of Monterey, may choose to change all or a portion of their Alternative Production Allocation to the Standard Production Allocation method set forth in Section III.B.2 and shall be entitled to all of the privileges associated with said Production Allocation as set forth herein (e.g., transferability, Storage rights, and Carryover rights). A Party choosing to change to the Standard Production Allocation shall do so by filing a declaration with the Court, and serving said declaration on all other parties. Once a Party chooses to change to the Standard Production Allocation method set forth in Section III.B.2, that Party shall not be allowed to thereafter again choose to participate in the Alternative Production Allocation. The Parties under the Standard

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## WATER DELIVERY AGREEMENT

Executed Meeling Agreement b/w Cal-Am + & McIntos?

This Water Delivery Agreement ("Agreement") made by and between Bishop, McIntosn & McIntosh, a Nevada general partnership ("BISHOP"), and California-American Water Company, a California corporation ("CAWC"), hereinafter individually a "Party," and collectively, the "Parties," is entered into with respect to the following:

WHEREAS, CAWC, a public utility regulated by the California Public Utilities Commission ("CPUC"), owns and operates wells and infrastructure and a water distribution system which serves properties located within the Seaside Basin and generally on the Monterey Peninsula;

WHEREAS, BISHOP is an owner of property overlying the Seaside Basin and located within the CAWC water service area;

WHEREAS, the Amended Decision governing the Seaside Basin Adjudication matter in the case of California American Water v. City of Seaside, et al. (Monterey County Superior Court, Case No. M66343) filed on February 9, 2007 ("Amended Decision") established that BISHOP has the right and title to produce and use a percentage of the Operating Safe Yield and Natural Safe Yield of Seaside Basin water as described more fully in the Amended Decision;

WHEREAS, in July of 2018, Exhibit C of the Amended Decision was modified to correct the place of use for Bishop's Laguna Seca Subarea Alternative Production Allocation ("APA"), and as modified the Amended Decision authorizes such allocation to be used on the following Assessor Parcel Numbers ("APN"s) located in Tract No. 1068 "Laguna Seca Office Park" as shown on the map recorded in Volume 16 of Cities and Towns at page 32 and as adjusted as shown on the Record of Survey recorded in Volume 33 of Surveys at page 26: APN 173-121-004-000 ("Lot 4"), 173-121-005-000 ("Lot 5"), 173-121-006-000 ("Lot 6"), and 173-121-007-000 ("Lot 7") (sometimes individually referred to herein as a "Bishop Lot" and collectively as the "Bishop Property");

WHEREAS, in order for CAWC to provide water service to the Bishop Property, BISHOP intends to allocate 10 acre feet per year ("AFY") of its APA as follows: three (3.0) AFY to Lot 4; two (2.0) AFY to Lot 5; two and one-half (2.5) AFY to Lot 6; and two and one-half (2.5) AFY to Lot 7;

WHEREAS, CAWC and BISHOP are informed that the Monterey Peninsula Water Management District ("MPWMD") has indicated an amendment to the CAWC water distribution system permit is required in order for CAWC to produce and deliver such water to the Bishop Property; and

WHEREAS, the Parties enter into this Agreement: (1) to make clear that they intend to comply with the terms of the Amended Decision, as clarified by the Monterey Court in its ruling on April 29, 2009, subsequent order filed on May 11, 2009, in Monterey County Superior Court, case number M66343, and any subsequent order of the court in said case; and (2) to ensure

operationally that water from the Laguna Seca Subarea is produced and delivered for the benefit of the Bishop Property.

## NOW THEREFORE, the Parties agree as follows:

- 1. Leased Water/Commencement of Lease. BISHOP agrees to lease up to a maximum of 10 AFY of its APA to CAWC at no charge ("Lease" or "Leased Water") in order for CAWC to deliver the Leased Water for use on the Bishop Property. Unless otherwise agreed to in writing by the owners of the affected Lots and approved by CAWC, which approval CAWC agrees will not be unreasonably withheld, conditioned or delayed, the Leased Water will be allocated as follows:
  - a. Three (3.0) AFY to Lot 4;
  - b. Two (2.0) AFY to Lot 5;
  - c. Two and one-half (2.5) AFY to Lot 6; and
  - d. Two and one-half (2.5) AFY to Lot 7.

CAWC agrees the Leased Water may only be used to serve the Bishop Property in accordance with the terms and conditions of this Agreement. This Agreement does not constitute a "Transfer" of the Leased Water as such term is defined in the Amended Decision because the Leased Water will be used on properties identified in Exhibit C to the Amended Decision. Any future change in the allocation of the Leased Water to the Lots shall be subject to obtaining any required approval from MPWMD.

- 2. Commencement and Terms of Service. On or before the date BISHOP applies to CAWC for a meter to be set for a Bishop Lot, BISHOP shall provide CAWC with written notice identifying the expected date for initiation of water service by CAWC to the Bishop Lot, which date shall be the commencement date of the Lease with respect to the Leased Water allocated to such lot. CAWC shall have no obligation to serve any Bishop Lot under this Agreement until it receives such notice as well as the written confirmation from the Watermaster and an amended water system distribution permit as both are described in Section 5 below. Service to the Bishop Property pursuant to this Agreement shall be subject to all of CAWC's tariffs as authorized by the CPUC, including the conditions of and the rates charged for service.
- 3. Interpretation. The Parties intend that any production, delivery, or use of water pursuant to this Agreement shall be in accordance and consistent with the Amended Decision (including any modifications thereto) and that nothing in this Agreement shall be construed to require either Party to violate the terms of the Amended Decision. Further, nothing in this Agreement shall be construed to prohibit the "mixing of molecules" from different sources or supplies of water, which is a practice recognized and allowed by California law and by the Amended Decision, as clarified by the Monterey Superior Court on April 29, 2009, and memorialized in the Superior Court's May 11, 2009, Order.

- 4. Accounting and Reporting. CAWC will account for and report the production of the Leased Water in accordance with Section 11 of the Rules and Regulations of the Seaside Groundwater Basin Watermaster as it may be amended from time to time. BISHOP understands and agrees, and will so instruct the Watermaster, that extraction by CAWC of the Leased Water for use on a Bishop Lot served pursuant to this Agreement shall be accounted for as Production by BISHOP.
- 5. <u>Conditions Precedent</u>. The application of this Agreement to the Bishop Property shall be conditional on the following:
  - a. For each Bishop Lot to be served pursuant to this Agreement, BISHOP shall: (1) submit written notice to the Watermaster of the expected commencement date of the Lease at least forty-five (45) days prior to such date; and (2) provide CAWC with written confirmation from the Watermaster that extraction by CAWC of the Leased Water for use on a Bishop Lot shall be accounted for as Production by BISHOP; and
  - b. The provision of Leased Water to the Bishop Property will not exceed 10 AFY.
  - c. MPWMD's issuance of an amendment to the CAWC water distribution system permit containing conditions agreeable to CAWC and that allows CAWC to produce and deliver Leased Water to the Bishop Property. BISHOP shall be responsible for the payment of all application fees and costs associated with the MPWMD application to amend the CAWC water distribution system permit.
- 6. <u>Cooperation</u>. BISHOP and CAWC mutually agree to provide such notification and cooperation to one another as may be necessary to achieve the purposes and implementation of this Agreement. The Parties shall provide further assurances in writing or other documentation as necessary in order to achieve the purposes and implementation of this Agreement.
  - 7. Termination. This Agreement may be terminated as follows:
    - a. Upon mutual written agreement of the Parties, provided that this Agreement may not be terminated without the written agreement of the owners of the Bishop Lots as of the effective date of the termination;
    - b. By CAWC if the Bishop Property has not received all necessary Permits prior to the date of termination if ordered to do so by the CPUC, provided that CAWC may not terminate this Agreement as to any Lot that has obtained Permits; or
    - c. By either Party if the required amendment to the CAWC water distribution system permit to enable CAWC to produce and deliver such water to the Bishop Property requires conditions that are not agreeable to CAWC and the Parties are unable to negotiate a mutually agreeable amendment to this Agreement as required by Section 13 below.
    - d. The Leased Water shall only be available for use by CAWC per the terms of this Agreement so long as the State Water Resource Control Board's Order No. WRO 2009-0060 (the "Cease and Desist Order") and Order No. WRO 2016-0016 (the

- "Amended Cease and Desist Order") (the Cease and Desist Order and Amended Cease and Desist Order are collectively referred to as the "CDO") affects the Bishop Property. At such time as the CDO is lifted and no longer effects the Bishop Property, and an alternative water source has been allocated to and is immediately available to serve a Bishop Lot, this Agreement shall terminate immediately as to such Bishop Lot.
- 8. Potential Moratorium. As of the date of this agreement, CAWC is proposing in CPUC Application 19-07-005 a moratorium in the Laguna Seca Subarea (LSSA) on new or expanded water service connections. If requested, CAWC will promptly apply for and support in good faith an exemption from the moratorium for Producers, like BISHOP, that have the right and title to produce and use a percentage of the Operating Safe Yield and Natural Safe Yield of Seaside Basin water as described more fully in the Amended Decision.
- 9. Cost Allocation. Except as provided herein, each Party shall be responsible for its own legal costs and attorney's fees associated with performance of the Agreement. Neither BISHOP nor CAWC shall be responsible for paying costs associated with any time expended on the performance or implementation of this Agreement by any officer, director, manager, attorney, representative, agent, or employee of the other Party.

#### 10. Indemnification.

- a. BISHOP agrees that, to the fullest extent permitted by law, CAWC shall be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorney's fees, litigation costs, defense costs, court costs, or any other cost arising out of or in any way related to an Indemnified Claim as defined in Section 10(b), below. Accordingly, the provisions of this Section 10 are intended by the Parties to be interpreted and construed to provide the fullest protection possible under the law to CAWC with respect to such Indemnified Claims. BISHOP acknowledges that CAWC would not enter into this Agreement in the absence of this commitment from BISHOP to indemnify, defend, and hold harmless CAWC as set forth herein.
- b. To the fullest extent permitted by law, BISHOP shall defend, indemnify and hold harmless CAWC and its directors, officers, employees and agents (individually an "Indemnified Party" and collectively "Indemnified Parties") from any claim, action, or proceeding to attack, challenge, set aside, void, or annul: (i) the entering into, making, or performance of this Agreement; or (ii) any governmental or regulatory approval related to implementation or performance of this Agreement (individually an "Indemnified Claim" and collectively "Indemnified Claims"). BISHOP's obligation to indemnify applies regardless of whether a liability is caused or contributed to by any act or omission of an Indemnified Party unless it is finally adjudicated that the liability is a result of the sole active negligence or sole willful misconduct of an Indemnified Party. The indemnification includes any damages, fees and/or costs awarded against an Indemnified Party, and costs of suit, attorney's fees, and other costs, liabilities and expenses incurred by an Indemnified Party in connection with an Indemnified Claim, including any costs incurred as a result of an indemnification obligation imposed by a governmental or regulatory entity as part of an approval process.

- c. BISHOP's duty to defend is a separate and distinct obligation from its duty to indemnify and shall arise immediately upon submittal to BISHOP of notice of an Indemnified Claim in any form or at any stage of the Indemnified Claim, whether or not liability is established. CAWC shall have the right to approve defense counsel, all significant decisions concerning the manner in which the defense is conducted, and any and all settlements, which approvals shall not be unreasonably withheld. The obligation to defend extends through final judgment, including exhaustion of any appeals; or, alternatively, through final settlement of the claim. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of one of the Indemnified Parties, BISHOP may submit a claim to CAWC for reimbursement of reasonable attorney's fees and defense costs which claim shall be paid by CAWC within 90 days from submittal. CAWC shall also have the right, at any stage of the Indemnified Claim and at its own election, to conduct its own defense. This Section survives the completion or termination of this Agreement.
- d. Notwithstanding any other provision of this Agreement, in the event any Indemnified Claim is threatened or asserted so as to give rise to BISHOP's indemnification obligation under this Section 10, BISHOP shall have the unilateral right at any time, with or without CAWC's consent, to agree to rescind or vacate any governmental or regulatory approval by any public agency that is necessary in order for CAWC to commence producing and delivering Leased Water to the Bishop Property pursuant to this Agreement, provided that such rescission or vacation does not materially increase or adversely affect CAWC's obligations or operations. For example, BISHOP shall not have the unilateral right to rescind or vacate any such approval if CAWC has lawfully commenced producing and delivering Leased Water to the Bishop Property. Prior to agreeing to rescind or vacate any such approval, BISHOP shall provide CAWC with written notice of its intent to rescind or vacate the approval and the Parties shall meet and confer on whether a material increase in or adverse effect on CAWC's obligations or operations would result from the proposed rescission or vacation.
- 11. <u>Assignment</u>. BISHOP may not assign its rights or delegate its obligations hereunder without the prior written consent of CAWC, which may be given or withheld in CAWC's sole and absolute discretion; provided, however, that BISHOP may, without the prior written consent of CAWC, assign its rights with respect to any Bishop Lot to the current and/or future owners of such Bishop Lot.
- 12. Notices. Any notice, consent, approval or disapproval to be given or other document to be delivered by any Party to the other or others hereunder may be delivered in person to the addressee identified below, or may be delivered by Federal Express, other private commercial delivery or courier service for next business day delivery, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, and addressed to the Party for whom intended, as follows:

If to CAWC:

California American Water Attn: General Manager 511 Forest Lodge Road, Suite 100 Pacific Grove, CA 93950 With a copy to:

California American Water

Attn: Corporate Counsel

555 Montgomery St., Suite 816 San Francisco, CA 94118

If to BISHOP:

Bishop, McIntosh & McIntosh

c/o Leonard H. McIntosh

P.O.Box 2320

Ketchum, ID 83340

With a copy to:

Anthony Lombardo

Anthony Lombardo & Associates

144 West Gabilan Street

Salinas, CA 93901

Any Party hereto may from time-to-time, by written notice to the other, designate a different address or person which shall be substituted for the one above specified. Any notice shall be deemed served or delivered upon actual receipt or first attempted delivery (as shown by the records of the U.S. Postal Service or private delivery service) at the address listed above.

13. Amendment. This Agreement may only be amended by a document in writing signed by the Parties hereto, provided that this Agreement may not be amended in any manner that could adversely affect any Bishop Lot without the written agreement of the then owner(s) of such Bishop Lot. If MPWMD indicates the required conditions for an amendment to the CAWC water distribution system permit to enable CAWC to produce and deliver the Leased Water to any of the Bishop Property are not agreeable to CAWC, then the Parties shall negotiate in good faith to amend this Agreement to address the impact of the permit amendment on this Agreement.

14. <u>Authority</u>. The persons executing this Agreement on behalf of the Parties hereto warrant that: (i) such Party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party; and (iii) by so executing this Agreement such Party is formally bound to the provisions of this Agreement.

### 15. Governing Law; Disputes.

- a. The Agreement shall be interpreted in accordance with California law, without giving effect to choice of law provisions. Headings used in this Agreement are for convenience only and are not to be used in the construction or interpretation of this Agreement.
- b. The Parties agree that in the event of litigation, exclusive venue shall be in Monterey County, California.
- c. In the event of any legal action or other proceeding between the Parties regarding this Agreement (an "Action"), the prevailing Party shall be entitled to the payment

- by the losing Party of the prevailing Party's reasonable attorney's fees, court costs and litigation expenses, as determined by the court.
- d. Likewise, the prevailing Party in any Action shall be entitled, in addition to the amounts set forth in Section 15(c) above, to the payment by the losing Party of the prevailing Party's reasonable attorney's fees, court costs and litigation expenses incurred in connection with: (i) any appellate review of the judgment rendered in the Action; and (ii) any proceeding to enforce a judgment in such Action. It is the intent of the Parties that the provisions of this Section 15(d) shall be distinct and severable from the other rights of the Parties, shall survive the entry of judgment and shall not be merged into such judgment.

16. No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of BISHOP, the current and future owner(s) of the Bishop Property and CAWC and no other person shall have any right of action under or by reason of this Agreement.

BISHOP, MCINTOSH & MCINTOSH

CALIFORNIA-AMERICAN WATER COMPANY

Leonard H Maintagh

Its: General Partner

Date: 6/5/2020

Its: Director of Operations

Date: 6/4/2020



## **DRAFT** FINDINGS of APPROVAL

CONSIDER AMENDMENT TO BISHOP WATER DISTRIBUTION SYSTEM (CALIFORNIA-AMERICAN WATER COMPANY BISHOP UNIT) TO PRODUCE AND DELIVER SEASIDE BASIN ALTERNATIVE PRODUCTION ALLOCATION TO ASSESSOR PARCEL NUMBERS: 173-121-004, 005, 023 (FORMERLY 173-121-006), AND 026 (FORMERLY 173-121-007)

**Donor Service Area: CAW Bishop Unit WDS** Recipient Assessor Parcel Numbers: 173-121-004, 005, 023, and 026 Application #20200624BUCAW, Permit #M15-03-L3-A

Adopted by MPWMD Staff Hearing Officer on	
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Unless noted otherwise, all cited documents and materials are available for review on the MPWMD website at https://www.mpwmd.net/regulations/public-notices/

It is hereby found and determined as follows:

1. FINDING: Co-Applicant California-American Water Company (CAW), a California Corporation, is the current owner and operator of the Bishop Unit Water Distribution System (WDS). The 1,036-acre CAW Bishop Unit is located within unincorporated Monterey County, and serves both Residential subdivisions and Non-Residential uses. The Bishop Unit has a Water Supply Permit from the State of California and is considered a valid WDS by the Monterey Peninsula Water Management District (MPWMD or District). CAW requests authorization to allow production and delivery of Seaside Basin Alternative Production Allocation, held by Bishop, McIntosh & McIntosh, a Nevada General Partnership, Co-Applicant, in part for Assessor Parcel Numbers: 173-121-004, 005, 023 (formerly 173-121-006), and 026 (formerly 173-121-007), referred to herein as the "CAW Bishop Unit - McIntosh Amendment."

**EVIDENCE:** 

Application #20200624BUCAW submitted June 24, 2020, including Site maps, lists of Parcels, County and State Permits and other materials. California Department of Public Health Services, Certificate of Issuance of a Water Supply Permit to California American Water Company -Bishop Water System, Permit #02-05P-2701882 dated February 1, 2013.

MPWMD Conditions of Approval for Application for Annexation of Laguna Seca Ranch Subdivision Into the Bishop Water Company Service Area, dated October 21, 1996; Water Delivery Agreement between Bishop, McIntosh & McIntosh and CAW dated June 5, 2020; Hearing Notice prepared for MPWMD Administrative Hearing on September 15, 2020.

#### 2. FINDING:

The Bishop Unit is within CAW's Monterey Division, but is operated as a separate independent unit from the Main California American Water System. The Bishop Unit is one of three CAW "satellite systems" in the Laguna Seca Subarea of the Seaside Groundwater Basin. The Seaside Groundwater Basin is an adjudicated basin governed by the Seaside Basin Watermaster in compliance with a 2006 Decision by the Monterey County Superior Court.

**EVIDENCE:** 

Permit application materials specified in Finding #1. Map of CAW Service Area. Seaside Groundwater Basin Adjudication Judgment dated March 27, 2006, as amended, Monterey Superior Court Case #M66343, California American Water vs. City of Seaside et al. (referred to herein as the "Adjudication Decision").

3. FINDING: The Monterey County Environmental Health Bureau (MCEHB) approved Bishop Well #3 in 2010 to augment Bishop Unit production from Wells #1 and #2. Well #3 was completed in December 2010, and replaced Well #2, which was destroyed in 2011.

**EVIDENCE:** 

Permit application specified in Finding #1, including MCEHB Well #3 Construction Permit #10-11766 issued May 24, 2010, and California Well Completion Report #e0116033 signed April 26, 2011; MCEHB Well #2 Destruction Permit #11-11875, and California Well Completion Report #e0116034 (destruction) signed April 26, 2011.

4. FINDING: The Co-Applicants have applied for a Permit to amend the CAW Bishop Unit WDS Conditions of Approval to allow production of Seaside Basin Alternative Production Allocation of up to ten (10) Acre-Feet for Assessor Parcel Numbers: 173-121-004, 005, 023, and 026. No other changes to the Bishop Unit WDS are proposed.

**EVIDENCE:** 

Permit application materials specified in Finding #1; MPWMD Permit #M15-03-L3-A, Amended Conditions of Approval #1 through #4, and #13 for the Bishop Unit WDS.

5. FINDING: Approval of the Application for the delivery of Seaside Basin Alternative Production Allocation to Assessor Parcel Numbers: 173-121-004, 005. 023, and 026 changes the current System Limits for CAW Bishop Unit WDS.

**EVIDENCE**: Permit application materials specified in Finding #1. MPWMD Permit

#M15-03-L3-A, Amended Condition of Approval #3 for the CAW

Bishop Unit WDS.

6. FINDING: The application for CAW Bishop Unit – McIntosh Amendment, along

with supporting materials, is in accordance with District Rule 21 and

Rule 22.

Permit application materials specified in Finding #1; "Notice of **EVIDENCE:** 

> Administrative Hearing" letter to Co-Applicants McIntosh and CAW from MPWMD dated August 21, 2020; MPWMD Rules and

Regulations.

## **Required Findings (MPWMD Rule 22-B)**

7. FINDING: The approval of the amended WDS Permit would not cause unnecessary

> duplication of Potable water service within any existing system. proposed CAW Bishop - McIntosh Amendment allows Seaside Groundwater Basin Alternative Production Allocation water to be

produced by CAW for the recipients Parcels. [Rule 22-B-1]

**EVIDENCE:** Permit application materials specified in Finding #1. MPWMD Permit

#M15-03-L3-A, Amended Conditions of Approval #1 through #4, and

#13 for the CAW Bishop Unit WDS.

8. FINDING: The approval of the Permit would not result in water importation or

> exportation to or from the District, respectively. The referenced Water Distribution System is located wholly within the MPWMD and is within the Laguna Seca Subarea of the Seaside Groundwater Basin. [Rule 22-

B-2]

**EVIDENCE**: District boundary location maps.

9. FINDING: Approval of the application would not result in significant adverse

> impacts to "Sensitive Environmental Receptors" (SER) as defined by MPWMD Rule 11, including the Seaside Groundwater Basin and the

Carmel Valley Alluvial Aquifer (CVAA). [Rule 22-B-3]

**EVIDENCE**: Permit application materials specified in Finding #1. MPWMD Permit

> #M15-03-L3-A, Amended Condition of Approval #13 for the CAW Bishop Unit WDS; Seaside Basin Adjudication Decision referenced in

Finding #2.

10. FINDING: The CAW has specified water rights as determined by the Superior Court

as part of the Seaside Basin Adjudication Decision. [Rule 22-B-4]

EVIDENCE: Adjudication Decision specified in Finding #2.

11. FINDING: Previous action by MPWMD in 1996 determined that there is a long-

term reliable source of water supply for the Bishop Unit with a System Capacity of 295 Acre-feet per Year (AFY) production for 454

Connections. [Rule 22-B-5]

EVIDENCE: Permit application materials specified in Finding #1;.

12. FINDING: The source of water supply for the Bishop Unit Wells is the Laguna Seca

Subarea of the Seaside Groundwater Basin. The cumulative effects of issuance of this WDS Permit do not result in significant adverse impacts to the Source of Supply or the species and habitats dependent on the Source of Supply due to compliance with the Adjudication Decision

issued by the Superior Court. [Rule 22-B-6]

EVIDENCE: MPWMD Permit #M15-03-L3-A, Amended Conditions of Approval #1

through #4, and #13 for the Bishop Unit WDS; Adjudication Decision

specified in Finding #2.

13. FINDING: The Source of Supply for the Bishop Unit is not derived from the Carmel

Valley Alluvial Aquifer. The Source of Supply is not within the jurisdiction of the State Water Resources Control Board (SWRCB) and has not been determined to be tributary to the Source of Supply for any other system. The Source of Supply is from aquifers within the Laguna

Seca Subarea of the Seaside Groundwater Basin. [Rule 22-B-7]

EVIDENCE: MPWMD maps showing boundaries of project area and jurisdiction of

the SWRCB; MPWMD hydrogeologic maps on file; MPWMD Permit #M15-03-L3-A, Amended Conditions of Approval #1 through #4, and

#13 for the Bishop Unit WDS.

14. FINDING: MPWMD Permit #M15-03-L3-A allows the Seaside Groundwater Basin

approved water for inclusion in the CAW System to be supplied to the recipients Parcels. Any CAW Source of Supply may be used in a fire

emergency. [Rule 22-B-8]

EVIDENCE: Permit application materials specified in Finding #1; MPWMD Permit

#M15-03-L3-A, Amended Conditions of Approval #1 and through #4,

and #13 for the Bishop Unit WDS.

15. FINDING: A back-flow protection device to prevent contamination of the CAW

system is not necessary as CAW is the water purveyor. The Bishop Unit

is certified by the State of California. [Rule 22-B-9]

**EVIDENCE:** Permit application materials specified in Finding #1. MPWMD Permit

#M15-03-L3-A, Amended Conditions of Approval #13, #14 and #15 for

the Bishop Unit WDS.

## Minimum Standards for Granting a Permit (MPWMD Rule 22-C)

16. FINDING: The application adequately identifies the Responsible Party as

California-American Water Company, a California Corporation. [Rule

22-C-1]

**EVIDENCE:** Permit application materials specified in Finding #1.

17. FINDING: The application meets the definition of a "Multiple-Parcel Connection

> System" as water will be provided by CAW, a regulated Public Utility with roughly 40,000 customers, for commercial, residential and/or landscape use on Bishop Unit Parcels. Compliance with California Title 22 water quality standards is the authority of the SWRCB Division of

Drinking Water. [Rule 22-C-2]

**EVIDENCE**: Permit application specified in Finding #1. MPWMD Permit #M15-03-

L3-3, Conditions of Approval #1, #2, #3, and #15. California

Administrative Code, Title 22.

18. FINDING: The application identifies the location of the Source of Supply for the

Bishop Unit as CAW Wells in the Laguna Seca Subarea of the Seaside

Groundwater Basin. [Rule 22-C-2]

Permit application materials specified in Finding #1; MPWMD Permit **EVIDENCE**:

#M15-03-L3-A, Amended Condition of Approval #4 for the Bishop Unit

WDS.

19. FINDING: The approval of the application would not create an Overdraft or increase

> an existing Overdraft of a Groundwater basin. The Superior Court has determined the "natural safe yield" and specified pumping rights of property owners in the Seaside Basin as part of the Adjudication

Decision. [Rule 22-C-4]

**EVIDENCE**: Adjudication Decision specified in Finding #2. MPWMD Permit #M15-

03-L3-A, Amended Conditions of Approval #1 through #4, and #13 for

the CAW Bishop Unit WDS.

20. FINDING: The approval of the application would not adversely affect the ability of

existing systems to provide water to Users due to conditions of approval that limit future water use to a reasonable and acceptable amount,

consistent with the Seaside Basin Adjudication. [Rule 22-C-5]

**EVIDENCE:** Adjudication Decision specified in Finding #2; MPWMD Permit #M15-

03-L3-A, Amended Conditions of Approval #1 through #4, and #13 for

the Bishop Unit WDS; California Water Code.

#### Compliance with California Environmental Quality Act (CEQA)

21. In the review of this application, MPWMD has followed those guidelines FINDING:

adopted by the State of California and published in the California Administrative Code, Title 14, Section 15000, et seq. Specifically, the MPWMD as a lead agency under CEQA and determined that a Class 1 Categorical Exemption is applicable due to minor alterations to existing facilities that involve "negligible expansion" of an existing use, as defined in CEQA Guidelines Section 15301(b). This decision is based on facts regarding current water use, and negligible changes expected in the future with the approval of the subject application. The District also reviewed the CEQA "Exceptions" to exemptions (Guidelines 15300.2) and determined that the criteria to override an exemption were not met.

CEQA and CEQA Guidelines, Section 15301; CEQA Guidelines EVIDENCE: Section 15300.2. MPWMD Notice of Exemption for CAW Bishop Unit

Amendment signed August 21, 2020. Staff hearing notice prepared for MPWMD Hearing Officer on September 2, 2020. MPWMD Permit #M15-03-L3-A, Amended Conditions of Approval #1 through #5, and

#13, and Special Conditions for the Bishop Unit WDS.



## **DRAFT**

# AMENDED CONDITIONS OF APPROVAL FOR CALIFORNIA AMERICAN WATER COMPANY, BISHOP UNIT

Application to Amend Bishop Unit Water Distribution System (California-American Water Company) to Produce and Deliver Seaside Basin Alternative Production Allocation

to Assessor Parcel Numbers: 173-121-004, 005, 023 (formerly 006), and 026 (formerly 007)

Permittee: California American Water, a California Corporation Permitted System: California American Water, Bishop Unit Recipient Assessor Parcel Numbers: 173-121-004, 005, 023, and 026

#### **Permitted System (Required by MPWMD Rules)**

- 1. The California American Water (CAW) Water Distribution System, Bishop Unit (Permitted System) is authorized by the Monterey Peninsula Water Management District (MPWMD or District) by action and amendments on April 15, 1996, October 21, 1996, and June 15, 2015, to provide water service to Residential subdivisions and Non-Residential customers within the Bishop Unit area, which comprises approximately 1,036 acres in the unincorporated County of Monterey. The Bishop Unit Service Area boundary map and a current list of Assessor Parcel Numbers is shown in **Attachment 1**, which may be updated in the future, as needed. This action is referred to herein as the "CAW Bishop Unit McIntosh Amendment" [Rule 22-D-1-a]
- 2. This Permit authorizes the Permitted System to produce and deliver Potable Alternative Production Allocation water to Recipient (Assessor) Parcels 173-121-004, 173-121-005, 173-121-023, and 173-121-026. [Rule 22-D-1-b]
- 3. The System Limits for the Permitted System shall be set at 305 Acre-Feet per Year (AFY), and the Expansion Capacity Limit set at 559 Connections, as approved by the MPWMD Hearing Officer September 15, 2020. [Rule 22-D-1]
- 4. The combined metered Bishop Unit water delivery to APNs 173-121-004, 173-121-005, 173-121-023, and 173-121-026 shall not exceed 9.3 AFY, based on a system loss factor of seven percent (7%). For purpose of Regulation XV, the 2016 Water Conservation and



Rationing Plan, this limit shall not restrict water use on the Parcels unless caused by a regulatory trigger or emergency trigger (see Regulation XV, Rules 165-A-3 and A-4) based on the adjudicated water rights specified in the Seaside Basin Adjudication decision, so long as California-American Water Company has a valid agreement for use of water rights associated with these Parcels.

- 5. The source of water for the Permitted System is percolating Groundwater extracted by two Bishop Unit Wells located within the Laguna Seca Subarea of the Seaside Groundwater Basin, as follows: Bishop #1 (MCEHB Permit #99-120, DWR #701026 completed 8/4/1999); and Bishop #3 (MCEHB Permit #10-11766, DWR #e0116033 completed 12/28/2010). For reference, Bishop #2 (MCEHB Permit #99-119, DWR #701027 completed 8/15/1999) was destroyed and replaced by Bishop #3. [Rule 22-C-3]
- 6. Permittee shall execute an Indemnification Agreement, provided separately, which holds the District harmless and promises to defend the District from any claims, demands, or expenses of any nature or kind arising from or in any way related to the District approval of the Permitted System or the adequacy of the system water supply. This Permit is not valid until the Indemnification Agreement is signed by both the Permittee and MPWMD. [Rule 22-D-1-d]
- 7. Permittee shall comply with District rules relating to water Well registration, metering, and annual reporting of production (MPWMD Rules 52 and 54). [Rule 22-D-1-e; Rule 22-D-2]
- 8. Permittee shall report production by the Water Meter Method (MPWMD Rule 56) for the Wells designated in Condition #5. Refer to Special Conditions #28, #29, #30, and #31 for additional Well reporting requirements. [Rule 22-D-1-e; Rule 22-D-2]
- 9. Permittee shall comply with all MPWMD water efficiency rules that pertain to CAW customers, as applicable, (e.g., Regulations XIV and Regulation XV). [Rule 22-D-1-f]
- 10. No new Connections to the Permitted System may be set until a Water Permit has been secured from MPWMD for each Connection in accordance with MPWMD regulations governing issuance of Water Permits. [Regulation II, Permits]
- 11. Any Intensification or Expansion of Use within the Permitted System shall require a Water Permit pursuant to MPWMD Regulation II.
- 12. Any new Water Gathering Facilities, Source of Supply, expansion of Service Area boundaries, changed conditions regarding water service by other entities, increase in the



#### MANAGEMENT DISTRICT

System Limits set in Condition #3, or other changes described in MPWMD Rule 22-E shall require a Permit to amend the Permitted System. [Rule 22-E]

- 13. Except for the Recipient Parcels which can receive water from Cal-Am's Main Water Distribution System based on the previously adjudicated Seaside Basin Alternative Production Allocation issued to Bishop, McIntosh & McIntosh, a Nevada General Partnership, the emergency interconnection between the Permitted System and the California-American Water Company, Ryan Ranch Unit, shall only be used during emergency events. The term "emergency event" means that water system facilities are not capable of providing sufficient supply to customers, typically due to failure of a facility component. Transfers of water between the Bishop Unit and Ryan Ranch Unit must be metered and reported to the District within one week of occurrence. Use of the emergency interconnection between the Bishop Unit and the Ryan Ranch Unit shall be subject to MPWMD Board review if such use occurs for more than 60 days. Use of the emergency interconnection between the Main California American Water System, Ryan Ranch Unit, and the Bishop Unit is prohibited unless written permission is given by the District General Manager in an emergency event, including documentation that Bishop Unit supply cannot meet the required demand. The Bishop Unit may receive CAW water from any source for emergency fire service, so long as this service is documented and reported in accordance with these conditions. [Rule 22-D-1-h] No mergency interconnection between the Permitted System and any other water system intended to provide regular (non-emergency) service shall be allowed without amending this WDS permit pursuant to Rule 22-E.
- 14. A back-flow protection device to prevent contamination of the CAW Bishop Unit system is not required as the Recipent Parcels will be served by California American Water. [Rule 22-D-1-h]
- 15. Because the Permittee and Permitted System is a regulated Public Utility, compliance with California Title 22 drinking water standards is already required by the State Water Resources Control Board, Division of Drinking Water. [Rule 22-C-2]
- 16. Permittee is not required to carry out specific mitigation measures by MPWMD to offset adverse environmental impacts above and beyond those actions already required by the "Physical Solution" specified by the Superior Court in the Seaside Basin Adjudication Decision or by the Seaside Basin Watermaster. [Rule 22-D-1-i]
- 17. Because the Permittee and Permitted System is a regulated Public Utility, Permittee is not required to provide an agreement to serve water to Parcels within the Bishop Unit. [Rule 22-D-1-j]



- 18. Upon District approval of this Permit, Permittee shall pay to the District the invoiced cost for MPWMD staff, attorney and consultant time spent to process the Permit subsequent to the application date, if required. Actual costs will be compared to the initial Application Fee. The Permittee will be separately provided documentation to support the invoiced amount. This Permit is not valid until payment for the invoiced amount is received by MPWMD. [Rule 22-D-1-1]
- 19. Upon finalization of these conditions, the Permittee shall sign and notarize an Acceptance of Permit Conditions Form associated with the approval of the Permitted System. By signing the form, Permittee acknowledges that Permittee understands and accepts these conditions as a binding part of the Permit approval and agrees to carry them out faithfully. [Rule 22-D-1-m]
- 20. Permittee shall disclose to any future owner, successors and assigns of the California American Water, Bishop Unit, (described in Condition #1) the requirements for the Permitted System associated with this Permit. MPWMD shall be advised in a timely manner of any changes in system ownership, system name, or other substantive changes to the system to facilitate accurate record-keeping. [Rule 22-D-2]
- 21. Permittee shall execute a Notice of Agreement prepared by MPWMD regarding the limitation on water use as set forth in these conditions. Permittee shall pay all fees associated with preparation, review and recording of the Notice of Agreement. The Notice of Agreement must be signed and notarized by the Permittee and accepted by the Monterey County Recorder. [Rule 22-D-1-n]
- 22. Upon notice to the Permittee in writing, e-mail or by telephone, reasonable access shall be given to MPWMD staff or its designated representative to inspect and document Water-Gathering Facilities and Water-Measuring Devices, obtain hydrogeologic data, and take readings from Water Measuring Devices within the Permitted System. [Rule 22-D-1-o]
- 24. The Permit granted herein is subject to revocation in the event the Permittee does not fully comply with each condition set forth in this Permit. [Rule 22-D-1-p]
- 25. Nothing in this Permit shall be construed to grant or confirm any water right.
- 26. This Permit does not authorize any act that results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code Sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. Sections 1531 to 1544). If a "take" will result from any act authorized under this Permit, the Permittee shall obtain



authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this Permit.

#### **Special Conditions of Approval**

- 27. The Permittee is authorized by MPWMD under this Permit to provide Potable water for Residential and Non-Residential use and associated landscaping to the Parcels referenced in Condition 1 upon submittal of applicable Water Permits for Connection to the Bishop Unit.
- 28. For each Well specified in Condition #5, Permittee shall continue to provide monthly reports of water production that identify production on a daily basis.
- 29. For each Well specified in Condition #5, Permittee shall continue to obtain monthly measurements of water levels in each Well, and measure water levels in monitoring Wells within the Bishop Unit, and report these data to the District along with the monthly production report described in Condition #28.
- 30. The Permittee shall report annually at the conclusion of the Water Year (September 30) in the form and manner prescribed by the District (1) the quantity of water delivered from each Source of Supply, (2) the total water produced, (3) the maximum number of Connections in the system, (4) the number of new Connections and disconnections, (5) provide a map or maps of the Service Area, and (6) list the identity and address of each Responsible Party as of the conclusion of the reported Water Year. This report shall be submitted to the District by November 30.
- 31. The Permittee shall report annually at the conclusion of the Water Year (September 30) in the form and manner prescribed by the District (1) the metered sales of water by classification (i.e., Residential, Multi-Family Residential, Commercial/Industrial, Public Authority, Golf Course, and Non-Revenue), (2) by month, and (3) for the Water Year. This report shall be submitted to the District by November 30.

ATTACHMENT 1—Service area map and list of Parcels in Bishop Unit

ork\WDS\2020\McIntosh\Amendment\AmendedConditions.docx

51shop HHachment L 8 CAL AM HIDDEN HILLS UNIT Sheet 2 of 2 CAL AM BISHOP, UNIT Laguna Seca Subarea and Regional Water Systems LAGUNA SECA SUBAREA Rada.

2 and Value Bank Selected

1 and Value Bank Selected

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3 and Value Bank Selected

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## NOTICE OF ADMINSTRATIVE HEARING

**Today's Date:** September 2, 2020

**Hearing Date:** September 15, 2020 at 10 a.m.

**Location:** MPWMD Administrative Hearing will be conducted with virtual (electronic)

participation only using Zoom. See bottom of Notice for meeting

information.

Item: Consider Amendment to Bishop Water Distribution System (California-

American Water Company) to Produce and Deliver Seaside Basin Alternative Production Allocation to Assessor Parcel Numbers: 173-121-004, 005, 023 &

026

The Monterey Peninsula Water Management District staff hearing officer will consider Application #WDS-20200624BUCAW submitted on June 24, 2020, by co-applicants California American Water (CAW) and McIntosh, et al. The proposed amendment would allow Seaside Groundwater Basin Alternative Production Allocation to be produced and supplied through the CAW-Bishop Unit to the recipient Parcels (173-121-004, 005, 023 and 026). The amendment would increase the number of Connections served by CAW-Bishop Unit by 105 Connections and increase System Capacity permitted under WDS Permit No. M15-03-L3 by ten (10) Acre-Feet. This action necessitates changes to the current Conditions of Approval for the CAW Bishop Unit.

MPWMD Staff recommends approval of the application with Conditions of Approval that comply with the minimum standards specified in MPWMD Rule 22-C, based on evidence in the record, and the mandatory conditions required in Rule 22-D. The complete information package for this public hearing, including Findings and Conditions of Approval, will be available for review on the District's website no later than Tuesday, September 8, 2020. Please email Gabriela Bravo at gabby@mpwmd.net with any questions.

#### **Instructions for Connecting to the Zoom Meeting**

Topic: McIntosh Bishop WDS Amendment Hearing

Time: Sep 15, 2020 09:45 AM Pacific Time (US and Canada)

Join Zoom Meeting

https://us02web.zoom.us/j/87119668657?pwd=MExOTTl5OGRVR2d6cWhyc2ZQZS84QT09

Meeting ID: 871 1966 8657

Passcode: Bishop

Dial in: 1-669-900-9128 US (San Jose)

Meeting ID: 871 1966 8657

Passcode: 446800

For other areas, find your local number: <a href="https://us02web.zoom.us/u/kfcQf27Nn">https://us02web.zoom.us/u/kfcQf27Nn</a>

FROM: Monterey Pen. Water Mgt. Dist.

## NOTICE OF EXEMPTION

TO:

County Clerk, County of Monterey

PO Box 29 Salinas, CA 93902	PO Box 85 Monterey, CA 93942-0085
	on for "CAW/Bishop Unit-McIntosh sin, and Issue MPWMD Permit #M15-03-
<b>Project Location Specific:</b> Bishop Uni <b>APNs:</b> 173-121-004, 173-121-005 and 17 <b>Project Location</b> – 24491 Citation Court.	73-121-023
delivery of Seaside Basin Alternat (AFY) from the California-Americ System (WDS) to CAW's Bishop as allowed by the Monterey County	neficiaries of Project: Approval of application enablestive Production Allocation of 10.00 Acre-Feet Annually can Water Company (CAW) "main" Water Distribution Unit in order to serve solely three MCINTOSH Parcels y Superior Court's Seaside Basin Adjudication Decision Watermaster, and MPWMD Permit M15-03-L3-A. No
Name of Public Agency Approving Proj	ject: Monterey Peninsula Water Management District
Name of Person or Agency Carrying On investor-owned public utility	ut Project: California-American Water Company, an
Exempt Status: (check one)  Exempt 15061(b)(3)  X Ministerial (Guidelines Secondered Emergency (Secondered Emergency Project (Secondered Exemption).	15269 (a))
previous determinations of the Sup regarding the Seaside Basin. [Ref	WMD's approval is a ministerial action based on perior Court on CEQA review allowed by MPWMD f: Superior Court Order dated May 11, 2009 as Am v. Seaside; Sierra Club v. MPWMD; 6 <sup>th</sup> Appellate 2010]
<b>Agency Contact Person</b> Gabriela Bravo, Conservation Analyst	831-658-5601 or gabby@mpwmd.net
David J. Stoldt MPWMD General Manager	Date