

This meeting is not subject to Brown Act noticing requirements. The agenda is subject to change.



AGENDA
Water Supply Planning Committee
Of the Monterey Peninsula Water Management District

Monday, November 2, 2020, 4 pm, Virtual Meeting

Pursuant to Governor Newsom's Executive Orders N-29-20 and N-33-20, and to do all we can to help slow the spread of COVID-19 (coronavirus), meetings of the Monterey Peninsula Water Management District Board of Directors and committees will be conducted with virtual (electronic) participation only using WebEx.

Join the meeting at:

<https://mpwmd.webex.com/mpwmd/onstage/g.php?MTID=e3888a5f42f52a5e2bfbf2e5daf894b18>

Or access the meeting at mpwmd.webex.com.

Event number: 126 330 6178

Meeting password: Supply

Participate by phone: 877-668-4493

For detailed instructions on connecting to the WebEx meeting see page 3 of this agenda.

Water Supply Planning Committee Members:

*George Riley, Chair
Mary Adams
Molly Evans*

Alternate:

Alvin Edwards

Staff Contact

*David J. Stoldt,
General Manager*

After staff reports have been distributed, if additional documents are produced by the District and provided to the Committee regarding any item on the agenda they will be made available on the District's website prior to the meeting. Documents distributed at the meeting will be made available upon request and posted to the District's website within five days following the meeting.

Call to Order

Comments from Public - *The public may comment on any item within the District's jurisdiction. Please limit your comments to three minutes in length.*

Action Items - *Public comment will be received. Please limit your comments to three (3) minutes per item.*

1. Consider Adoption of September 2, 2020 Committee Meeting Minutes
2. Consider Development of a Recommendation to the Board of Directors regarding Adoption of an Addendum to the District's Prior ASR Environmental Impact Report for Construction of a Bypass Pipeline to Allow Simultaneous Pure Water Monterey Recovery and ASR Injection (*Subject to CEQA Review per CEQA Guideline Sections 15162 and 15164*)

Discussion Items – *Public comment will be received. Please limit your comments to three (3) minutes per item.*

3. Update on Pure Water Monterey Project
4. Discuss Maximizing Storage in Seaside Basin
5. Update on ASR Construction
6. Review Amendments to ASR Operating Agreement

Suggest Items to be Placed on Future Agendas

Adjournment

Upon request, MPWMD will make a reasonable effort to provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. MPWMD will also make a reasonable effort to provide translation services upon request. Submit requests by noon on Friday, October 30, 2020, to the Board Secretary, arlene@mpwmd.net or call 831-658-5652.

U:\staff\Board_Committees\WSP\2020\20201102\Nov-2-2020-WSP-Agenda.doc

See next page of agenda for instructions on connecting to WebEx meeting

Instructions for Connecting to the WebEx Meeting

Note: If you have not used WebEx previously, when you begin connecting to the meeting you may be asked to download the app. If you do not have a computer, you can participate by phone.

Begin: Within 10 minutes of the meeting start time from your computer click on this link <https://mpwmd.webex.com/mpwmd/onstage/g.php?MTID=e3888a5f42f52a5e2bfbf2e5daf894b18> or paste the link into your browser or go to: mpwmd.webex.com.

Under “Join a Meeting” enter the event number 126 330 6178, hit the enter key and when prompted enter the meeting password Supply, click “Next” and see the dropdown menu at the bottom of the screen “Use computer for audio” and select the method you will use to hear the meeting – see below.

1) Audio and video connection from computer with WebEx app – view participants/materials on your screen

Click on the “Use computer for audio” drop down list

Click “Join Meeting”

Once in the meeting, mute your microphone.

Turn your microphone on when it is your turn to speak.

2) View material on your computer screen and listen to audio on your phone

From the “Use computer for Audio” drop down list select “Call In”

Click on “Join Meeting” / You will see a toll-free telephone number, access code, and attendee ID # -- enter these numbers on your phone.

Mute the microphone on your computer.

Disable computer speakers using the Settings menu.

Join by phone only (no computer) dial 1-877-668-4493 and use the meeting number above.

Present Public Comment

Receipt of Public Comment – the Chair will ask for comments from the public on all items. Limit your comment to 3 minutes.

- (a) Computer Audio Connection: Select the “raised hand” icon. When you are called on to speak, please identify yourself.
- (b) Phone audio connection **with** computer to view meeting: Select the “raised hand” icon. When you are called on to speak, please identify yourself.
- (c) Phone audio connection only: Press *3. Wait for the clerk to unmute your phone and then identify yourself and provide your comment. Press *3 to end the call.

Submit Written Comments

If you are unable to participate via telephone or computer to present oral comments, you may also submit your comments by e-mailing them to comments@mpwmd.net with one of the following subject lines "PUBLIC COMMENT ITEM #" (insert the item number relevant to your comment) or "PUBLIC COMMENT – ORAL COMMUNICATIONS". Comments must be received by 12:00 p.m. on Monday, November 2, 2020. Comments submitted by noon will be provided to the committee members and compiled as part of the record of the meeting.

WATER SUPPLY PLANNING COMMITTEE

ITEM: ACTION ITEM

1. CONSIDER ADOPTION OF SEPTEMBER 2, 2020 COMMITTEE MEETING MINUTES

Meeting Date: November 2, 2020

**From: David J. Stoldt,
General Manager**

Prepared By: Arlene Tavani

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines Section 15378.

SUMMARY: Attached as **Exhibit 1-A** are draft minutes of the September 2, 2020 committee meeting.

RECOMMENDATION: The Committee should adopt the minutes by motion.

EXHIBIT

1-A Draft Minutes of the September 2, 2020 Committee Meeting



EXHIBIT 1-A

DRAFT MINUTES
Water Supply Planning Committee of the
Monterey Peninsula Water Management District
September 2, 2020

Call to Order: The WebEx virtual meeting was called to order at 4:00 pm.

Committee members present: George Riley, Chair
Mary Adams
Molly Evans

Committee members absent: None

Staff members present: David J. Stoldt, General Manager
Jonathan Lear, Water Resources Division Manager
Thomas Christensen, Environmental Resources Div. Mgr.
Arlene Tavani, Executive Assistant

District Counsel present: David Laredo, De Lay & Laredo
Heidi Quinn, De Lay & Laredo

Comments from the Public:

Action Items

1. **Consider Adoption of August 3, 2020 Committee Meeting Minutes**
On a motion by Evans and seconded by Adams, minutes of the August 3, 2020 meeting were approved on a unanimous vote of 3 – 0 by Evans, Adams and Riley.

3. **Update on Pure Water Monterey Project**
At the request of General Manager Stoldt, Committee Chair Riley agreed to move this item off of Discussion Items and bring it forward to the committee for action.

Riley made a motion to recommend that the Board of Directors approve pursuit of a fourth well as part of the overall strategy for the Pure Water Monterey project. The motion was seconded by Adams and approved on a vote of 3 – 0 by Riley, Adams and Evans.

Stoldt explained that the Pure Water Monterey (PWM) project was originally designed with four pairs of wells: 4 shallow wells and 4 deep wells. It was eventually determined by Monterey One Water's (M1Water) consultant that only two well pairs would be needed. Due to problems with two of the wells, the consultants, District staff and California-American Water (Cal-Am) have recommended the need for a third or possibly fourth new deep injection well to achieve maximum productivity for the PWM project. It would provide redundancy and flexibility of operations. Stoldt presented a chart that showed the cost for construction of the third and fourth wells. Updated estimates should be provided to the District by September 11, 2020. Funding would not follow the past agreement in which the District paid 75% of

costs. Instead, the M1 Water Board has agreed to pay for construction of the third deep injection well, if the District would fund construction of the fourth well. The District had previously budgeted \$3 million for the third well. The early estimate of the cost for the fourth well is \$3,700,000 but M1 Water representatives have said they will take measures to keep the cost close to \$3 million, such as covering some of the project management costs. The District could carry the costs over two budget years.

The timing for further consideration of this item was critical as the bid package for the third well was scheduled for distribution on September 8; the District's Administrative Committee would meet on September 15; the Board of Directors could consider this item on September 21; and the amended bid packet that would include the fourth well was to be distributed on September 24, 2020. Also, the California Coastal Commission was scheduled to make a decision on Cal-Am's permit for a desalination project on September 17, 2020.

The committee expressed concern that Kennedy Jenks was the firm that originally recommended that only two well pairs were needed and now Kennedy Jenks and Todd Groundwater have completed design work and presented costs for construction of an additional two wells. Committee members also noted they felt pressure to approve the expenditure, since the wells were needed to obtain full productivity for PWM.

No public comment was directed to the committee on this item.

Discussion Items

2. Potential for Cal-Am Table 13 Water Right (Permit 21330) to Resolve Need for ASR Parallel Pipeline

General Manager Stoldt summarized the information presented in the staff note and responded to questions from the Board. Chris Cook, Director of Operations for California American Water, also responded to questions. Staff agreed to meet with representatives from Marina Coast Water District and Cal-Am to discuss the agency's concerns.

Public Comment: Roger Masuda, Counsel for Marina Coast Water District (MCWD), addressed the committee. He stated that he disagreed with many of the points made by District staff and in the written staff report submitted on this item. He requested that staff from the District, Cal-Am and MCWD meet to discuss the points of disagreement in detail.

3. ~~Update on Pure Water Monterey Project (PWM)~~ *Moved up on the agenda to be considered as an Action Item following Item 1*

4. Update on ASR Project

Jon Lear narrated a PowerPoint presentation that described progress on construction of the water treatment facility at the Santa Margarita site that included: installation of a roof, windows, bay doors and the motor control center. The presentation can be viewed on the District's website.

Suggest Items to be Placed on Future Agendas

No discussion.

Adjournment: The meeting was adjourned at 5:09 pm.

WATER SUPPLY PLANNING COMMITTEE

ITEM: ACTION ITEM

2. **CONSIDER DEVELOPMENT OF A RECOMMENDATION TO THE BOARD OF DIRECTORS REGARDING ADOPTION OF AN ADDENDUM TO THE DISTRICT'S PRIOR ASR ENVIRONMENTAL IMPACT REPORT FOR CONSTRUCTION OF A BYPASS PIPELINE TO ALLOW SIMULTANEOUS PURE WATER MONTEREY RECOVERY AND ASR INJECTION** *(Subject to CEQA Review per CEQA Guideline Sections 15162 and 15164)*

Meeting Date:	November 2, 2020	Budgeted:	No
From:	David J. Stoldt General Manager	Program/ Line Item:	Water Supply Projects N/A
Prepared By:	Jonathan Lear	Cost Estimate:	CalAm Reimbursement

General Counsel Review: N/A

Committee Recommendation: N/A

CEQA Compliance: **This action does not constitute a project as defined by the California Environmental Quality Act Guidelines section 15378.**

SUMMARY: In June, staff reported to the Board that a bottleneck in simultaneous operation of ASR injection and Pure Water Monterey recovery had been identified due to the existing piping configuration in General Jim Moore Blvd. A bypass pipeline around the bottleneck was identified as a solution that would allow simultaneous operation of both projects. The proposed pipeline is above the length and diameter to be exempt from the CEQA process. In order to facilitate this solution in an expedited manner, Cal-Am asked the District to act at the Lead Agency under CEQA for the project. At the Board Meeting on June 22, 2020, MPWMD Board directed the General Manager enter into a reimbursement agreement with Cal-Am for the CEQA work to construct to bypass pipeline necessary to allow simultaneous PWM recovery and ASR injection. The appropriate agreements were executed and the environmental work has been completed.

At the July 6, 2020 Water Supply Planning Committee staff presented the EIR Addendum to the Committee. The introduction to the Addendum is attached to this staff note as **Exhibit 2-A**.

The entire document can be downloaded from this link: <https://www.mpwmd.net/water-supply/aquifer-storage-recovery/technical-aspects/>.

The Committee recommended that the Addendum be brought before the full Board for consideration of adoption. MPWMS staff worked with Denise Duffy and Associates to prepare the findings that will need to be made in order to adopt the Addendum. These findings are included in this staff note as **Exhibit 2-B**. If the MPWMD Board adopts this Addendum at its November meeting, construction on the pipeline would begin in November/December 2020.

During public comments at the July 31, 2020 Board Meeting Marina Coast Water District (MCWD) provided comments stating that the parallel pipeline would not be necessary if a change petition was filed for the water rights associated with the Carmel River ASR project and Cal-Am's Table 13 water rights. Staff was directed by Board to meet with MCWD staff and the item was tabled at the meeting without a vote.

On September 24, District staff met with MCWD General Manager and Council to discuss the water rights and the need for a parallel pipeline to operate ASR and PWM at the same time. MCWD suggested that if a change petition was filed and granted to change the place of use for ASR and Table 13 water rights, these permits could be used in the winter and PWM water could be banked in the Seaside Groundwater Basin and recovered in the summer and used for drought. Cal-Am was not present at this meeting.

Following the meeting District staff discussed the proposal with District Council and looked at how the changes in operation of the system would affect compliance with existing State Board Orders, existing inter-agency agreements, and existing CPUC Testimony. A few items were identified:

- According to State Board Staff, a petition to change the place of use for the water rights would likely take a few years and is not guaranteed that there will not be protests that might not be resolvable.
- If the water produced from the Carmel Valley Alluvial Aquifer during the winter is counted as ASR and Table 13 water, then it would concentrate the recovery of Cal-Am's legal right of 3,376 into the summer months. This is counter to Testimony provided to the CPUC regarding how Cal-Am plans to operate the Carmel Valley Well Field in the summer months.
- Changing the place and time of use of ASR water would be counter to the ASR Agreement between NOAA Fisheries, the District, and Cal-Am. This agreement states that ASR water will be banked in the winter months and recovered in the summer months to provide maximum benefit to the River. NOAA is in control of how banked ASR water is used to protect the River and sets the annual volume to be recovered each water year. If PWM water is banked instead of ASR water, NOAA loses their control over the water banked in the Seaside Basin. This could likely be a point of protest.

RECOMMENDATION: That the Committee recommend to the Board of Directors that it approve Resolution No. 2020-13 (**Exhibit 2-B**) adopting the Construction of a Bypass Pipeline Modification Addendum as Addendum 6 to the ASR EIR/EA.

DISCUSSION: The Pure Water Monterey (PWM) Project began injecting water into the Seaside Groundwater Basin in March 2020 and building up the 1,000 Acre Foot Operating Reserve. PWM water is available as a source to the water supply portfolio and will become a component of the Quarterly Water Budget and used to shift production away from the Carmel River and comply with the Cease and Desist Order (CDO). In meetings between District Staff and Cal-Am for planning the recovery schedule for PWM, it was identified that in order to recover all PWM and Native Seaside Groundwater, the Seaside well field would need to operate for more months of the year than previous operational protocols. Additionally, only the ASR wells are connected to the

pipeline in General Jim Moore Blvd. that is attached to the transfer (Monterey) pipeline that can move water to the Forest Lake Tanks. The Forest Lake Tanks supply water to meet water demand in New Monterey, Pacific Grove, and the Del Monte Forest. The rest of the wells in Seaside provide water to meet demand in Seaside and Old Monterey as far as the Naval Post Graduate School and are isolated from the demands met by the Forest Lake Tanks. The demand on the Seaside system is between 10 to 12 Acre Feet per day and is not enough to consume all of the recovered PWM water, so water must be recovered by the ASR wells and moved through the transfer pipeline to the Forest Lake Tanks to ensure all of the PWM water can be consumed.

Project Description

Cal-Am proposes to construct a new 36-inch-diameter, 7,000 LF, potable water transmission pipeline (Bypass Pipeline) in located General Jim Moore Blvd (GJM) between Hilby Avenue and approximately 750 feet south of Coe Avenue in Seaside, CA. The proposed Bypass Pipeline would connect to an existing 36-inch pipeline at each end.

The Bypass Pipeline would be located in the Former Fort Ord within the Seaside Munitions Response Area (MRA).

The project would also include a new dechlorination facility and a new 16-inch diameter connection to the Cal-Am Aquifer Storage and Recovery (ASR) well sites 3 and 4 located at the Seaside Middle School.

Purpose

The proposed Bypass Pipeline would improve the existing ASR system and allow Cal-Am to perform simultaneous ASR injection and extraction operations in order to meet customer demand as a result of reduced Carmel River diversions. The Bypass Pipeline would be used to convey water from Crest Tank to ASR Wells 3 and 4 for injection. Extraction operations would be performed at ASR Wells 1 and 2 and would be conveyed through existing infrastructure to Forest Lake Reservoir in Pacific Grove.

Under current Cal-Am permit requirements, a 30-day retention period is required between ASR injection and extraction operations. Due to reduced Carmel River diversions, Cal-Am would not be able to meet customer demand during the 30-day retention period when extraction operations are not allowed. The proposed dechlorination facility would dechlorinate water prior to injection into ASR Wells 3 and 4 which would remove the 30-day retention period requirement and allowing Cal-Am to meet customer demand.

Construction

The Bypass Pipeline would be constructed by open trench within the paved roadway of the northbound lanes of GJM. The typical trench width would be approximately 6-feet wide and 6.5-feet deep. Excess soil would be handled and disposed of per requirements of City of Seaside Programmatic On-Call Construction Support Plan – Roadways and Utilities – Seaside Munitions

Response Area. Pavement and striping would be restored per City of Seaside requirements. Traffic control plans would be developed and submitted to the City of Seaside for review and approval.

The pipeline would include blow off and air vent appurtenances installed in either the sidewalk or median of GJM. Blow offs would be pump out style, located within utility boxes that are flush with the surrounding ground. Air vents would be installed above grade in locked cages. The locations of the appurtenances would be per approval of the City of Seaside.

EXHIBITS

2-A Introduction to the Addendum

2-B Resolution No. 2020-13

2-C Memorandum responding to comments raised by Marina Coast Water District concerning the Aquifer Storage & Recovery Project EIR/EA – Addendum No. 6

ADDENDUM No. 6

TO THE

AQUIFER STORAGE AND RECOVERY PROJECT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL ASSESSMENT

FOR THE

BYPASS PIPELINE & DE-CHLORINATION FACILITY MODIFICATION

July 2020

Prepared for
Monterey Peninsula Water Management District

Prepared by
Denise Duffy and Associates, Inc.



EXHIBIT 2-A

This Page Is Intentionally Blank

EXHIBIT 2-A

TABLE OF CONTENTS

I. Introduction 1

II. Project Location 2

III. Project Description..... 2

IV. Comparison to the Conditions Listed in CEQA Guidelines Section 15162 5

V. Changes to the Project..... 6

LIST OF FIGURES

1. Regional Map..... 7

2. Site Photos..... 8

3. Surrounding Land Uses..... 9

4. Site Plan 10

LIST OF ATTACHMENTS

1. Initial Study Checklist for the Proposed Modification to Support Addendum No. 6 to the ASR EIR/EA
2. Air Quality and GHG Calculations Spreadsheets dated June 19, 2020
3. ASR Bypass Pipeline & De-Chlorination Facility Modification – Botanical Survey Results (June 24, 2020)
4. Approved MMRP for the Aquifer Storage and Recovery Project

EXHIBIT 2-A

This Page Is Intentionally Blank

EXHIBIT 2-A

I. INTRODUCTION

Pursuant to the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq. (CEQA) and the California Environmental Quality Act Guidelines, Title 14, Chapter 3 of the California Code of Regulations (CEQA Guidelines), and in cooperation with other affected agencies and entities, the Monterey Peninsula Water Management District (MPWMD) has prepared this Addendum to the Final Environmental Impact Report/Environmental Assessment for the Monterey Peninsula Water Management District Phase 1 Aquifer Storage and Recovery (ASR) Project (EIR/EA), certified by MPWMD's Board of Directors on August 21, 2006, as modified by:

- Addendum No. 1 to the ASR EIR/EA, which addressed full implementation of ASR Phase 2 and was adopted by MPWMD's Board of Directors on April 16, 2012;
- Addendum No. 2 to the ASR EIR/EA, which addressed the addition of the Hilby Pump Station and was adopted by MPWMD's Board of Directors on June 20, 2016;
- Addendum No. 3 to the ASR EIR/EA, which addressed the Monterey Pipeline and was adopted by MPWMD's Board of Directors on February 22, 2017;
- Addendum No. 4 to the ASR EIR/EA, which addressed the Backflush Basin Expansion and was adopted by MPWMD's Board of Directors on July 16, 2018; and,
- Addendum No. 5 to the ASR EIR/EA, which addressed the Water Treatment Facility Modification and was adopted by MPWMD's Board of Directors on July 15, 2019.

MPWMD prepared this Addendum to the ASR EIR/EA to address the effects of constructing and operating the proposed Bypass Pipeline and De-Chlorination Facility Modification (Proposed Modification), which would constitute a minor modification to the ASR Project. This Addendum evaluates the potential environmental effects associated with the Proposed Modification, which consists of a 36-inch potable water transmission pipeline, located in General Jim Moore Boulevard between Hilby Avenue and Coe Avenue, and a proposed de-chlorination facility to serve the ASR project.

The ASR Project entails diversion of "excess" Carmel River winter flows, as allowed under water rights permits issued by the State Water Resources Control Board, which is then treated and transmitted via the California American Water (CalAm) distribution system to specially-constructed injection/recovery wells, known as ASR wells, in the Seaside Groundwater Basin and injected under an authorization from the Environmental Protection Agency (EPA). The excess water is diverted by CalAm wells only during periods when flows in the Carmel River exceed fisheries bypass flow requirements. After treatment to potable drinking water standards, water is then conveyed through CalAm's distribution system to ASR facilities (injection wells) to recharge the over-pumped Seaside Groundwater Basin. Available storage capacity in the Seaside Groundwater Basin serves as an underground reservoir for the diverted water. Water is then pumped back out from the Seaside Groundwater Basin in dry periods to help reduce pumping-related impacts on the Carmel River. This "conjunctive use" more efficiently utilizes local water resources to improve the reliability of the community's water supply while reducing the environmental impacts to the Carmel River and Seaside Groundwater Basins.

This Addendum evaluates whether construction and operation of the proposed Bypass Pipeline and De-Chlorination Facility would result in a new significant impact, or an impact that is substantially more severe than the impacts disclosed in the ASR EIR/EA as amended. This Addendum is supported by **Attachment 1, Initial Study Checklist for the Bypass Pipeline Modification**, which conclusively determines the following in accordance with CEQA Guidelines Section 15464:

EXHIBIT 2-A

- No new or previously unidentified adverse significant impacts would result from the construction and operation of the Proposed Modification.
- The Proposed Modification would not result in a substantial increase in the severity of the impacts identified in the ASR EIR/EA and Addenda.

MPWMD's Board of Directors will consider this Addendum, along with the certified ASR EIR/EA and its Addenda, prior to making a decision on any approvals pertaining to the Proposed Modification.

II. PROJECT LOCATION

The Proposed Modification is located in the City of Seaside. More specifically, the Proposed Modification includes the construction of the Bypass Pipeline, which is located within the existing paved area of the General Jim Moore Boulevard roadway between Hilby Avenue and approximately 750 feet south of Coe Avenue and the Paralta well site (see **Figure 1. Regional Map**). The Bypass Pipeline is primarily located in the northbound lane of General Jim Moore Boulevard and will tie into an existing pipeline at the intersection of Hilby Avenue and General Jim Moore Boulevard

The Proposed Modification also includes the construction and operation of a de-chlorination facility located within the Paralta well site, which is a previously developed site that includes existing water distribution system infrastructure. The existing water distribution system improvements includes a well and associated infrastructure (see **Figure 2. Site Photos**). The de-chlorination facility would tie into an existing ASR pipeline along the southbound lane of General Jim Moore Boulevard. This existing pipeline would transfer de-chlorinated water to ASR Wells 3 and 4 to be injected into the Seaside Groundwater Basin. The de-chlorination facility would also connect to an existing water transfer pipeline, which would transfer water supplies from the proposed Bypass Pipeline to the de-chlorination facility, as more thoroughly described below. The Proposed Modification also includes the construction and operation of a de-chlorination facility at the existing Santa Margarita Treatment facility, located at 1910 General Jim Moore Boulevard. The de-chlorination facility at the Santa Margarita site would occur entirely within the existing footprint of the treatment facility.

The Proposed Modification also includes the use of an existing soil deposition site along the west side of General Jim Moore Boulevard. More specifically, the soil deposition site is along Mescal Street between Plumas Avenue and Kimball Avenue and has been used historically for soil deposition purposes (see **Figure 2. Site Photos**).

As previously mentioned, the Proposed Modification is located in the City of Seaside. Per the Seaside General Plan, the modification site is designated as Low-Density Single Family Residential. The surrounding land uses include existing residential uses to the north, habitat management and low-density single family residential to the south and east, and existing residential uses to the west (see **Figure 3. Surrounding Land Use**).

III. PROJECT DESCRIPTION

The Proposed Modification would improve the existing ASR system and allow CalAm to perform simultaneous ASR injection and extraction operations to meet customer demand as a result of reduced Carmel River diversions, as well as ensure the simultaneous recovery of Pure Water Monterey water and the injection of Carmel River water as part of the ASR program. The Proposed Modification would be used

EXHIBIT 2-A

to convey water from the existing Crest Water Tank to ASR Wells 3 and 4 for injection. Extraction operations would be performed at ASR Wells 1 and 2 and would be conveyed through existing infrastructure to Forest Lake Reservoir in Pacific Grove. Under current CalAm permit requirements, a 30-day retention period is required between ASR injection and extraction operations. Due to reduced Carmel River diversions, CalAm would not be able to meet customer demand during the 30-day retention period when extraction operations are not allowed.

The Proposed Modification consists of several distinct sub-components, including the construction and operation of the proposed Bypass Pipeline, de-chlorination facility, and the use of an existing soil deposition site. These components are collectively referred to as the “Proposed Modification” in this Addendum. The following includes a description of each of the separate sub-components of the Proposed Modification.

BYPASS PIPELINE MODIFICATION

The proposed Bypass Pipeline Modification is necessary to allow the simultaneous recovery of Pure Water Monterey water and the operation of the existing ASR system. Under existing operations, the simultaneous recovery of Pure Water Monterey water and the operation of the existing ASR system is not possible due to existing system limitations. As a result, an additional pipeline (i.e., the proposed Bypass Pipeline) is necessary to allow recovery of Pure Water Monterey water and injection of Carmel River water at the same time. If the proposed Bypass Pipeline Modification is not constructed, even if flows in the Carmel River are above permit conditions allowing injection, ASR injection would need to be stopped to recover all Pure Water Monterey water via the existing transfer pipeline. The proposed Bypass Pipeline Modification would allow both Pure Water Monterey and ASR water resources projects to function simultaneously.

In the absence of the proposed Bypass Pipeline Modification, ASR injection would be limited to certain months. This would substantially reduce the injection capacity of the ASR system. And it would further reduce the amount of available “ASR bank.” Without the Bypass Pipeline Modification, Seaside Basin and Carmel River source water may have a 200 acre-feet (AF) buffer or less. Whereas with the proposed Bypass Pipeline Modification, would increase the “ASR bank” and would result in an approximately 1,000 AF buffer. As a result, the proposed Bypass Pipeline Modification would improve existing system operation, provide additional system redundancy, and ensure the simultaneous operation of both the Pure Water Monterey and ASR projects.

The Bypass Pipeline consists of the construction and operation of a new 36-inch-diameter, 7,000 linear foot (LF), potable water transmission pipeline located in General Jim Moore Boulevard between Hilby Avenue and approximately 750 feet south of Coe Avenue in Seaside, CA (see **Figure 2. Site Photos**). The Bypass Pipeline would connect to an existing 36-inch pipeline at each end. The Bypass Pipeline would be constructed using open trench technology within the paved roadway of the northbound lanes of General Jim Moore Boulevard (see **Figures 4a. and 4b. Site Plan**). The typical trench width would be approximately 6-feet wide and 6.5-feet deep. Excess soil would be handled and disposed of per requirements of the Fort Ord Reuse Authority (FORA) and City of Seaside Programmatic On-Call Construction Support Plan – Roadways and Utilities – Seaside Munitions Response Area. Pavement and striping would be restored per City of Seaside requirements. Traffic control plans would be developed and submitted to the City of Seaside for review and approval. The pipeline would include blow off and air vent appurtenances installed in either the sidewalk or median of General Jim Moore Boulevard. Blow offs would be pump out style, located within utility boxes that are flush with the surrounding ground. Air vents would be installed above grade in locked cages. The locations of the appurtenances would be per approval of the City of Seaside.

EXHIBIT 2-A

DE-CHLORINATION FACILITY MODIFICATION

The Proposed Modification would include the construction and operation of the de-chlorination facility, which would be located at the Paralta well site on southwest corner of General Jim Moore Boulevard and Coe Avenue (see **Figure 4a. Site Plan**). The proposed de-chlorination facility modification would dechlorinate water prior to injection into ASR Wells 3 and 4 which would remove the 30-day retention period requirement discussed above thereby allowing CalAm to meet customer demand. The de-chlorination facility would include two connections at General Jim Moore Boulevard and Coe Avenue. One connection would be to an existing transfer pipeline that would bring water supplies in through the proposed Bypass Pipeline and the other connection would be to an existing ASR pipeline in order to inject the de-chlorinated water into ASR Wells 3 and 4 .

The de-chlorination facility would be housed in an approximately 268 square foot building and would include a skid pump, chemical tank, and associated piping. The energy use associated with the electrical components of de-chlorination facility include the building and the interior lighting, sodium bisulfite metering pumps, exhaust fan, sodium bisulfite analyzer system and chlorine residual analyzer systems, and instrumentation. These electrical components would require an additional load of approximately 20 Amps. The de-chlorination facility would connect to a new 16-inch diameter connection to existing ASR Wells 3 and 4 located at the Seaside Middle School.

The Proposed Modification would include the construction and operation of the de-chlorination facility at the existing Santa Margarita Treatment Facility, located at 1910 General Jim Moore Boulevard. This modification would occur entirely within the existing treatment facility footprint. The proposed de-chlorination facility modification would dechlorinate water prior to injection into ASR Wells 1 and 2 which would remove the 30-day retention period requirement discussed above thereby allowing CalAm to meet customer demand.

SOIL DEPOSITION MODIFICATION

The Proposed Modification also includes the use of a soil deposition site along the west side of General Jim Moore Boulevard, known as the Mescal site. More specifically, the soil deposition site is along Mescal Street between Plumas Avenue and Kimball Avenue and has been used for soil deposition associated with ASR construction activities in the past (see **Figure 4b. Site Plan**). Excess soil would be disposed of at this existing soil deposition site consistent with the requirements of FORA. Additionally, fencing and/or flagging will be installed at the soil deposition site under the direction of a qualified biologists to ensure that all documented special-status species are located outside of the soil deposition area.

CONSTRUCTION AND OPERATION

Construction is anticipated to begin in January of 2021 and will last approximately eight (8) months. Construction activities will include site grading and trenching. The total amount of earthwork for the Proposed Modification is 7,800 Cubic Yards (CY) of cut and 5,270 CY of fill, with a net cut and fill of approximately 2,530 CY. It is anticipated that a majority of native soils can be used as backfill. Construction is planned to occur Monday through Friday from 7am to 7pm. It is estimated that an average of eight (8) construction workers will be required onsite during construction with a peak on-site presence of approximately eight (8) to ten (10) personnel at the peak of construction. Materials and equipment will also be delivered to the site; it is anticipated that approximately 100 deliveries would occur during construction, which would include piping, fill material, the chemical building, chemical tank, pump skid, and concrete. This would mean that material delivery would occur approximately two (2) to three (3)

EXHIBIT 2-A

times per week throughout the duration of construction activities. Construction workers will access the site from General Jim Moore Boulevard and will park at or near the site. Traffic control will be required during construction. Traffic controls will include, at a minimum, measures to ensure safety of pedestrians and bicyclists on General Jim Moore Boulevard.

Additionally, operational workers will access the modification site (specifically the de-chlorination facility) in order to provide routine maintenance and material delivery. Furthermore, maintenance will take place once a month for the air valves on the pipeline alignment. Operational workers may visit the de-chlorination facility twice a week when the de-chlorination system is operated and ASR water is being injected to ASR Wells 3 and 4, which would probably be combined with maintaining the existing Paralta well site. Lastly, the chemical tank in the de-chlorination facility was sized for at least 14-days of storage so operational workers may deliver up to two (2) trucks of chemicals each month.

IV. COMPARISON TO THE CONDITIONS LISTED IN CEQA GUIDELINES SECTION 15162

MPWMD prepared this Addendum pursuant to CEQA Guidelines Section 15164, which states: “A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” CEQA Guidelines Section 15162 establishes the following criteria for the preparation of a Supplemental EIR.

- 1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - a) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - b) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The following discussion summarizes the reasons why a subsequent or supplemental EIR, pursuant to CEQA Guidelines Section 15162, is not required in connection with approvals for the Proposed Modification and why an addendum is appropriate.

EXHIBIT 2-A

V. CHANGES TO THE PROJECT

1. Project Background

The ASR EIR/EA and its Addenda did not contemplate the Proposed Modification. The draft ASR EIR/EA can be accessed on the MPWMD website at the following address: <http://www.mpwmd.net/wp-content/uploads/2015/08/MPWMD-Draft-EIR-EA-3-06.pdf>; the final ASR EIR/EA can be accessed at the following address: https://www.mpwmd.net/wp-content/uploads/2015/08/FEIR_8-21-06.pdf. Addendum No. 1 to that document can be found online at the following address: http://www.mpwmd.net/asd/board/boardpacket/2012/20120416/16/item16_exh16b.pdf, Addendum No. 2 can be found here: <http://www.mpwmd.net/asd/board/boardpacket/2016/20160620/16/Item-16-Exh-A.pdf>, and Addendum No. 3 can be found here: <https://www.mpwmd.net/asd/board/boardpacket/2017/20170222/02/Item-2-Exh-A.pdf>. Addendum No. 4 can be found here: <https://www.mpwmd.net/asd/board/boardpacket/2018/20180716/16/Item-16-Exh-A.pdf>. Addendum No. 5 to that document can be found online at the following address: <https://www.mpwmd.net/asd/board/boardpacket/2019/20190715/18/Item-18-Exh-A.pdf>

2. Environmental Effects

As detailed in **Attachment 1, Initial Study Checklist for the Proposed Modification**, the Proposed Modification would not result in any new significant environmental effects that cannot be mitigated with existing, previously identified mitigation measures in the ASR EIR/EA and its Addenda. In addition, the Proposed Modification would not substantially increase the severity of environmental effects identified in the ASR EIR/EA and its Addenda.

3. New Information

No new information of substantial importance has been identified or presented to MPWMD such that the ASR Project would result in: 1) significant environmental effects not identified in the ASR EIR/EA and its Addenda, or 2) more severe environmental effects than described in the ASR EIR/EA and its Addenda, or 3) require mitigation measures which were previously determined not to be feasible, or mitigation measures that are considerably different from those recommended in the ASR EIR/EA and its Addenda.

4. Conclusion

Section 15164 of the CEQA Guidelines states that a lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. Based on the information in this Addendum, MPWMD has determined that:

- No new significant environmental effects or a substantial increase in the severity of previously identified significant effects would occur as a result of the construction and operation of the Proposed Modification;
- No substantial changes have occurred or would occur with respect to the circumstances under which the ASR Project was originally undertaken, which would require major revisions to the previously certified ASR EIR/EA due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

EXHIBIT 2-A

- No new information of substantial importance has been received or discovered, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous ASR EIR/EA and its Addenda were certified as complete.

EXHIBIT 2-B

RESOLUTION NO. 2020-13

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
CERTIFYING ADDENDUM No. 6
TO THE AQUIFER STORAGE AND RECOVERY EIR/EA**

WHEREAS, the Board of Directors of the Monterey Peninsula Water Management District (MPWMD) has directed that its staff pursue Aquifer Storage and Recovery (ASR) as a means to facilitate conjunctive use of local water resources for the benefit of the environment and the community; and

WHEREAS, MPWMD adopted Findings Related to the Certification of the MPWMD Phase 1 Aquifer Storage and Recovery Project EIR and Determining Compliance with the California Environmental Quality Act, adopted the Mitigation and Monitoring Plan, certified the Final Environmental Impact Report/Environmental Assessment (EIR/EA) for the Phase 1 ASR Project, and approved the Phase 1 ASR Project on August 21, 2006; and

WHEREAS, MPWMD approved and adopted the April 2012 Addendum to the Phase 1 ASR EIR/EA, adopted the April 2012 Mitigation Monitoring Plan, and approved the full implementation of ASR Water Project 2 on April 16, 2012; and

WHEREAS, MPWMD approved the Hilby Avenue Pump Station and adopted the June 2016 Hilby Avenue Pump Station Addendum as Addendum 2 to the Aquifer Storage and Recovery Project Environmental Impact Report/Environmental Assessment on June 20, 2016; and

WHEREAS, MPWMD approved a realignment of a segment of the Monterey Pipeline and adopted the February 2017 Monterey Pipeline Addendum as Addendum 3 to the ASR EIR/EA on February 22, 2017; and

WHEREAS, MPWMD approved an expansion to the backflush basin and adopted the July 2018 Backflush Basin Expansion Addendum as Addendum 4 to the ASR EIR/EA on July 16, 2018; and

WHEREAS, MPWMD approved a modification to the water treatment facility and adopted the July 2019 Water Treatment Facility Modification Addendum as Addendum 5 to the ASR EIR/EA on July 15, 2019; and

WHEREAS, MPWMD has followed guidelines of the California Environmental Quality Act (CEQA) and prepared the Bypass Pipeline and De-Chlorination Facility Modification Addendum 6 to modify the approved ASR Phase 1 Project by allowing the construction and operation of the proposed Bypass Pipeline, De-Chlorination Facility, and the Soil Deposition site; and

WHEREAS, MPWMD has prepared Findings of Environmental Review for the Bypass Pipeline and De-Chlorination Facility Modification Addendum to the ASR EIR/EA, attached hereto as **Attachment A** and hereby incorporated by reference.

NOW THEREFORE, BE IT RESOLVED:

We, the Board of Directors of the Monterey Peninsula Water Management District, certify the Bypass Pipeline and De-Chlorination Facility Modification Addendum as a true and accurate statement of the environmental impacts of the construction of the Bypass Pipeline and De-Chlorination Facility Modification; and

Adopt the July 2020 Bypass Pipeline and De-Chlorination Facility Modification Addendum as Addendum 6 to the ASR EIR/EA, which found that the proposed modifications to the approved ASR Phase 1 Project would not result in a measurable increase in environmental impacts over what was previously analyzed in the 2006 ASR EIR/EA, the 2012 ASR Phase 2 Addendum, the Hilby Avenue Pump Station Addendum, the Monterey Pipeline Addendum, the Backflush Basin Expansion Addendum, and the Water Treatment Facility Modification Addendum; and

Directs staff to post a Notice of Determination of this action in accordance with Section 15094 of the CEQA Guidelines.

On motion of Director _____ and second by Director the _____ foregoing resolution is duly adopted this 20 day of July 2020 by the following votes:

AYES:

NAYS:

ABSENT:

I, David J. Stoldt, Secretary to the Board of Directors on the Monterey Peninsula Water Management District, hereby certify that the foregoing is a resolution duly adopted on the 20 day of July 2020.

Witness my hand and seal of the Board of Directors this _____ day of July 2020.

David J. Stoldt, Secretary to the Board

ATTACHMENT A

**FINDINGS OF ENVIRONMENTAL REVIEW
FOR THE
BYPASS PIPELINE AND DE-CHLORINATION
FACILITY MODIFICATION ADDENDUM TO THE
ASR EIR/EA**

- 1) **FINDING:** The Monterey Peninsula Water Management District (MPWMD) Board of Directors adopted the Findings Relating to Certification of the MPWMD Phase 1 Aquifer Storage and Recovery Project EIR and Determining Compliance with the California Environmental Quality Act, adopted the Mitigation Monitoring Plan, certified the Final Aquifer Storage and Recovery (ASR) Environmental Impact Report/Environmental Assessment (EIR/EA) for the Phase 1 ASR Project, and approved the Phase 1 ASR Project on August 21, 2006.

EVIDENCE: The ASR EIR/EA and related documents are on file in the MPWMD office.

- 2) **FINDING:** The MPWMD Board of Directors approved and adopted the April 2012 Addendum to the Phase 1 EIR/EA (Addendum 1), adopted the April 2012 Mitigation Monitoring Plan for ASR Water Project 2, and approved the full implementation of ASR Water Project 2 on April 16, 2012.

EVIDENCE: Addendum 1 and related documents are on file in the MPWMD office.

- 3) **FINDING:** The MPWMD Board of Directors approved the Hilby Avenue Pump Station and adopted the June 2016 Hilby Avenue Pump Station Addendum as Addendum 2 to the ASR EIR/EA on June 20, 2016

EVIDENCE: Addendum 2 and related documents are on file in the MPWMD office.

- 4) **FINDING:** The MPWMD Board of Directors approved a realignment of a segment of the Monterey Pipeline and adopted the February 2017 Monterey Pipeline Addendum as Addendum 3 to the ASR EIR/EA on February 22, 2017.

EVIDENCE: Addendum 3 and related documents are on file in the MPWMD office.

- 5) **FINDING:** The MPWMD Board of Directors approved an expansion to the backflush basin and adopted the July 2018 Backflush Basin Expansion Addendum as Addendum 4 to the ASR EIR/EA on July 16, 2018; and

EVIDENCE: Addendum 4 and related documents are on file in the MPWMD office.

- 6) **FINDING:** The MPWMD Board of Directors approved a modification to the water treatment facility and adopted the July 2019 Water Treatment Facility Modification Addendum as Addendum 5 to the ASR EIR/EA on July 15, 2019; and

EVIDENCE: Addendum 5 and related documents are on file in the MPWMD office.

- 7) **FINDING:** MPWMD followed the California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15164 to determine that an Addendum evaluating the environmental effect of the Bypass Pipeline and De-Chlorination Facility Modification and related improvements (together hereinafter referred to as Modification) is appropriate based on the following:
- a. The Modification would not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
 - b. No changes in circumstances have occurred involving new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and,
 - c. No new information of substantial importance which was not known and could not have been known at the time of the previous EIR/EA and Addenda were found.

The MPWMD Board of Directors at their July 20, 2020 meeting reviewed the Bypass Pipeline and De-Chlorination Facility Modification Addendum (Addendum 6).

EVIDENCE:

- a. Construction and operational environmental impacts and mitigation measures at the Phase 1 ASR Project site were previously considered with the ASR EIR/EA; and
- b. The proposed Modification consists of several distinct sub-components, including the construction and operation of the proposed Bypass Pipeline, De-Chlorination Facility, and the Soil Deposition site. The proposed location of the Bypass Pipeline is within an existing roadway, the De-Chlorination Facility is located within the existing Paralta well site, similarly, the De-Chlorination modification at the Santa Margarita site is located entirely within the existing water treatment facility, and the Soil Deposition site has been used for soil deposition purposes in the past. The Modification's potential environmental effects are consistent with the impacts previously considered in the ASR EIR/EA and subsequent Addenda including impacts to air quality, noise, and sensitive species in addition to cultural resources and hazardous materials; and
- c. All appropriate measures to reduce impacts to less than significant described in the adopted ASR EIR/EA Mitigation and Monitoring Programs would apply to the Modification; and
- d. The proposed Modification would not result in any new significant environmental effects that cannot be mitigated with existing, previously identified mitigation measures in the ASR EIR/EA; and
- e. The proposed Modification would not substantially increase the severity of environmental effects identified in the ASR/EIR and its Addenda; and

- f. No new information of substantial importance has been identified or presented to MPWMD Board of Directors that the Modification would result in significant environmental effects not identified in the ASR EIR/EA and its Addenda, more severe environmental effects than described in the ASR EIR/EA and its Addenda, or require mitigation measures which were previously determined not to be feasible or are considerably different from those recommended in the ASR EIR/EA and its Addenda; and
- g. The Agenda and supporting documents for the July 20, 2020 Board Meeting are on file in the District office.

- 8) FINDING:** Addendum 6 reflects the independent judgement of the MPWMD Board, and each participating Director has reviewed and considered the information contained in the Addendum and related documents prior to making the decision on the Addendum.

EVIDENCE: Each Director on the Board received a copy of Addendum 6 and supporting documents as evidenced by the July 20, 2020 Board meeting packet.

- 9) FINDING:** The MPWMD Board finds that the proposed modifications to the approved ASR Phase 1 Project would not result in a measurable increase in environmental impacts over what was previously analyzed in the August 21, 2006 ASR EIR/EA and subsequent Addenda.

EVIDENCE: The above stated facts.



Denise Duffy & Associates, Inc.

PLANNING AND ENVIRONMENTAL CONSULTING

MEMORANDUM

To: Monterey Peninsula Water Management District, Board of Directors

From: Denise Duffy & Associates, Inc.

CC: David Stoldt, General Manager, MPWMD
Jonathan Lear, PG, CHg, Water Resources Manager, MPWMD
Maureen Hamilton, Water Resources Engineer, MPWMD

Date: July 29, 2020

Subject: **Aquifer Storage & Recovery Project EIR/EA – Addendum No. 6: MCWD Response**

I. Introduction

This memorandum responds to comments raised by Marina Coast Water District (“MCWD”) in a letter dated July, 20, 2020 concerning modifications to the existing Aquifer Storage & Recovery (“ASR”) Project.¹ As described in Addendum No. 6 to the ASR Final Environmental Impact Report/Environmental Assessment (“ASR Final EIR/EA”)(SCH#2004121065), California American Water (“CalAm”) proposes to modify the existing ASR Project. More specifically, the proposed modification consists of the following: 1) Bypass Pipeline Modification; 2) De-Chlorination Facility Modification; and, 3) Soil Deposition Modification. These modifications are collectively referred to as the “Proposed Modification.” The Monterey Peninsula Water Management District (“MPWMD”) prepared Addendum No. 6 to the ASR Final EIR/EA to evaluate the potential environmental effects associated with the Proposed Modification in accordance with the requirements of the California Environmental Quality Act (“CEQA”) and consistent with prior modifications to the ASR Project. As discuss below, MPWMD appropriately considered the potential environmental effects associated with the Proposed Modification.

This memorandum consists of the following: 1) an introduction; 2) a brief procedural overview regarding the ASR Project, including prior modifications and related CEQA review; 3) a brief summary of the Proposed Modification; 4) a description of the applicable CEQA regulatory requirements; 5) a detailed response to Marina Coast Water District’s (“MCWD”) comments; and, 6) a general conclusion.

¹ The ASR Project entails diversion of “excess” Carmel River winter flows, as allowed under water rights permits issued by the State Water Resources Control Board (“SWRCB”). These diversions are subsequently treated and transmitted via CalAm’s distribution system to specially-constructed injection/recovery wells, known as ASR wells, in the Seaside Groundwater Basin. CalAm wells divert the excess flows only during specific periods when flows exceed fisheries bypass requirements. After treatment to potable drinking water standards, water is conveyed through CalAm’s distribution system to ASR facilities (injection wells) to recharge the over-pumped Seaside Groundwater Basin. Water is then pumped back out from the Seaside Groundwater Basin during dry periods to reduce pumping-related effects on the Carmel River. This “conjunctive use” more efficiently utilizes local water resources to improve the reliability of the community’s water supply while reducing adverse effects to the Carmel River and Seaside Groundwater Basins.

II. Procedural Overview

On March 23, 2006, MPWMD circulated the Draft EIR/EA for the ASR Project for public review. MPWMD received 13 public comments on the Draft EIR/EA. MPWMD subsequently prepared a Final EIR/EA that responded to public comments and made minor revisions/clarifications to the Draft EIR/EA. On August 21, 2006 MPWMD certified the Final EIR/EA for Phase 1 of the ASR Project, adopted a Mitigation Monitoring and Reporting Program (“MMRP”), and approved the ASR Project. ASR Phase 1 became operational in 2008.

Following certification of the ASR Final EIR/EA and construction of ASR Phase 1, MPWMD incorporated several modifications and refinements to the ASR Project to expand system operations, account for necessary modifications to improve system efficiency, and maximize allowable diversions of excess Carmel River flows. These modifications included the implementation of ASR Phase 2, addition of the Hilby Pump Station, modifications to the Monterey Pipeline, expansion of the existing backflush basin, and a water treatment facility modification. MPWMD evaluated the effects of these modifications consistent with the requirements of CEQA as follows:

- Addendum No. 1 to the ASR EIR/EA evaluated implementation of ASR Phase 2. MPWMD adopted Addendum No. 1 on April 16, 2012;
- Addendum No. 2 to the ASR EIR/EA evaluated the addition of the Hilby Pump Station. MPWMD adopted Addendum No. 2 on June 20, 2016;
- Addendum No. 3 to the ASR EIR/EA evaluated modifications to the Monterey Pipeline. MPWMD adopted Addendum No. 3 on February 22, 2017;
- Addendum No. 4 to the ASR EIR/EA evaluated the Backflush Basin Expansion. MPWMD adopted Addendum No. 4 on July 16, 2018; and,
- Addendum No. 5 to the ASR EIR/EA evaluated the Water Treatment Facility Modification. MPWMD adopted Addendum No. 6 on July 15, 2019.

In July 2020, MPWMD prepared Addendum No. 6 to the ASR Final EIR/EA. Addendum No. 6 included a comprehensive evaluation of the potential environmental effects associated with the construction and operation of the Proposed Modification in connection with the ASR Project, which MPWMD previously evaluated and approved. Based on the information contained in Addendum No. 6, MPWMD determined that the Proposed Modification would not result in any additional environmental effects beyond those previously identified in the ASR EIR/EA, as modified, or increase the severity of a previously identified significant impact. MPWMD prepared Addendum No. 6 consistent with the approach and methodology followed by MPWMD for previous modifications to the ASR Project.

Prior to adoption of Addendum No. 6, MPWMD received a letter from legal counsel representing MCWD regarding the Proposed Modification. These comments ranged from concerns related to pipeline sizing, the necessity of the Proposed Modification, as well as comments regarding the level of analysis contained in Addendum No. 6. A copy of that correspondence is included as **Attachment A**.

III. Overview of the Proposed Modification

The Proposed Modification consists of several distinct sub-components that would improve existing ASR system operations to allow for the simultaneous ASR injection and extraction operations and recovery of Pure Water Monterey (“PWM”) water (see MPWMD ASR Final EIR/EA Addendum No. 6, at pg. 2; see also MPWMD Water Supply Committee Board Report dated April 6, 2020). Simultaneous operations would occur in March, April, and May. Injection activities at Seaside Middle School (ASR Wells 3 and 4) would be fed by the Crest Tank and utilize the proposed Bypass Pipeline (discussed below). ASR Wells 1 and 2 would produce and treat PWM water at the Santa Margarita Well site and use the existing pipeline in General Jim Moore Boulevard to transfer water south to the Hilby Pump Station. The Proposed Modification includes the

construction and operation of the proposed Bypass Pipeline, de-chlorination facility modification, and use of an existing soil deposition site. (Ibid.). The following provides a brief overview of the Proposed Modification to provide additional background regarding the Proposed Modification and supporting CEQA analysis.

The proposed Bypass Pipeline Modification consists of the construction of a new 36-inch diameter, 7,000 linear foot (“LF”), potable water transmission pipeline in General Jim Moore Boulevard.² This modification would allow for the simultaneous recovery of PWM water and the operation of the existing ASR system (Ibid.). Under existing operations, simultaneous recovery is not possible due to existing system limitations (Ibid.). Absent the proposed Bypass Pipeline, ASR injection would be limited to certain months. This would reduce the injection capacity of the ASR system and would reduce the amount of available “ASR bank.” (Ibid.). **Attachment B** includes two (2) exhibits prepared by MPWMD showing the different scenarios with and without the proposed Bypass Pipeline. As shown in these exhibits, if the bypass pipeline is not constructed (even if flows in the Carmel River are above permit conditions allowing injection), ASR injection would need to stop to allow use of the existing singular pipeline for PWM recovery in order to comply with the Cease and Desist Order (“CDO”) and recover all PWM water (Ibid.). The proposed Bypass Pipeline would allow PWM and ASR projects to function simultaneously.

The Proposed Modification also includes the construction and operation of a de-chlorination facility at the Paralta well site. This facility would dechlorinate water prior to injection into ASR Wells 3 and 4. Under current CalAm permit requirements, a 30-day retention period is required between ASR injection and extraction operations (Ibid.). This requirement effectively precludes CalAm from being able to meet existing customer demand during the 30-day retention period when extraction operations are not allowed because of reduced Carmel River diversions. Similarly, this modification also includes a de-chlorination facility at the existing Santa Margarita Treatment Facility. This modification would be located entirely within the existing treatment facility footprint and would also remove the 30-day retention period requirement prior to extraction from ASR Wells 1 and 2.

Finally, the Proposed Modification also entails the use of an existing soil deposition site located along the west side of General Jim Moore Boulevard. This site is commonly referred to as the “Mescal Soil Deposition Site.” This site has been used for soil deposition associated with construction activities in the past and excess soil would be disposed of at this location consistent with soil disposal requirements for property located within the former Fort Ord. Fencing and/or flagging would be installed at the soil deposition site under the direction of a qualified biologist to ensure impacts to biological resources would be avoided.

In addition to the physical site improvements described above, the Proposed Modification would also be required to comply with applicable Project Environmental Commitments contained in the ASR Final EIR/EA (see **Attachment C**). Similarly, the Proposed Modification would also be required to comply with applicable mitigation measures identified in the MMRP prepared for the ASR Project. MPWMD identified the mitigation measures that would be applicable to the Proposed Modification in Addendum No. 6 (see Attachment 4 to Addendum No. 6). The implementation of these measures would ensure that the Proposed Modification would not result in any new significant environmental effects beyond those identified in the ASR Final EIR/EA or increase the severity of a previously identified significant effect. MPWMD would be responsible for ensuring that all applicable environmental commitments and mitigation measures are implemented in connection with the Proposed Modification.

² Public Resources Code Sec. 21080.21 excludes pipelines of less than one (1) mile in length (i.e., less than 5,280 LF) from CEQA review if the pipeline is within a public street or highway or any other public right-of-way. Here, the proposed Bypass Pipeline is entirely within the exiting paved right-of-way of General Jim Moore Boulevard. However, because the proposed Bypass Pipeline is 7,000 LF it exceeds that one (1) mile, the Bypass Pipeline is not excluded from further CEQA review. As a result, MPWMD determined that an Addendum to the existing ASR Final EIR/EA would be the appropriate level of environmental review due to the direct nexus between the Proposed Modification and the ASR Project.

IV. Applicable CEQA Requirements

Sec. 15164 of the CEQA Guidelines governs the preparation of an addendum to an EIR or Negative Declaration. Section 15164(a) states that the “lead agency... shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred.” CEQA Guidelines Sec. 15162(a) indicates that “no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:³

- 1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - a) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - b) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - d) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.”

As described below, MPWMD determined that an Addendum was the appropriate level of environmental review for the Proposed Modification, MPWMD concluded that a subsequent or supplemental EIR was not required under CEQA Guidelines Section 15162. Here, MPWMD determined that the Proposed Modification would not result in: 1) a substantial change in the project which would require *major revisions* of the environmental impact report; 2) substantial changes with the respect to the circumstances under which the project is being undertaken which would require *major revisions* in the environmental impact report; and, 3) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available that would result in additional environmental effects beyond those previously identified in the ASR Project Final EIR/EA. As a result, MPWMD determined that the Proposed Modification would not result in any additional adverse

³ CEQA Guidelines Sec. 15162 implements the requirements of Public Resources Code Sec. 21166, which limits the preparation of subsequent EIRs under certain situations. Sec. 15162 interprets the three (3) situations in which Public Resources Code Sec. 21166 requires preparation of a subsequent EIR. Public Resources Code Sec. 21166 states that: “When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report; (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or, (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”

environmental effects beyond those disclosed in the ASR Final EIR/EA or result in an increase in the severity of a previously identified significant impact. MPWMD based their conclusion on substantial evidence, including, but not limited to, 1) existing site characteristics (i.e., developed/disturbed nature of the site); 2) description of the Proposed Modification, including information related to each of the proposed sub-components, anticipated construction schedule, and supporting exhibits; 3) site visits conducted by DD&A and MPWMD's staff familiarity with the site; 4) existing information contained in the ASR Final EIR/EA; 5) existing mitigation measures and Project Environmental Commitments identified in the ASR Final EIR/EA; 6) technical documentation previously prepared in support of the ASR Project; and, 7) project-level technical review of the Proposed Modification.

V. Response to MCWD Comments

MCWD submitted written comments regarding the adequacy of MPWMD's environmental review, as well as the necessity of the Proposed Modification (see **Attachment A**). As described above, MPWMD previously described the purpose of the Proposed Modification. The following specifically responds to environmental issues raised by MCWD's legal counsel.

a. **The Proposed Modification would modify the existing ASR Project and MPWMD is the appropriate lead agency.**

MCWD states that it appears that the proposed Bypass Pipeline is necessary to address deficiencies with CalAm's proposed Monterey Peninsula Water Supply Project ("MPWSP") rather than address existing operational needs of the ASR Project. MCWD contends that the Proposed Modification is an attempt to avoid mitigation requirements required by the California Public Utilities Commission ("CPUC") identified in the MPWSP Final EIR/EIS. MCWD further appears to suggest that MPWMD is not that appropriate Lead Agency to consider the Proposed Modification.

As noted above, the Proposed Modification is an important component of the ASR Project and is necessary to ensure the simultaneous operation of the ASR Project and the PWM Project under existing conditions regardless of whether the MPWSP or PWM Expansion are pursued in the future. MPWMD previously identified that failure to construct the Proposed Modification would limit ASR operations and thereby reduce available water supply to serve existing demand (see **Attachment B**). While the Proposed Modification would connect to CalAm's transfer pipeline and could be used to transfer other source supplies in the future (e.g., PWM expansion), the Proposed Modification has separate and independent utility from both the PWM Expansion and MPWSP. The Proposed Modification is necessary to ensure the simultaneous operation of the ASR Project and PWM under existing conditions. As a result, there is a direct nexus between the Proposed Modification and the existing ASR Project. Therefore, the Proposed Modification has independent utility from the MPWSP and PWM Expansion – if neither project is constructed, the Proposed Modification would still be needed, could still be implemented by MPWMD, and is not contingent upon the approval of either project. (see *Del Mar Terrace Conservancy, Inc. v. City Council of the City of San Diego* (1992) 10 Cal. App. 4th 712 (upholding an EIR that treated as a project one freeway segment within a long term, multi-segment regional plan because the one segment would serve a viable purpose even if the later segments were never built); see also *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 698-700 (finding independent utility where two projects could be implemented independently of each other and where they were approved by different independent agencies.) For these reasons, MPWMD appropriately evaluated the Proposed Modification as a modification to the ASR Project.

In addition, as identified in Sec. 15051(b) of the CEQA Guidelines, "[i]f a project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole." Here, MPWMD is the public agency with the greatest responsibility for supervising or approving the Proposed Modification. The Proposed Modification, which includes several sub-components, is directly related to improving existing ASR system

operations to account for previously identified system limitations that will prevent MPWMD and CalAm for maximizing ASR diversions. Moreover, the Proposed Modification is not merely limited to the proposed Bypass Pipeline. The Proposed Modification also includes the construction and operation of a de-chlorination facility at the Paralta Well site to eliminate the 30-day retention period for ASR Wells 3 and 4. Similarly, the Proposed Modification also includes the addition of a de-chlorination facility at the Santa Margarita Well site to eliminate the 30-day retention period for ASR Wells 1 and 2. MPWMD is the primary public entity responsible for the oversight and operation of the ASR program. Therefore, because the Proposed Modification is to the existing ASR Project it is appropriate that MPWMD serves as the Lead Agency for the Proposed Modification.

As identified by MPWMD, the Proposed Modification would be required to comply with all applicable mitigation measures identified in the ASR Final EIR/EA. While the mitigation measures contained in the ASR Final EIR/EA may be different from those contained in the MPWSP EIR/EIS, MPWMD previously determined that these mitigation measures were appropriate to ensure that the potential environmental effects associated with the ASR Project and subsequent modifications were adequately addressed within the context of CEQA. Furthermore, it is also important to recognize that the Proposed Modification is located primarily within paved portions of the General Jim Moore Boulevard road right-of-way and previously developed/disturbed sites (i.e., Paralta Well site and Santa Margarita Well site) that are improved with existing ASR Project infrastructure. As a result, the existing mitigation measures contained in the ASR Final EIR/EA are more than adequate to address that the potential effects associated with the Proposed Modification.

The Proposed Modification, as described in Addendum No. 6 and supporting documentation presented before the MPWMD Water Supply Committee, clearly demonstrate the necessity of the Proposed Modification to ensure the simultaneous operation of both the ASR Project and the PWM Project. MPWMD served as lead agency for prior modifications to the ASR Project and it is appropriate for MPWMD to serve as lead agency in connection with the Proposed Modification. As described above, the Proposed Modification is necessary to ensure system reliability and redundancy, maximize allowable Carmel River diversions and maintain consistency with SWRCB Orders related to reducing diversions from the Carmel River.

For these reasons, MPWMD appropriately considered the Proposed Modification as a change to the approved ASR Project and the Proposed Modification has independent utility from potential future water supplies. Furthermore, MPWMD is the appropriate lead agency to consider the Proposed Modification.

b. MPWMD appropriately considered and evaluated the potential environmental effects associated with the Proposed Modification consistent with the requirements of CEQA Guidelines Secs. 15162 and 15164.

MCWD suggests that Addendum No. 6 is not adequate to cover the additional project components and that MPWMD only considered the additional project components included in the Proposed Modification in isolation. MCWD states that an agency must consider the impacts caused by the project modifications in combination with the impacts previously analyzed in the EIR to determine whether there would be any new or more severe impacts.

MPWMD did not consider the potential impacts associated with the Proposed Modification in isolation. In fact, MPWMD clearly evaluated the effects of the Proposed Modification within the context of the entire ASR Project and related modifications. MPWMD summarized the findings of the prior CEQA documentation, evaluated the effects of the Proposed Modification, and then subsequently concluded whether the Proposed Modification would increase the severity of a previously identified significant impact (i.e., MPWMD considered whether the Proposed Modification would contribute, that is add, to a previously identified impact for the approved ASR Project). MPWMD included a detailed evaluation of the individual effects associated with the Proposed Modification and evaluated whether those effects would increase the

severity of a previously identified impact. This approach is consistent with the requirements of CEQA – the only way to effectively determine whether a project would increase the severity of a previously identified impact is to consider the incremental effects associated with a modification in combination with the effects associated with the original project. In this instance, Addendum No. 6 clearly concludes under each of the respective CEQA topical sections that the Proposed Modification would not result in any additional impacts *or* increase the severity of a previously identified impact. Based on this analysis, MPWMD appropriately concluded that the Proposed Modification would not result in any additional environmental effects beyond those previously identified or increase the severity of any significant impacts identified in the ASR Final EIR/EA and related addenda.

For these reasons, MPWMD did not consider the Proposed Modification in isolation and appropriately considered whether the Proposed Modification would increase the severity of a previously identified impact.

c. Addendum No. 6 does not constitute improper “piecemealing.”

MCWD suggests that Addendum No. 6 violates CEQA’s supplemental review requirements and constitutes improper “piecemealing.”

CEQA requires that a lead agency must consider the “whole of the action” – in other words CEQA does not allow a project proponent or Lead Agency to “piecemeal” a project (i.e., pursue separate smaller projects that are part of a larger action to minimize the level of environmental review). In this instance, MPWMD considered and fully evaluated the environmental effects associated with the construction and operation of the ASR Project. Subsequently, MPWMD and CalAm identified that additional modifications were necessary to improve system function and reliability, maximize diversions of excess Carmel River flows, and incorporate additional modifications to account for design changes due to the development of other water supply projects (e.g., Monterey Pipeline, PWM, etc.). The preparation of an addendum to account for necessary modifications to an existing project does not constitute “piecemealing.”

Here, MPWMD prepared Addendum No. 6 to consider further modifications to the ASR Project proposed by CalAm. These modifications are necessary to address existing system deficiencies and ensure system reliability. This approach does not constitute piecemealing – MPWMD considered these modifications within the context of previous environmental review process, including prior addenda. The incorporation of a modification to an existing project that was subject to prior environmental review does not constitute piecemealing. Rather, this is the exact circumstance that the legislature envisioned when providing for a process to amend an existing EIR or Negative Declaration. i.e., when some changes or additions are necessary to a project, but those revisions would not result in additional environmental effects or an increase the severity of an identified significant impact. Moreover, the Proposed Modification, as previously described, is directly related to the ASR Project. As a result, an addendum to the ASR Project is the appropriate form of review for the Proposed Modification. This does not constitute a situation of improper “piecemealing” – the Proposed Modification is not being pursued independently from the ASR Project. Rather, MPWMD considered and evaluated the effects of the Proposed Modification within the context of the existing ASR Project and associated environmental review.

As noted above, CEQA allows for lead agencies to prepare an addendum to a previously certified EIR if some changes or additions are necessary provided the project would not result in any additional significant environmental effects or increase the severity of a previously identified significant impact. As identified throughout Addendum No. 6, none of these conditions would occur in connection with the Proposed Modification. In fact, Addendum No. 6 clearly identifies that the Proposed Modification would be exclusively located within the existing paved right-of-way of General Jim Moore Boulevard and previously disturbed/developed sites that are improved with existing water supply infrastructure associated with the ASR Project. Moreover, MPWMD also identified that the Proposed Modification would be required to comply

with applicable mitigation measures and project environmental commitments identified in the ASR Final EIR/EA. MPWMD did not consider the Proposed Modification in isolation, but rather considered the Proposed Modification within the context of the ASR Project, as a whole, as well as site-specific environmental conditions.

MPWMD appropriately evaluated the potential effects associated with the Proposed Modification and did not improperly “piecemeal” the Proposed Modification.

d. MPWMD appropriately evaluated potential air quality effects associated with the Proposed Modification consistent with the Monterey Bay Air Resources District (“MBARD”) CEQA Guidelines.

MCWD erroneously contends that MPWMD determined that Proposed Modification does not require CEQA review for air quality and greenhouse gas emissions because it does not meet threshold screening criteria given the limited scope of the Proposed Modification. This is factually incorrect. MCWD also further suggests that the analysis must consider whether adding the new components would result in new or more severe impacts.

MPWMD evaluated the potential air quality effects, including potential greenhouse gas emissions, associated with the construction and operation of the Proposed Modification. In fact, MPWMD clearly identified that the Proposed Modification would generate emissions during construction and operation of the Proposed Modification. Table 1, Construction Air Quality Emissions, identifies that the Proposed Modification would result in temporary air quality emission during construction-related activities. The temporary increase in construction-related emissions would be below applicable MBARD CEQA thresholds of significance. In addition, Table 2, Operational Air Quality Emissions, also identifies that the Proposed Modification would generate additional air quality emissions during operation. In addition, MPWMD also identified anticipated greenhouse gas emissions associated with the Proposed Modification (see Addendum No. 6, at pg. 23 – 24). These potential effects are also below applicable MBARD thresholds of significance. Contrary to MCWD assertions, MPWMD clearly evaluated potential air quality effects associated with the Proposed Modification.

MPWMD clearly identified that the Proposed Modification would not increase the severity of a previously identified significant impact. As discussed above, MPWMD appropriately considered whether the environmental effects would increase the severity of a previously identified impact (i.e., would the Proposed Modification, when considered with the ASR Project and prior modifications, increase the severity of a previously identified impact). Here, the potential air quality effects associated with the Proposed Modification are relatively insignificant. Similarly, the ASR Final EIR/EA identified that potential air quality effects associated with the ASR Project, as modified, would be relatively insignificant and would not exceed applicable MBARD thresholds of significance. The relatively minor increase in air quality effects associated with the Proposed Modification would not increase the severity of any previously identified air quality effect. In addition, it is also worth noting that construction-related effects are temporary in nature and therefore the incremental increase in impacts associated with the Proposed Modification would not contribute to other ASR related construction emissions since the ASR Project, as modified, has already been constructed.

MPWD appropriately evaluated potential air quality effects, including greenhouse gas emissions.

e. Addendum No. 6 contains sufficient information to determine the extent of potential environmental effects associated with the Proposed Modification and appropriately concludes that the Proposed Modification would not result in new or substantially more severe significant impacts than those disclosed in the ASR Final EIR/EA, as modified.

MCWD states that there is insufficient information to determine whether the ASR Project, as modified, would result in new or substantially more severe impacts that were not disclosed in the EIR.

MPWMD determined that the Proposed Modification would not result in any new environmental effects beyond those associated with the ASR Project, as modified, or increase the severity of a previously identified significant effect. MPWMD based this determination on a variety of factors, including, but not limited to: 1) existing site characteristics (i.e., developed/disturbed nature of the site); 2) description of the Proposed Modification, including information related to each of the proposed sub-components, anticipated construction schedule, and supporting exhibits; 3) site visits conducted by DD&A, MPWMD's environmental consultant, as well as MPWMD's staff familiarity with the site; 4) existing information contained in the ASR Final EIR/EA; 5) existing mitigation measures and Project Environmental Commitments identified in the ASR Final EIR/EA; 6) technical documentation previously prepared in support of the ASR Project; and, 7) project-level technical review of the Proposed Modification. MPWMD relied on this information to determine the extent of potential environmental effects associated with the Proposed Modification and whether the Proposed Modification would result in any new or more severe environmental effects.

In addition to the factors listed above, it is also important to recognize that the extent of potential impacts associated with the Proposed Modification would be limited given the existing developed/disturbed nature of the site. For instance, the proposed Bypass Pipeline modification would be entirely within the existing paved right-of-way of General Jim Moore Boulevard. Potential resources-related effects, therefore, would be limited. Similarly, the Proposed De-chlorination Facility Modification, which includes a de-chlorination facility at the Paralta Well site and a facility at the Santa Margarita Well site, would also be within existing developed/disturbed areas - the Paralta and Santa Margarita Well sites are both improved with existing ASR infrastructure. Given the existing developed/disturbed nature of the project footprint, MPWMD concluded that the extent of environmental effects would be limited primarily to temporary construction-related effects (e.g., temporary air quality emissions, temporary construction-related erosion, temporary traffic-related effects due to lane closures, temporary construction-related noise, etc.).⁴ MPWMD appropriately disclosed the nature of potential impacts associated with the Proposed Modification. MPWMD also appropriately identified that temporary construction-related effects would be addressed through the implementation of existing mitigation measures identified in the ASR Final EIR/EA.⁵

While the location of a project informs the extent of potential environmental effects, it is also important to recognize that the project type also similarly informs the extent of potential effects. Here, the Proposed Modification consists of a new pipeline, de-chlorination facilities, and the temporary use of an existing soil deposition in accordance with soil disposal requirements for properties in the former Fort Ord. Most impacts associated with these types of activities are typically temporary in nature and are associated with construction. For instance, impacts associated with potable pipelines tend to be limited to construction. Most pipelines are typically underground and do not result in above ground features that would permanently alter the existing character of a site following construction and subsequent restoration-related activities. Once constructed, operational impacts are limited to periodic maintenance related activities and routine inspections. Here, the Proposed Modification includes the construction of a new pipeline within the existing paved right-of-way of General Jim Moore Boulevard. Given the nature of this modification (and the existing developed nature of the site), MPWMD appropriately concluded that the effects would be relatively insignificant and confined to temporary construction impacts. Similarly, the De-chlorination Facility Modification would also primarily result in temporary construction-related effects. Unlike the proposed Bypass Pipeline, the De-Chlorination Facility Modification would include permanent above ground features. This could result in

⁴ MPWMD also identified that the Proposed Modification would result in potential operational impacts associated with routine maintenance related activities associated with the proposed de-chlorination facility modification.

⁵ It is also worth noting that construction-related effects are temporary in nature and therefore construction-related effects associated with the ASR Project have already occurred. Therefore, the incremental construction-related effects associated with the Proposed Modification would not substantially increase construction effects associated with the ASR Project.

potential effects due to on-going operation, including potential aesthetic-related effects, hydrology/drainage, noise, traffic, etc. MPWMD clearly disclosed these effects in Addendum No. 6. Additionally, the use of an existing soil deposition site to temporarily stockpile soil in accordance with soil handling procedures for properties within the former Fort Ord would result in limited environmental effects. The Proposed Modification includes measures to ensure that temporary construction effects due to the use of this area would be addressed. Again, just like the characteristics of a site inform the environmental analysis, the project type also equally informs environmental analysis and extent of potential effects.

Finally, as noted elsewhere in this memorandum, it is necessary to reiterate that MPWMD did not consider the Proposed Modification's potential environmental effects in isolation. MPWMD clearly summarized the effects of the ASR Project, as modified, evaluated the impacts associated with the Proposed Modification, and then subsequently considered whether the Proposed Modification would result in any new environmental effects or increase the severity of a previously identified impact. In order to determine whether the Proposed Modification would increase the severity of a previously identified impact, MPWMD necessarily considered whether the Proposed Modification would contribute (i.e., add) to a previously identified impact. MPWMD appropriately concluded that the Proposed Modification would not increase the severity of a previously identified impact.

For these reasons, MPWMD adequately disclosed the extent of potential impacts associated with the Proposed Modification based on a detailed review of the Proposed Modification, as well as existing technical information prepared in support of the ASR Project, including documentation prepared in support of previous modifications to the ASR Project.

f. MPWMD appropriately evaluated potential transportation related impacts.

MCWD states that the analysis of transportation impacts is also inadequate. MCWD, incorrectly, states that MPWMD did not analyze the extent of potential traffic disruption or the amount of traffic. MCWD further states that the conclusion that traffic control measures would be sufficient to ensure that temporary construction-related traffic effects due to temporary lane closures is not adequate.

MPWMD appropriately identified that construction of the Proposed Modification could result in temporary traffic-related impacts due to lane closures associated with the construction of the proposed Bypass Pipeline. More specifically, MPWMD identified that temporary lane closures could potentially affect the existing transportation circulation system and affect emergency access. MPWMD also further identified that the Proposed Modification would result in temporary increases in construction-related traffic, as well as a minor increase in operational traffic due to on-going maintenance related activities and routine deliveries. MPWMD further identified anticipated construction and operational traffic associated with the Proposed Modification.

MPWMD concluded that temporary construction impacts due to temporary lane closures would be addressed through the implementation of traffic control measures. Addendum No. 6 identifies that CalAm would implement traffic control measures as part of the Proposed Modification. Moreover, MPWMD also requires the implementation of traffic control measures as part of the ASR Project and associated modifications. More specifically, the ASR Final EIR/EA identifies several "Project Environmental Commitments" that MPWMD requires as part of the ASR Project. One of the applicable "Project Environmental Commitments" requires the preparation of a traffic control plan. The purpose of the traffic control plan is to: 1) reduce, to the extent feasible, the number of vehicles on roadways adjacent to the project; 2) reduce, to the extent feasible, the interaction between construction equipment and other vehicles; 3) promote public safety through actions aimed at driver and road safety; and, 4) ensure safety for bicyclists and pedestrians. **Attachment C** identifies the traffic control plan requirements as specified in the ASR Final EIR/EA. In addition, it is also worth noting that the Proposed Modification will also be required to comply with mitigation measures identified in the ASR Final EIR/EA, including Mitigation Measure Cume-1 which

requires coordination with affected jurisdictions to ensure construction phasing to minimize potential traffic-related effects, as well as other potential cumulative effects. Additionally, CalAm will also need to submit a detailed traffic control plan to the City of Seaside as part of the City's encroachment permit process for work within the City's right-of-way (i.e., General Jim Moore Boulevard).

The implementation of traffic control measures during temporary lane closures will ensure that the Proposed Modification would not result in any additional impacts or increase the severity of a previously identified impact. MPWMD appropriately identified that the Proposed Modification would result in temporary construction-related effects and identified that the Proposed Modification will implement applicable traffic control measures to address temporary impacts due to lane closures.

g. MPWMD appropriately considered potential growth inducing effects associated with the Proposed Modification.

MCWD states that MPWMD did not consider potential growth inducing effects associated with the Proposed Modification.

MPWMD identified that the Proposed Modification would not induce substantial unplanned population growth. The Proposed Modification is a necessary modification to the existing ASR Project. More specifically, the Proposed Modification is necessary to ensure that the ASR Project and PWM can operate simultaneously during certain periods of the year when the use of the existing single pipeline would cause ASR operations to temporarily cease which would reduce available water supplies to serve existing demand. The Proposed Modification would not result in an increase in existing diversion limits for ASR or cause an increase in available water supply to facilitate additional growth or development. Rather, this modification would allow MPWMD and CalAm to ensure that existing water rights are perfected to ensure reliability of water supply serving the Monterey Peninsula. Moreover, as identified in the ASR Final EIR/EA, the ASR Project is not considered growth-inducing since the ASR Project is not creating a new source of water, which represents the primary constraint/obstacle to growth in the region. Rather, the purpose of the ASR Project is to reduce the amount of water diverted from the Carmel River during the summer by diverting, on average, a similar amount of water during the winter when flows are greater, and storing the water in the Seaside Groundwater Basin. The ASR Project, including the Proposed Modification, is necessary to comply with applicable SWRCB Orders mandating the reduction of diversions from the Carmel River. As identified in the ASR Final EIR/EA, no allocation of new water would result from the ASR Project - the ASR Project is not creating a new source of water and is not removing an obstacle to population growth or fostering growth.

The construction of a new water supply pipeline is not, in and of itself, evidence of a potential growth inducing effect. Moreover, pipeline sizing is also not necessarily indicative of a potential growth inducing effect. There are certain situations where the extension of water supply/wastewater infrastructure to a previously unserved area would be considered growth-inducing because those facilities would potentially remove an obstacle to development (i.e., lack of available water supply or wastewater services). The construction of the Proposed Modification is not, however, akin to extending services to a previously unserved area. Similarly, the Proposed Modification would not remove an existing obstacle to development. As discussed elsewhere, this modification is necessary to ensure that the ASR Project and PWM can operate simultaneously and thereby ensure that ASR diversions are fully realized. The ASR Final EIR/EA appropriately accounted for and evaluated potential growth inducing effects associated with the full utilization of the ASR Project. The purpose of the Proposed Modification is not to facilitate additional development nor would the Proposed Modification remove an existing obstacle to development. The Proposed Modification represents a modification to an existing water supply project to ensure that the project can fully operate. The Proposed Modification would not be growth inducing.

For these reasons, MPWMD appropriately concluded that the Proposed Modification would not result in any potential growth inducing effects consistent with the findings of the ASR Final EIR.

h. The Proposed Modification would not result in any new cumulative effects or increase the severity of a previously identified cumulatively considerable effect.

MCWD states that the addendum must consider other cumulative projects, including the MPWSP, and other projects in the area.

MPWMD evaluated the potential cumulative effects associated with the construction and operation of the ASR Project. As previously identified by MPWMD, cumulative effects associated with the ASR Project are primarily related to construction activities and the potential overlap of ASR construction with other projects in the project vicinity. MPWMD identified that the ASR Project could result in cumulative traffic effects, cumulative air quality related effects during overlapping construction schedules with other planned projects, cumulative noise effects due to construction, as well as potential cumulative effects to biological resources. MPWMD identified that these effects would be less-than-significant through the incorporation of Mitigation Measure Cume-1, which requires MPWMD to coordinate with local agencies to develop and implement a phased construction plan to reduce potential cumulative traffic, air quality, and noise related effects. See Attachment 4 to Addendum No. 6 for a full listing of mitigation measures applicable to the ASR Project, including the Proposed Modification.

The Proposed Modification would not increase the severity of a previously identified cumulative effect or result in any additional cumulative effects beyond those previously identified in the ASR Final EIR/EA. The Proposed Modification would primarily result in temporary construction-related impacts. Construction impacts would be limited in duration and primarily confined within the existing paved right-of-way of General Jim Moore Boulevard and previously developed/disturbed well sites that are improved with existing ASR infrastructure. The Proposed Modification would not overlap with the construction of other ASR components since those elements have been constructed. In addition, the Proposed Modification is not anticipated to result in any construction schedule overlap with portions of the MPWSP located in the vicinity of the Proposed Modification. Construction of the Proposed Modification would commence in January 2021 (or sooner) depending on equipment and material procurement, coordination with the City of Seaside, and finalization of construction specifications. While MPWMD identified that construction of the Proposed Modification would take approximately eight (8) months, actual pipeline installation would take approximately 3.5 months (assuming installation of 500 LF per week). As noted above, MPWMD requires that all modifications to the ASR Project comply with the mitigation measures identified in the ASR Final EIR/EA. As a result, construction activities would be coordinated with local land use jurisdictions (i.e., City of Seaside) to ensure that construction activities would be phased to minimize potential effects.

For the reasons described above, MPWMD appropriately concluded that the Proposed Modification would not result in any additional cumulative effects beyond those previously disclosed in the ASR Final EIR/EA.

VI. Conclusion

MPWMD appropriately evaluated the potential effects associated with the Proposed Modification in accordance with the requirements of CEQA. MPWMD prepared a detailed addendum that described the Proposed Modification, summarized the findings of prior environmental documentation prepared for the ASR Project, disclosed the extent of potential effects associated with the Proposed Modification, and considered whether the Proposed Modifications would result in any additional environmental effects beyond those previously identified or would increase the severity of a previously identified significant impact. MPWMD did not consider the Proposed Modification in isolation, but rather considered the potential effects associated with the Proposed Modification within the context of the entire ASR Project and prior CEQA review.

Attachment A
MCWD Comment Letter



REMY | MOOSE | MANLEY
LLP

Howard "Chip" Wilkins III
cwilkins@rmmenvirolaw.com

July 20, 2020

Via Email

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940

Re: Proposed Bypass Pipeline & De-Chlorination Facility Modification

Dear Board of Directors:

This letter provides Marina Coast Water District’s (MCWD) comments on the Sixth Addendum to the Aquifer Storage and Recovery Project Environmental Impact Report/Environmental Assessment, which purports to cover a proposed Bypass Pipeline and De-Chlorination Facility Modification (“Project”). As explained herein, MCWD requests the Monterey Peninsula Water Management District’s (MPWMD) delay voting on the Project and confer with MCWD to address potential conflicts with MCWD’s infrastructure and pipelines in the Project area. MCWD wishes to convey its full support for MPWMD’s objectives for the ASR Project. MCWD is confident that it can work with MPWMD to ensure its interests and concerns relating the Project’s environmental impacts are resolved in a way that allows both the Project to move forward and MCWD to meet the present and planned future water supply needs of the Central Marina and Ord Community service areas.

Initially, we note that the footprint of the proposed bypass pipeline Cal-Am now wants to build matches the footprint of the new Cal-Am pipeline that was analyzed as part of the Pure Water Monterey (PWM) expansion project. The proposed bypass pipeline doesn’t appear to have any impact on simultaneous ASR injection and PWM extraction because, pursuant to Cal-Am’s agreement with the Seaside Basin Watermaster, PWM water can be extracted at eleven different wells in Seaside, include the existing ASR wells—which are both injection and extraction. The new “bypass” pipeline, on the other hand, appears to be intended to move PWM water further south into the Cal-Am system.

If Cal-Am wants to inject and extract ASR water simultaneously, it should better explain the deficiencies in its system to justify the need for this extra pipeline. As explained below, it appears that Cal-Am proposed modifications to its facilities are an attempt to address deficiencies in the Monterey Peninsula Water Supply Project (MPWSP) and to avoid mitigation requirements for these facilities required by the

a

California Public Utilities Commission (CPUC) in the MPWSP EIR/EIS. To avoid this subversion of CEQA, MCWD supports and believes CEQA requires exploring mutually beneficial uses of MCWD’s potable water conveyance pipeline that can meet the present and planned future needs of MCWD and ASR without Cal-Am’s proposed new 36 inch pipeline. MCWD incorporates by reference its comments on the pipeline for the “Proposed Modifications to the Pure Water Monterey Groundwater Replenishment Project.” Those comments can be found at <https://purewatermonterey.org/wp/wp-content/uploads/Final-SEIR-Proposed-Modifications-PWM-GWR-Project-April-2020.pdf> from pages 4-90 through 4-97. As explained in our comments on the PWM expansion project, the modification to Cal-Am’s distribution system are proposed for the Monterey Peninsula Water Supply Project and the CPUC is the CEQA Lead Agency for the proposed modifications to Cal-Am’s distribution system. MCWD also requests MPWMD review other comments in the Final EIR relating to the project to ensure it has fully considered the environmental impacts of the project.

a
continued

Based on our limited review, the addendum is not adequate to cover the additional project components. In general, CEQA Guidelines section 15162 requires a subsequent or supplemental EIR if changes to a project will result in new or substantially more severe significant impacts compared to what was disclosed in the EIR, and an addendum is only permissible if none of the conditions specified in Guidelines section 15162 have occurred. When performing the analysis required under section 15162, an agency must *add* the impacts caused by the project modifications to the project analyzed in the EIR to determine whether there would be any new or more severe impacts. Although an addendum will focus on the project modifications, it cannot analyze the modifications in isolation. Otherwise the document would be more akin to a Mitigated Negative Declaration, which is subject to a different set of CEQA rules.

b

Here, the addendum violates CEQA by only looking at the additional components—that were not even contemplated in the EIR—in complete isolation and analyzes whether the additional components, by themselves, would result in significant impacts. This does not fulfill CEQA’s requirements. Instead, the addendum must look at the entire project—the EIR project plus the additional components—to determine whether any of the events triggering the need for a supplemental or subsequent EIR have occurred. Otherwise, a project proponent would be able to continuously add new components onto a project without CEQA review so long the impacts caused by the additional component, by itself, are less than significant. That is not how CEQA works. This violates CEQA’s supplemental review requirements and constitutes improper “piecemealing.” Moreover, even if CEQA did allow new components to be continuously tacked-on to a project after an EIR is complete, despite the snowballing of environmental impacts, the addendum fails to consider cumulative impacts caused by the entire project, or other cumulative projects.

c

For example, for Air Quality and Greenhouse Gas Emissions, the addendum claims that the additional project components do not require CEQA review because they do not meet threshold screening criteria given their limited scope. But the analysis must

d

consider whether *adding* the new components to the project would result in new or more severe significant impacts, not whether the additional components meet the screening thresholds by themselves. By dodging this analysis, the addendum does not disclose the amount of emissions that the new components would generate or whether the addition of those emissions would cause new or more severe environmental impacts.

d
continued

In fact, because the addendum does not quantify emissions, it is impossible to tell whether there would be new or more severe impacts. This problem runs throughout the addendum into other resources, including noise and hydrology/water quality, for example. There is simply not enough information in the addendum to determine whether the project, as modified with the additional components, would result in new or substantially more severe significant impacts that were not disclosed in the EIR.

e

The analysis of transportation impacts is also inadequate. Although the addendum acknowledges that temporary lane closures could adversely affect the existing circulation system and affect existing emergency access, it does not analyze the extent of the disruption or the amount of traffic. Instead, the addendum concludes in half-a-sentence that the proposed modification would include traffic control measures to ensure that potential temporary impacts during construction would not adversely affect existing traffic operations. There is no analysis or data provided to support that conclusion, and the reader has no idea what the traffic control measures might entail, much less whether they would be adequate to ensure impacts are less than significant.

f

CEQA also requires analysis of growth inducement, which appears to be missing from the addendum. This analysis is particularly important here as the proposed 36 inch pipeline seems to be vastly oversized for the stated purpose.

g

Finally, the addendum must consider other cumulative projects including the MPWSP, and other projects in the area.

h

Very truly yours,

/s/ Chip Wilkins

Howard "Chip" Wilkins III

Attachment B

MPWMD April 6, 2020 Water Supply Committee Exhibit

Without separate parallel pipeline, ASR injection would be limited to certain month to allow extraction of all additional source water from the north. With limited ASR bank and Table 13, Seaside Basin and Carmel River source water may have 200 AF buffer or less.

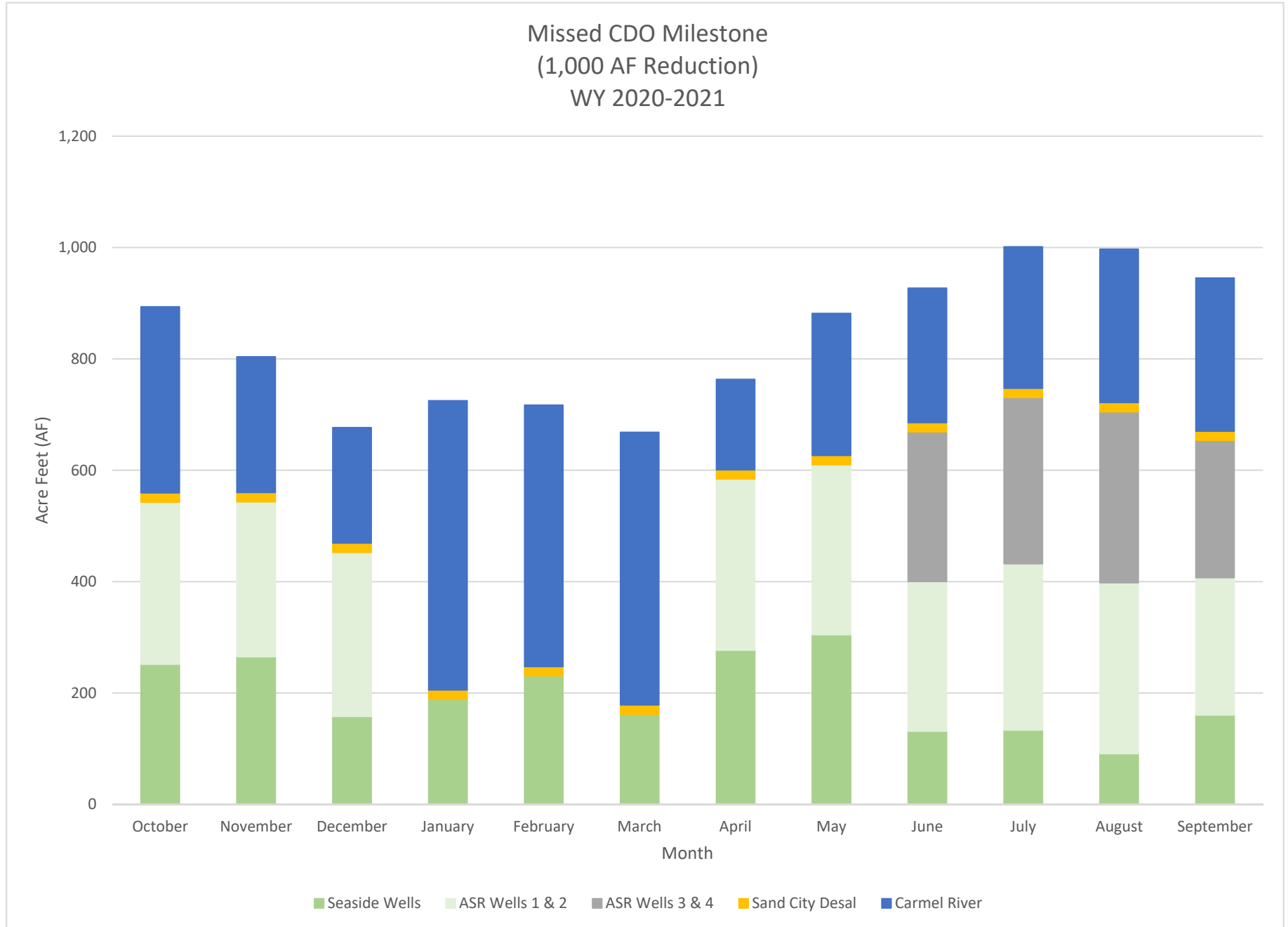


EXHIBIT 3-A

Injection of ASR via separate parallel pipeline while extracting additional source water from the north, increases ASR bank and Table 13. This results in allowing Seaside Basin limits and Carmel River EDL to be met during max ASR injection year with approximately 1,000 AF buffer.

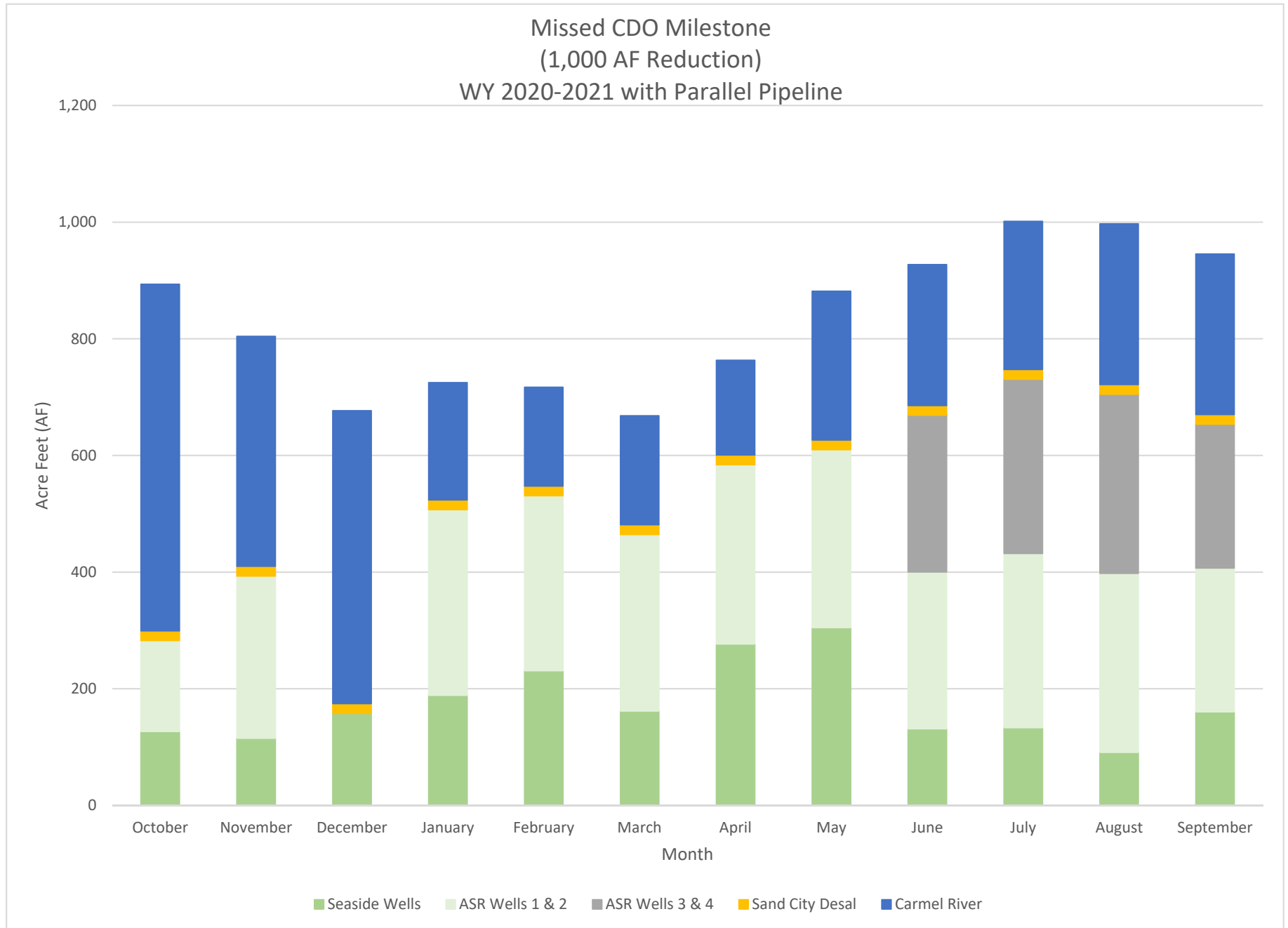


EXHIBIT 3-B

Attachment C

Project Environmental Commitments

The following is an excerpt from the ASR Draft EIR/EA and identifies Project Environmental Commitments that will be implemented in connection with the ASR Project, including previous modifications. These measures would also be applicable to the Proposed Modification.

Project Environmental Commitments

As part of the project planning and impact assessment process, MPWMD will incorporate the following environmental commitments into the project to avoid or minimize impacts.

Traffic Control Plan

The construction contractor will coordinate with local public works or planning departments, including the City of Seaside, to prepare a traffic control plan during the final stage of project design. The purpose of the traffic control plan will be to:

- reduce, to the extent feasible, the number of vehicles (construction and other) on the roadways adjacent to the project;
- reduce, to the extent feasible, the interaction between construction equipment and other vehicles;
- promote public safety through actions aimed at driver and road safety; and
- ensure safety for bicyclists and pedestrians throughout the project study.

The traffic control plan will include the following measures:

- Through access for emergency vehicles will be provided at all times.
- Access will be maintained for driveways and private roads.
- Adequate off-street parking will be provided for construction-related vehicles through the construction period.
- Pedestrian and bicycle access and circulation will be maintained during construction. If construction encroaches onto a sidewalk, a safe detour will be provided for pedestrians at the nearest painted crosswalk. If construction encroaches on a bike lane, warning signs will be posted that indicate that bicycles and vehicles are sharing the roadway.
- Lane closures (partial or entire), traffic controls, and construction materials delivery will be restricted to between 9:00 a.m. and 4:00 p.m. on weekdays to avoid more congested morning and evening hours.
- Roadway segments or intersections that are at or approaching LOS that exceed local standards will be identified. A plan will be provided for construction-generated traffic to avoid these locations at the peak periods, either by traveling different routes or by traveling at nonpeak times.
- Traffic controls on arterials and collectors should include flag persons wearing bright orange or red vests and using a “stop/slow” paddle to warn drivers.
- Access to public transit should be maintained, and movement of public transit vehicles will not be impeded as a result of construction activities. Coordination with Monterey-Salinas Transit (MST) will be required regarding lane closures (partial or entire) that occur on bus routes and to provide notice

- of construction that could affect transit service routes so that MST can adjust routes or schedules. Adequate lead-time will need to be afforded to MST for developing temporary service changes due to construction and providing notice of changes to the public.
- Construction warning signs will be posted, in accordance with local standards or those set forth in the Manual on Uniform Traffic Control Devices in advance of the construction area and at any intersection that provides access to the construction area.
- If lane closures occur, local fire and police departments will be notified of construction locations and alternative evacuation and emergency routes will be designed to maintain response times during construction periods, if necessary.
- Written notification will be provided to appropriate contractors regarding appropriate routes to and from construction sites, and weight and speed limits for local roads used to access construction sites.
- A sign will be posted at all active construction sites. This sign will give the name and telephone number or electronic mail address of the MPWMD staff member to contact with complaints regarding construction traffic. The area of the sign should be at least 1 square yard.

The traffic control plan will be included in the construction specifications, implemented by construction contractor throughout the construction period, and monitored by MPWMD.

Health and Safety Plan and Risk Management Plan

As required by Cal/OSHA standards, the construction contractor will prepare and implement a hazardous operations site-specific Health and Safety Plan (HSP) and Resource Management Plan (RMP) for construction activities that occur on designated DOD and NPL sites (former Fort Ord). A site-specific HSP will be developed, as necessary, by an environmental contractor before any investigation or cleanup activities or construction activities begin in the area. Workers who could directly contact soil, vapors, or groundwater containing hazardous levels of constituents will perform all activities in accordance with the HSP. The RMP for construction in this portion of the project study area would identify specific measures to reduce potential risks to human and ecological populations during construction of the Proposed Project. The RMP will be submitted to the Regional Water Quality Control Board (RWQCB) for review and approval. Preparation of the RMPs and subsequent RWQCB staff approval will occur independent of the CEQA process under the administrative jurisdiction of the RWQCB.

WATER SUPPLY PLANNING COMMITTEE

ITEM: DISCUSSION ITEM

6. REVIEW AMENDMENTS TO ASR OPERATING AGREEMENT

Meeting Date: November 2, 2020 **Budgeted:** N/A

From: David J. Stoldt **Program/
General Manager** **Line Item No.:** N/A

Prepared By: David J. Stoldt **Cost Estimate:** N/A

General Counsel Approval: N/A

Committee Recommendation: N/A

CEQA Compliance: This action does not constitute a project as defined by the California Environmental Quality Act Guidelines Section 15378.

SUMMARY: The existing Aquifer Storage and Recovery Management & Operations Agreement between California American Water (Cal-Am) Company and the Monterey Peninsula Water Management District (District) is set to expire April 1, 2021. Notice to renew was required 180 days prior, but Cal-Am and the District agreed well in advance to update and restate the Agreement. The District provided a revised Amended and Restated draft Agreement July 14, 2020 and Cal-Am provided its responses September 4, 2020.

Exhibit 6-A is a clean current draft, and **Exhibit 6-B** is the Cal-Am redline version of the District's July 14th draft. District staff will be prepared to discuss the major and substantive changes at the meeting.

EXHIBITS

6-A Cal-Am Draft Amended and Restated Agreement – Clean

6-B Cal-Am Draft Amended and Restated Agreement – Redline

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

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

RECITALS

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

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

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

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

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

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

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

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

1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated:

David J. Stoldt
General Manager
Monterey Peninsula Water Management District

Garry Hofer
Vice President, Operations
California-American Water Company

EXHIBIT A
ASR FACILITIES OPERATIONS

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

**Amended and Restated
Aquifer Storage and Recovery (~~ASR~~)
Management ~~&~~and Operations Agreement
between
California ~~-~~American Water Company
and
Monterey Peninsula Water Management District**

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

RECITALS

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

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

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

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

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

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

~~**NOW, THEREFORE, BE IT RESOLVED**~~ ~~the parties hereby enter into this Amended and Restated~~WHEREAS, in March 2006, the Parties entered into the Aquifer Storage and Recovery (ASR) Management & Operations Agreement with an effective date of April 1, 2006 (the “Original Contract”), and the Parties now desire to amend, restate, and replace the Original Contract.

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

1. Definitions.

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

1.2. Purpose. This Agreement is intended to set forth general facts and assumptions concerning ~~Aquifer Storage and Recovery (ASR)~~ASR facilities and operations, and to amend, restate and replace the Original Contract. This Agreement clarifies areas of joint effort and cooperation between the ~~parties~~Parties to facilitate present and future actions. The Parties agree to cooperate in order to optimize operation of the Existing ASR Facilities (~~as defined herein~~) for present use and benefit to the ~~rate payers~~customers of Cal-Am, and the constituents of the ~~Water Management~~ District. The Parties agree to further cooperate to facilitate expansion or use of Existing ASR Facilities and to plan for the creation and operation of Future ASR Facilities.

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

~~3.4. **ASR Facilities.** Any reference in this Agreement to ASR Facilities shall mean all pumps, motors, piping and appurtenant ASR equipment located outside the points of connection to the Cal-Am water distribution system piping. This reference shall include land and rights of way in the City of Seaside and upon former Fort Ord lands relating to existing ASR facilities. The Water Management **Ownership.** The District shall solely and exclusively own all ASR Facilities at the Santa Margarita ~~site~~Site, and Cal-Am shall solely and exclusively own all ASR Facilities at the Seaside Middle School ~~site with the exception of the monitor wells owned by the District, which ownership shall be inclusive of any rights pertaining to permits issued in relation to those ASR facilities.~~Site. The ~~parties~~Parties agree to meet and confer, and engage in joint decision-making, with respect to any capital improvement, facility modification, and repair or maintenance effort for the ASR Facilities.~~

~~4. **Associated ASR Facilities.** The term “Associated ASR Facilities” shall refer to all pipeline modifications, regulating station modifications and booster pump modifications installed within the Cal-Am water distribution system (including all points of connection, but excluding ASR Facilities as defined herein, located outside the points of connection) and operated in connection with the Existing ASR. Cal-Am shall solely and exclusively own all Associated ASR Facilities, which ownership shall be inclusive of any rights pertaining to permits issued in relation to those Associated ASR facilities. The parties agree to meet and confer, and engage in joint decision making with respect to any capital improvement, facility modification, and repair or maintenance effort for the Associated ASR Facilities.~~

~~5. **ASR Operator Operations.** The Parties shall ~~be jointly operate the responsible for~~ ASR Facilities. Cal-Am shall be the sole operator for all Associated ASR Facilities, except ~~Operations as described set forth in the Operation and Maintenance Manual.~~Exhibit A to this ~~Agreement~~ Operations shall conform to all requirements set by the California Public Utilities Commission (“CPUC”) and the SWRCB Division of Drinking Water to meet the needs of the Cal-Am service area. ~~Operations shall further conform to the water supply budget set by the Water Management District.~~~~

~~6. **ASR Operations.** References in this Agreement to ASR Operations shall mean activities undertaken in accord with the Santa Margarita Test Injection Well (SMTIW) Aquifer Storage and Recovery (ASR) System, Operation and Maintenance Manual. The Operation and Maintenance Manual may be modified from time to time by the written agreement of the Parties. The term ASR Operations shall refer to both injection and recovery activities, but shall distinguish both Existing ASR and Future ASR, shall distinguish both ASR Facilities and Associated ASR Facilities, and shall distinguish both Future ASR Facilities and Future Associated ASR Facilities, as those terms are defined by this Agreement. Cal-Am shall timely and with due diligence repair and/or replace any ASR Facility or Associated ASR Facility, or component thereof, necessary for the full and effective function of either of those Facilities.~~

~~7. **Existing ASR.** The term “Existing ASR Facilities” shall refer to the existing Santa Margarita site ASR facilities, the existing Seaside Middle School site ASR facilities, existing appurtenant on-site and off-site facilities, and related lands held by the Water Management District and Cal-Am. Existing ASR shall constitute both ASR Facilities and Associated ASR Facilities as those terms are defined in this Agreement. Existing ASR shall not include any~~

~~facilities defined as Future ASR, except as may be provided by an addendum or amendment to this Agreement.~~

~~8.5. **Future ASR.** The term “Future ASR” shall refer to Facilities that will support the permanent expansion of ASR Operations by the Water Management District and Cal-Am. Future ASR shall be comprised of both Future ASR Facilities and Future Associated ASR Facilities, as those terms may be defined in an amendment or addendum to this Agreement authorized by the Water Management District Board of Directors.~~

~~9.6. **Water Rights.** Cal-Am and the Water Management District agree to cooperate and support the acquisition District jointly own and hold SWRCB water rights permit Nos. 20808A and 20808C, which authorize diversion and use of Carmel River water rights needed for ASR Operations. Cal-Am and the Water Management District shall jointly hold all relevant applications and Carmel River water rights permits for ASR purposes. Cal-Am and the Water Management District further agree to jointly cooperate in activities concerning the acquisition, protection and support perfection and use of water rights permit Nos. 20808A and 20808C as needed for ASR Facilities Operations; provided that, nothing in this Agreement shall affect or limit Cal-Am’s exclusive right to determine operation of the extraction wells and facilities in the Carmel River alluvial system. Cal-Am and the District agree to cooperate and support each other’s efforts to store and extract and use water associated from the ASR Facilities consistent with ASR Facilities Operations. Cooperative efforts shall extend to both existing ASR, as well as Future ASR, specified herein. This Agreement, however, shall not affect or define the right convey or interest limit, or otherwise affect, any right of either Party to store water in, or extract water from, the Seaside Groundwater Basin; rights to store and extract water in the Seaside Groundwater Basin are managed by the Seaside Groundwater Basin Watermaster pursuant to the Amended Decision, Monterey County Superior Court Case No. M66343, dated February 7, 2007, as may be further amended.~~

~~10.7. **Other Permits.** Subject to the provisions of Section 6 hereof, Cal-Am and the Water Management District shall cooperate in the acquisition of all other regulatory permits or approvals required for ASR Facilities Operations. The parties Parties agree that they shall mutually cooperate and support each other’s efforts pursuant to this paragraph, as may relate to Existing ASR and Future ASR, as well as to ASR Facilities and Associated Future ASR Facilities.~~

~~11.8. **Planning & Construction.** Cal-Am shall be the lead entity related to the planning and construction of all Associated ASR Facilities. The Water Management District shall be the lead entity related to the planning and construction of all ASR Facilities. The parties agree to jointly investigate means to minimize expenses of both ASR Facilities and Associated ASR Facilities relating to property acquisition, ownership, construction, and debt issuance. ASR Facilities, excluding Santa Margarita Site for which the District shall be the lead entity.~~

~~12.9. **Water Charges.** The Parties shall not charge or impose any fee or other expense upon each other, except as otherwise provided for in this Agreement, for the use of the ASR Facilities or the Associated ASR Facilities.~~

~~13.10. **Water Use.** All water produced from storage by either the ASR Facilities or the Associated ASR Facilities shall be held exclusively for the benefit of customers of Cal-Am.~~

~~14.11. **ASR Expenses.** All costs associated with operation of the ASR Facilities or the Associated ASR Facilities, including but not limited to costs of administration, operation, regulatory compliance, maintenance, repair, replacement, and insurance shall be borne by the responsibility of Cal-Am. The District shall invoice Cal-Am shall further on a quarterly basis for the prior three-month period of ASR Expenses. Cal-Am shall reimburse the Water Management District actual and necessary costs it may incur related to the ASR Facilities or the Associated District for all reasonable ASR Facilities Expenses incurred by the District.~~

~~15.12. **Extraordinary Use of ASR Facilities.** Where the ASR Facilities are utilized by Cal-Am in lieu of operating other water production facilities, and when this operation does not relate to the recovery of water as part of the ASR Facilities Operations, then Cal-Am shall pay to the Water Management District for any costs itthe District may incur with respect to the in lieu operation, including but not limited to costs of administration, operation, regulatory compliance, maintenance, repair and replacement. Cal-Am may operate ASR Facilities for these purposes only upon the advance written consent of the Water Management District.~~

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

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

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

- ~~a. The District or Cal-Am may, in its sole discretion, terminate this Agreement immediately upon written below notice to the other Party, with no further notice or cure opportunity, if (a) Cal-Am ceases to provide water supply for the benefit of Cal-Am's customers on the Monterey Peninsula, or (b) the District no longer holds comprehensive authority to integrate management of the ground and surface water resources in the Monterey Peninsula area.~~

~~16. **Renewal Option.** To the extent ASR Facilities or Associated ASR Facilities are constructed and remain in operable condition, either Party shall have the option to extend and renew this Agreement to coincide with the remaining usable life of those ASR Facilities or Associated ASR Facilities, whichever has the longer remaining usable life, or to some other date mutually agreed to by the Parties. Notice of a Party's intent to exercise this Renewal Option shall be communicated to the other Party, in writing, no less than one hundred eighty (180) days prior to the termination date referenced in Section 18, below. The Parties agree to meet and confer, and engage in joint decision making with respect to determining any question regarding the remaining usable life of either the ASR Facilities or Associated ASR Facilities, or other mutually agreed to termination date. Nothing in this paragraph, however, shall be construed to limit the discretion of the Water Management District to cause the early termination as set forth in Paragraph 21 of this Agreement, which provisions shall prevail over the renewal option set forth in this paragraph.~~

~~17. **Termination.** The term of this Amended and Restated Aquifer Storage and Recovery (ASR) Management & Operations Agreement shall be 20 years from the date of execution subject to the early termination provision of Paragraph 21.~~

~~b. The failure of any Party to perform any material term, covenant, or condition of this Agreement, and the failure continues for more than thirty (30) days following the defaulting Party's receipt of written notice of such default from a non-defaulting Party, shall constitute an "Event of Default" under this Agreement; provided, however, that if and to the extent such Event of Default cannot reasonably be cured with such thirty (30) day period, and if the defaulting Party has diligently attempted to cure the same within such thirty (30) period and thereafter continues to diligently attempt to cure the same, then the cure period provided for herein shall be extended from thirty (30) days to one-hundred twenty (120) days. If an Event of Default occurs, any non-defaulting Party may terminate this Agreement immediately upon written notice to the other Party. A non-defaulting Party may enforce any and all rights and remedies it may have against a defaulting Party under applicable law.~~

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

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

b. **ASR Facilities.** Cal-Am and the District will own the ASR Facilities as described in Section 4 hereof, and each shall have a right of first refusal to purchase or otherwise acquire, for fair market value, the ASR Facilities from the other for continued ASR Facilities Operation.

~~18.17. **Limitation.** It is understood by the partiesParties that all Agreementsagreements, obligations, debts and liabilities of Cal-Am do not constitute the Agreementsagreements, obligations, debts and/or liabilities of the Water ManagementDistrict, its officers, agents and employees. Further, it is understood by the partiesParties that all Agreementsagreements, obligations, debts and liabilities of the Water ManagementDistrict do not constitute the Agreementsagreements, obligations, debts and/or liabilities of Cal-Am, its officers, agents and employees.~~

~~19.18. **California Public Utilities Commission.** Cal-Am and the Water Management District recognize and acknowledge that Cal-Am is subject to certain regulatory practices and authority of the California Public Utilities Commission (CPUC),CPUC, and that Cal-Am may require expenditure authorization from the CPUC in order to implement discrete aspects of this Agreement. The Parties agree to work cooperatively, and with due diligence, to obtain any CPUC approval necessary to implement this Agreement.~~

~~20.19. **Assignment.** This Agreement, and rights referenced herein, shall be assignable by either Party only upon the advance written consent of the other Party, which consent shall not be unreasonably withheld. The Water Management District may, in its sole discretion, terminate~~

~~this Agreement, in the event Cal-Am ceases to provide for the benefit of Cal-Am's customers on the Monterey Peninsula, whether by sale, purchase, eminent domain or other public acquisition.~~

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

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

23.22. Entire Agreement. This ~~document~~ Agreement represents the entire ~~Agreement~~ agreement between the ~~parties~~ Parties and supersedes any prior written or oral negotiations and representations between the ~~parties~~ Parties.

24.23. 25.—Amendment. This Agreement may be amended or modified only by an instrument in writing duly approved and signed by each ~~party~~ Party hereto. Any waiver of any terms or conditions must be in writing and signed by the ~~parties~~ Parties.

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

7 of 9 pages

*ASR Management & Operation and Operations Agreement
DRAFT #7-149-4-20*

Dated:

David J. Stoldt
General Manager
Monterey Peninsula Water Management District

~~Christopher Cook~~
~~Director of~~

Garry Hofer
Vice President, Operations
Coastal Division
California-American Water Company

U:\dstoldt\A-MPWMD-DJS\New Water Projects\ASR Project\ASR Agreement-Amended and Restated DRAFT Clean 7-14-20.doc

EXHIBIT A
ASR FACILITIES OPERATIONS

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