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October 19, 2020

VIA EMAIL

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

Re: MPWMD Board of Directors October 19, 2020, Meeting, Agenda Item 11 – Pure Water Monterey Expansion Lead Agency Status

Dear Chair Edwards and Members of the Board:

On behalf of California-American Water Company ("Cal-Am"), this letter expands on our August 17, 2020, letter to the Board and provides additional support demonstrating why MPWMD staff's proposal to steal the CEQA lead agency role from Monterey One Water ("M1W") for the Pure Water Monterey Expansion project ("PWM Expansion") is unlawful and inappropriate. As the proposed purchaser of potable water produced by the PWM Expansion, Cal-Am has a direct interest in ensuring that the PWM Expansion undergoes sufficient and appropriate environmental review, and that the public agencies involved in that review comply with proper legal procedures. MPWMD staff's proposal flies in the face of environmental review standards and procedural norms, and undercuts the basic lead agency and public review principles upon which CEQA is based.

As background, MPWMD staff's proposal for MPWMD to assume lead agency status for the PWM Expansion was first suggested in an item on the Board's August 17, 2020, meeting agenda. Prior to that meeting, Cal-Am submitted a letter advising the Board of the legal errors and oversights that would occur under staff's proposal, and the item was pulled from the agenda. The August 17 letter is attached hereto as Attachment A and is hereby incorporated by reference.

Now that the proposal is once again before the Board, Cal-Am reiterates that staff's proposal's has no basis in law. Simply put, MPWMD has no legal ability to "step into [M1W]'s shoes as lead agency" and take the actions contemplated in the staff report and the proposed letter to the M1W Board of Directors attached thereto as Exhibit 11-A. Staff's proposed letter suggests a course of action that materially misrepresents the legal basis for a responsible agency to assume lead agency status under CEQA and would lead this Board into committing egregious legal error. As our prior letter explained, staff's proposal:

1. Violates the binding terms of the 2012 MOU, which gave M1W the lead agency role for a Groundwater Replenishment Project, with express discretion to decide whether it would implement such a project;

2. Contradicts other documents explaining M1W's role as lead agency, such as the 2013 MRWPCA-MPWMD Groundwater Replenishment Project Cost Sharing Agreement ("2013 Agreement") and the Final SEIR for the PWM Expansion (e.g., Final SEIR at p. 4-101 ["M1W is the appropriate lead agency . . . as is the principal proponent of the Proposed Modifications to its PWM/GWR Project"]);

3. Ignores that on April 27, 2020, M1W appropriately exercised its sole discretion as lead agency to reject certification of the Final SEIR for the PWM Expansion as a result of substantial deficiencies in its environmental analysis; and

4. Fails to identify any appropriate legal path for MPWMD to assume lead agency status under CEQA or OPR's dispute resolution procedures.

In addition to these deficiencies, staff's proposal also violates the plain language of CEQA and the CEQA Guidelines. Public Resources Code section 21067 defines "lead agency" as "the public agency which has the ***principal responsibility for carrying out*** or approving a project which may have a significant effect upon the environment." (Emphasis added.) Further, the CEQA Guidelines provide criteria for identifying the appropriate lead agency, stating:

> Where ***two or more public agencies will be involved with a project***, the determination of which agency will be the lead agency shall be governed by the following criteria:
>
> (a) If the project will be ***carried out by a public agency***, ***that agency shall be the lead agency*** even if the project would be located within the jurisdiction of another public agency.

(CEQA Guidelines, § 15051, subd. (a) [emphasis added].) Here, M1W is a public agency that would carry out the PWM Expansion, as it did the original PWM project. In fact, M1W owns and operates the PWM project and facilities that the PWM Expansion proposes to expand, and there is no ability for MPWMD to "carry out" the PWM Expansion – that can only be done by M1W. MPWMD therefore expressly agreed that M1W would need to carry out the PWM Expansion when it entered into the 2013 Agreement with M1W, which states that "***[M1W] shall***" (i) "be the lead Party for performance and completion of work under this Agreement"; (ii) "serve as the contracting authority for the Parties for the GWR Project and, with MPWMD's concurrence, contract directly with all professionals, firms, and outside contractors"; and (iii) "hold title to all GWR Project facilities to be constructed under this Agreement" (2013 Agreement, §§ 7, 9, 6 [emphasis added].) Clearly, under the express terms of the 2013 Agreement, M1W is the sole public agency ***carrying out*** the project.

Accordingly, MPWMD's role in the PWM Expansion is more limited. Because it is not ***carrying out*** the project, as a matter of law it cannot serve as lead agency for PWM Expansion. (See, e.g., *Planning & Conservation League v. Department of Water Resources* (2000) 83

Cal.App.4th 892, 904-907; *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 239 [citing cases and noting that "courts have concluded that the public agency that shoulders primary responsibility for creating and implementing a project is the lead agency, even though other public agencies have a role in approving or realizing it"].) In addition, although the CEQA Guidelines recognize instances where two public agencies may enter into an agreement designating the lead agency where such agencies have a "substantial claim" to be the lead agency," (CEQA Guidelines, § 15051, subd. (d)), here M1W and MPWMD already did that, ***expressly agreeing that M1W shall serve as lead agency and MPWMD shall serve as a responsible agency***. (2012 MOU, §§ II.1.C, II.2.D.) Should MPWMD attempt to usurp the lead agency role from M1W, it would be violating CEQA and applicable case law.[1]

Moreover, staff's proposal is made even more tenuous by MPWMD's limited role with respect to the PWM Expansion. CEQA only applies when a public agency proposes to "approve" a project. (Pub. Resources Code, § 21080, subd. (a); CEQA Guidelines, § 15004.) The term "approval" refers to a public agency decision that "commits the agency to a definite course of action in regard to a project." (CEQA Guidelines § 15352, subd. (a).) Notably, "approval" does not include an agency's "mere interest" in a project, "or inclination to support" a project. (CEQA Guidelines, § 15004, subd. (b)(4)). In other words, to trigger CEQA, there needs to be an identifiable discretionary action to be taken by the public agency in order to approve a project.

Here, MPWMD did issue some ancillary approvals in support of the original PWM Project. However, in listing permits and approvals required for the PWM Expansion, the Final SEIR does not list ***any*** new or amended approvals that are required from MPWMD. (See Final SEIR, p. 2-33, Table 2.8 [New or Amended Permits or Approvals for Proposed Modifications].) If MPWMD need not undertake any discretionary action in approving the PWM Expansion, it serves no role in its CEQA review, making staff's lead agency claim legally irrelevant. Even if MPWMD must make some limited discretionary approval, it was not substantial enough for M1W or the SEIR preparers to identify it in the SEIR – nor substantial enough for MPWMD to raise it as an error during MPWMD's participation in the SEIR process. Therefore, to the extent MPWMD claims its approval authority is sufficient to be designated a lead agency, such arguments are specious and belied by the record.

Overall, staff's attempt to insert MPWMD as lead agency for PWM Expansion despite its very limited role betrays the proposal's true purpose of simply reversing another agency's decision that staff does not like. Nothing in CEQA allows a responsible agency to assume lead agency status after the preparation of an EIR simply because the responsible agency has expended resources in support of a certain project and it does not agree with the lead agency's decision to reject the EIR and project.

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[1] Moreover, as explained above, M1W owns and operates the PWM project and facilities that the PWM Expansion proposes to expand and is the only entity that can "carry out" the PWM Expansion. Therefore, there is no credible basis for MPWMD to assert that it has a "substantial claim" to lead agency status.

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We once again urge this Board to reject staff's proposal for MPWMD to "assume the role of lead agency" for the PWM Expansion. Should the Board attempt to take over as lead agency or pursue other actions with respect to the PWM Expansion Final SEIR, MPWMD and the Board will be committing CEQA error that would undoubtedly be overturned by a court.

Very truly yours,

Winston Stromberg
of LATHAM & WATKINS LLP

cc: Rich Svindland, California-American Water Company
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ATTACHMENT A

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August 17, 2020

VIA EMAIL

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

Re: MPWMD Board of Directors August 17, 2020, Meeting, Agenda Item 11 – Pure Water Monterey Expansion Lead Agency Status

Dear Chair Edwards and Members of the Board:

On behalf of California-American Water Company ("Cal-Am"), this letter addresses Monterey Peninsula Water Management District ("MPWMD") staff's proposal that MPWMD steal the CEQA lead agency role away from Monterey One Water ("M1W") on the Pure Water Monterey Expansion project ("PWM Expansion"). MPWMD has no legal ability to "step into [M1W]'s shoes as lead agency" and take the actions contemplated in the proposed letter to the M1W Board of Directors attached to the agenda packet as Exhibit 11-A. Cal-Am, as the proposed purchaser of potable water produced by the PWM Expansion, has a direct interest in ensuring that the project undergoes sufficient environmental review, and that agencies, including MPWMD, comply with the proper legal procedures. MPWMD staff's proposed letter materially misrepresents the legal basis for a responsible agency to assume lead agency status under CEQA. We urge this Board to reject staff's proposal for MPWMD to "assume the role of lead agency" for the PWM Expansion. Should the Board attempt to take over as lead agency, MPWMD and the Board will be committing an egregious CEQA error.

Staff's proposal flies in the face of commitments made nearly a decade ago that confirm M1W's lead agency status for the original Pure Water Monterey Groundwater Replenishment Project ("Phase 1 PWM") and PWM Expansion. On April 20, 2012, MPWMD, M1W,[1] and Cal-Am entered into the Groundwater Replenishment Project Planning Term Sheet and Memorandum of Understanding to Negotiate in Good Faith ("2012 MOU") to enable planning and environmental evaluation of a groundwater replenishment project. Under the binding terms of the 2012 MOU:

> ***MRWPCA will act as lead agency pursuant to CEQA***, and will prepare or have prepared an environmental document pursuant to

[1] Prior to November 2017, M1W was referred to by its former name, Monterey Regional Water Pollution Control Agency ("MRWPCA").

> CEQA to evaluate the environmental impacts of such a GWR Project. ***If MRWPCA chooses to implement a GWR Project, MRWPCA will adopt or certify an environmental document . . . that in its judgment complies with CEQA***. MRWPCA will use funding provided by MPWMD, in addition to its own funds, for this effort.

(2012 MOU, § II.1.C [emphasis added], attached hereto as **Exhibit A**.) "MRWPCA ***expressly retains its discretion with respect to whether it will implement a GWR Project***." (*Id*., § II.1.E [emphasis added].) For its part, MPWMD retained "discretion to consider the CEQA Documents in a manner fully consistent with its role as a ***responsible agency*** under CEQA." (*Id*., § II.2.D [emphasis added].)

The contractual agreements referenced in staff's proposed letter expressly confirm this understanding, stating that "MRWPCA shall be the lead Party for performance and completion of work" on the Phase 1 PWM. (See 2013 MRWPCA-MPWMD Groundwater Replenishment Project Cost Sharing Agreement, § II.C.7, attached hereto as **Exhibit B**.) Additionally, the Final Supplemental Environmental Impact Report ("Final SEIR") for the PWM Expansion specifically concluded that M1W is the appropriate lead agency for evaluation of the action, given that it is the principal proponent of the PWM Expansion. (E.g., PWM Expansion Final SEIR, p. 4-101.)

As the MPWMD Board is aware, on April 27, 2020, the M1W Board of Directors denied certification of the Final SEIR for the PWM Expansion as a result of substantial deficiencies in the environmental analysis related to: source water for the PWM Expansion; water supply and demand; impacts to agricultural water supplies; and failure to evaluate the PWM Expansion either as an alternative to or a cumulative project with Cal-Am's Monterey Peninsula Water Supply Project ("MPWSP").[2] The M1W Board decided to not certify the Final SEIR after nearly two years of environmental review, including an extended public comment period in which many members of the public raised substantial comments and concerns regarding PWM Expansion and the Final SEIR. At no time during the preparation and M1W's consideration of the Final SEIR did MPWMD raise any concerns about M1W's ability to serve as CEQA lead agency or the sufficiency of its environmental review.

Now, in staff's proposed letter to the M1W Board, staff asserts that MPWMD must step into the lead agency role "for the purposes of certifying the Final SEIR" because M1W "has not timely acted to certify the SEIR" and "MPWMD has made considerable investments of time and public resources." However, M1W ***had no obligation whatsoever*** to certify an SEIR that it found to be legally deficient. In fact, it would have been contrary to the terms of the 2012 MOU and been a prejudicial abuse of discretion for M1W to certify the legally inadequate SEIR. (Pub. Resources Code, § 21168.5.) Moreover, contrary to MPWMD staff's letter, M1W did not "refuse[] to take definitive action to exercise discretion or finish its lead review of the SEIR."

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[2] In the CPUC's proceedings for the MPWSP, the CPUC similarly determined that PWM Expansion would be infeasible for "myriad independent reasons." (See CPUC D.18-09-017, Appx. C, p. C-17.)

The M1W Board took definitive action when it rejected certification of the Final SEIR at its April 27 meeting.

MPWMD staff fails to cite any provision in CEQA—because there is none—that allows a CEQA responsible agency to assume the lead agency role after the preparation of an EIR simply because the responsible agency has expended resources in support of a certain project and does not agree with the lead agency's decision to reject the EIR and project.

Indeed, staff's attempt to usurp lead agency status from M1W has no basis in law. Nothing in CEQA allows the changing of lead agency status at the end of the environmental review process, after a duly-prepared EIR has been publicly circulated and considered by the lead agency's decisionmaking body, except when very specific and limited conditions not present here are met. CEQA Guidelines section 15052 provides that a shift in lead agency designation may occur ***only*** when:

> (1) The lead agency did not prepare ***any*** environmental documents for the project, and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.
>
> (2) The lead agency prepared environmental documents for the project, but the following conditions occur: (A) a subsequent EIR is required pursuant to Section 15162; (B) the lead agency has granted a final approval for the project; and (C) the statute of limitations for challenging the lead agency's action under CEQA has expired.
>
> (3) The lead agency prepared inadequate environmental documents ***without*** consulting with the responsible agency and the statute of limitations has expired for a challenge to the action of the appropriate lead agency.

(Emphasis added.) In its proposed letter, ***staff concedes that none of these conditions are met***, yet claims that Section 15052 nonetheless does not foreclose its ability to assume the role of lead agency. MPWMD staff is wrong.

To support its novel interpretation, staff quotes a legal treatise, intentionally omitting a crucial portion of that treatise that emphasizes the limited circumstances in which lead agency roles may change during the environmental review process. The treatise explains: "For example, this can occur if a project application is submitted to a county and the area containing the project is later annexed to a city or included in a newly incorporated city." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act § 3.8(e).) This example is based on *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, also cited in MPWMD staff's letter, where the lead agency designation changed mid-environmental review from a county to a city. There, the applicant "asked the County to send the administrative record on the Project to the City, which was about to be incorporated and which would have jurisdiction over the Project. Accordingly, on June 18, 1991, the County deferred further consideration of the Project to the City." (*Gentry*,

supra, 36 Cal.App.4th at p. 1369.) In discussing the propriety of such a change in lead agency, the court noted that CEQA Guidelines section 15051 allows agencies to enter into agreements designating the lead agency as had happened between the county and the city. (*Id.* at pp. 1397–1398.) Even so, after the change in lead agency designation, the project applicant reapplied to the city for project approvals, and the city issued a new notice of its CEQA process. (*Id*. at p. 1369.)

The authority cited by MPWMD staff in its proposed letter has absolutely no bearing on the facts here. When read in context, the authority cited by staff suggests that when an agency's jurisdiction over a project is transferred by annexation or incorporation ***and*** the agencies agree, lead agency status may be transferred without restarting the CEQA review process. With respect to the PWM Expansion and SEIR, however, no transfer in jurisdiction has occurred and M1W has not agreed to cede any CEQA authority to MPWMD.

Staff also suggests that M1W may use the Office of Planning and Research's ("OPR") dispute resolution process to resolve MPWMD's claim that it can serve as lead agency. (Pub. Resources Code, § 21165, subd. (a); CEQA Guidelines, § 15053; Cal. Code Regs., tit. 14, §§ 16000 *et seq*.) This is also incorrect. Staff ignores that such a dispute exists only when there is a "contested, active difference of opinion between two or more public agencies as to which of those agencies ***shall prepare any necessary environmental document***" and "each of those agencies claims that it either has or does not have the obligation ***to prepare that environmental document***." (Pub. Resources Code, § 21165, subd. (b) [emphasis added].) In other words, the dispute resolution process occurs ***before*** an environmental document is prepared, not after the fact.

OPR can resolve disputes regarding lead agency status ***at the outset of the environmental review process*** "based on consideration of the criteria in [CEQA Guidelines] Section 15051 as well as the capacity of the agency to adequately fulfill the requirements of CEQA." (CEQA Guidelines, § 15053, subd. (e).) CEQA Guidelines section 15051, subdivision (a), states that "[i]f the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency." It has always been understood that M1W—not MPWMD—is responsible for implementing (i.e., carrying out) any eventual groundwater replenishment project. As the 2012 MOU expressly states, MPWMD agreed that M1W "expressly retains its discretion with respect to whether it will ***implement*** a GWR Project[.]" (2012 MOU, § II.1.E [emphasis added].)

Accordingly, in 2015, M1W approved the Phase 1 PWM, certified its associated Final EIR, and committed to carrying out construction, operation, and maintenance of Phase 1. Had M1W certified the PWM Expansion SEIR, it would have been responsible for carrying out those same tasks with respect to the PWM Expansion. In contrast, MPWMD's role has been limited to that of a responsible agency, providing financial funding and issuing ancillary approvals. MPWMD has not and could not have carried out the Phase 1 PWM or PWM Expansion in the same manner or to the same degree as M1W. Therefore, under CEQA Guidelines section 15051, M1W has the only claim to lead agency status.

Assuming that MPWMD did have a claim, CEQA Guidelines section 15051 provides that where there are two or more public agencies with a substantial claim to be lead agency, the lead agency will generally be designated either by the first to act on the project or by agreement. Here, M1W undisputedly acted first (in 2012) ***and with MPWMD's express contractual agreement***. MPWMD cannot, at this late stage, credibly argue that it has the better claim to lead agency status in a brazen attempt to reverse M1W's decision.

Even if the M1W Board were to agree that MPWMD could assume the role of lead agency for the PWM Expansion, MPWMD would need to restart the CEQA process and resolve the significant deficiencies in the SEIR identified by the M1W Board when it denied certification. MPWMD cannot simply assume lead agency status, certify an SEIR already determined to be deficient by the proper lead agency and for which it did not control either the preparation or the responses to public comments, and then approve the PWM Expansion. There is no procedure under CEQA for such conduct because it is not recognized under CEQA as an acceptable process for an environmental document.

In sum, the only legal action the Board can take here is to reject staff's proposal to assume the role of lead agency for the PWM Expansion.

Very truly yours,

Winston Stromberg
of LATHAM & WATKINS LLP

cc: Rich Svindland, California-American Water Company
Ian Crooks, California-American Water Company
Kathryn Horning, Esq., California-American Water Company
Duncan Joseph Moore, Esq., Latham & Watkins LLP
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EXHIBIT A

MRWPCA-MPWMD-CAL AM GROUNDWATER REPLENISHMENT PROJECT PLANNING TERM SHEET AND MEMORANDUM OF UNDERSTANDING TO NEGOTIATE IN GOOD FAITH

This Groundwater Replenishment Project Planning Term Sheet And Memorandum of Understanding To Negotiate In Good Faith ("GWR MOU") is entered into as of April 20, 2012, by and between the Monterey Regional Water Pollution Control Agency, a joint powers authority ("MRWPCA"), the Monterey Peninsula Water Management District, a California special act district ("MPWMD"), and the California-American Water Company ("Cal Am"), an investor-owned water utility, collectively the "Parties", based upon the following facts, intentions and understandings of the Parties.

I. BACKGROUND

A. MRWPCA owns and operates a wastewater collection and treatment system in northern Monterey County, including the Regional Treatment Plant ("RTP") and the associated ocean outfall ("Outfall"). From the RTP, MRWPCA produces treated wastewater that has the potential for reuse;

B. MPWMD was created by the California Legislature in 1977 for the purposes of "conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water." The MPWMD's specific functions are "management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects." It is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and "fix, revise, and collect rates and charges for the services, facilities, or water furnished by it";

C. Cal Am is an investor-owned water utility regulated by the California Public Utilities Commission ("CPUC") that serves retail customers in the Monterey Peninsula. Cal Am has been ordered by the State Water Resources Control Board to significantly reduce its diversions from the Carmel River, its largest source of water supply, on a schedule that will result in Cal Am being able to divert only 30 percent of its historical draw from the Carmel River by December 31, 2016. Cal-Am requires additional sources of water to serve Cal Am's Monterey Peninsula customers. CPUC approval for certain aspects of such additional water supplies is required.

D. The CPUC previously approved Cal Am's participation in the "Regional Project," in conjunction with the Monterey County Water Resources Agency and the Marina Coast Water District (Decision 10-12-016, December 2, 2010.) The Regional Project was intended, among other things, to fulfill Cal Am's need for additional water supplies. However, Cal Am has withdrawn from participation in that project, and is seeking alternative approaches to meet its needs.

E. The Seaside groundwater basin ("Seaside Basin") is in a state of overdraft, and rights to water and pumping thereof have been adjudicated by the Monterey Superior Court. The Seaside Basin is governed by a Watermaster appointed by the Court.

F. MPWMD and Cal Am have an existing aquifer storage and recovery project ("ASR") which involves the injection of water into the Seaside Basin, and its recovery for the benefit of Cal Am. This initial phase ("ASR Phase 1") uses water diverted from the Carmel River, which is injected and extracted using two existing wells.

G. MRWPCA treats wastewater at the RTP, creating a potential source of water supply.

H. The parties believe that an additional increment of water supply should be generated for the benefit of Cal Am and its customers, many of whom are within the service areas of MPWMD and MRWPCA, by conveying advanced treated wastewater from the MRWPCA to the Seaside Basin, where it could be injected for storage and subsequent recovery by Cal Am ("GWR Project").

I. There would be substantial benefits of such a Groundwater Replenishment Project, including but not limited to:

- Drought resistant element of water supply portfolio;
- Cost-effective water supply; and
- Diversification of Cal Am's water supply portfolio

- There are also other benefits to this project, including but not limited to:
  i. Improved water quality in Monterey Bay
  ii. Advance the State of California's recycled water policies;
  iii. Reuse of water otherwise discharged to the ocean;
  iv. Lower carbon footprint relative to desalination;

J. The Parties intend by this GWR MOU to enable planning and environmental evaluation of a groundwater replenishment project by the following:

- to commit themselves to evaluate the ways in which a groundwater replenishment project could be effectively accomplished;
- to commit themselves to negotiate in good faith to reach agreement on such a project, should it be deemed viable;
- for MRWPCA to commit to act as lead agency to achieve California Environmental Quality Act ("CEQA") compliance for such a project, should it be deemed viable;
- for MPWMD to assist MRWPCA in providing the necessary financial support for the foregoing planning and CEQA compliance activities, subject to Recital M, below; and
- to identify non-binding preliminary terms of a GWR project agreement, which will assist in focusing the development of a GWR project responsive to the Parties' capabilities and needs.

K. Except as set forth in Recital J above, the terms set forth in this GWR MOU are the Parties' preliminary concept of terms that may be included in future agreements by and among some or all of the Parties ("GWR Agreements".) They are not intended to be, nor should they be considered as, binding on the Parties.

L. None of the Parties intends by this GWR MOU to commit itself, or the other Parties, to a particular course of action, other than as set forth in Recital J above. The Parties reserve their discretion to evaluate and determine the feasibility or viability of any GWR Project, as well as project impacts, alternatives and mitigation measures, including but not limited to not proceeding with the GWR Project.

M. MPWMD financial support for GWR described in Recital J above is contingent upon successful implementation of a new revenue collection mechanism during the 2012-13 fiscal year.

II.
BINDING TERMS REGARDING PROCESS TO EVALUATE AND IF FEASIBLE DEVELOP A GROUNDWATER REPLENISHMENT PROJECT

1. MRWPCA

A. MRWPCA is anticipated to be the source of the recycled water supply. MRWPCA would apply additional treatment to wastewater from the RTP, convey that water to the Seaside Basin, and inject it into the aquifer, thus making an additional source of water available for use by Cal Am and its customers.

B. MRWPCA will in good faith commit to evaluate its resources and capabilities with respect to the feasibility of performing the foregoing functions.

C. In the event that a feasible project is identified, MRWPCA will act as lead agency pursuant to CEQA, and will prepare or have prepared an environmental document pursuant to CEQA to evaluate the environmental impacts of such a GWR Project. If MRWPCA chooses to implement a GWR Project, MRWPCA will adopt or certify an environmental document – including any necessary supplements or addenda thereto (collectively "CEQA Documents") – that in its judgment complies with CEQA. MRWPCA will use funding provided by MPWMD, in addition to its own funds, for this effort.

D. MRWPCA will negotiate in good faith with the other Parties to develop GWR Agreements acceptable to all Parties, which agreements will be consistent with the CEQA Documents. The Parties' goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR Project to be operational

such that water can be made available to Cal Am on the schedule set forth by the SWRCB.

E. MRWPCA expressly retains its discretion with respect to whether it will implement a GWR Project or enter into a GWR Agreement, and on what terms. Nothing in this agreement shall be construed as limiting MRWPCA's obligation to consider any and all alternatives, including the "no project" alternative, and any and all mitigation measures, and to make the requisite findings, in the above-referenced CEQA process.

2. MPWMD

A. MPWMD will provide matching funding for MRWPCA and MPWMD GWR evaluation, planning, pre-design, and environmental review costs for the GWR derived from its new revenue collection mechanism implemented for the 2012-13 fiscal year. The Parties anticipate that MPWMD will contribute 50% of MRWPCA's actual GWR related costs, which 50% is currently estimated to be $1,036,550 in FY 2012-13 and $1,469,200 in FY 2013-14. Initially within 90 days after MPWMD's implementation of its new revenue collection mechanism for FY 2012-13, and by April 1 of each following year, the MRWPCA and MPWMD will meet and confer to review and must agree upon the Project budget for the following fiscal year. During a fiscal year, upon presentation to MPWMD by MRWPCA of invoices representing Project expenditures, MPWMD will remit to MRWPCA within 60 days an amount representing 50% of the expenditure. However, if required by MPWMD's new revenue collection mechanism, invoices presented before November 1 shall be paid no later than December 31, and invoices presented before May 1 shall be paid no later than June 1.

B. If MPWMD determines that a GWR Project is viable, MPWMD will negotiate in good faith with the other Parties to develop a GWR Agreement acceptable to all Parties, which agreement will be consistent with the above-described CEQA Documents. The Parties' goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR Project to be operational such that water can be made available to Cal Am on the schedule set forth by the SWRCB.

C. In the event that GWR Agreements are executed, MPWMD will undertake the permanent financing of GWR with long-term debt, secured by either revenues of MPWMD or payments to be received under a water purchase agreement with Cal Am, or both. Proceeds of the financing, or revenues received from water sales, will be used to reimburse MRWPCA for its past out-of-pocket contributions of MRWPCA for a GWR Project (any unreimbursed costs including the MRWPCA investment before execution of this MOU). Such permanent financing will be undertaken when and if the Parties agree that the Project shall proceed to design and construction and requires funding in excess of that reasonably available from pay-as-

you-go monies, notwithstanding that MRWPCA and MPWMD may decide to undertake more than one permanent financing in order to facilitate a pilot project or construction in phasing.

D. MPWMD expressly retains its discretion with respect to whether it will enter into any GWR Agreement, and on what terms; as well as its discretion to consider the CEQA Documents in a manner fully consistent with its role as a responsible agency under CEQA.

3. CAL AM

A. If each Party independently agrees that a GWR Project is viable, Cal Am will negotiate in good faith with the other Parties to develop a GWR Agreement acceptable to all Parties, which agreement will be consistent with the above-described CEQA Documents. The Parties' goal is that such agreement will be complete and fully executed in a timeframe which will enable the GWR to be operational such that water can be made available to Cal Am on the schedule set forth by the SWRCB.

B. Subject to ratemaking treatment approved by the CPUC and terms acceptable to Cal Am, Cal Am will enter into a GWR Agreement with MPWMD, with minimum annual purchase obligations of water at a price sufficient to pay the annual costs of debt and the costs of the GWR Project, including without limitation, operations, maintenance, repair, replacement, regulatory compliance, and administration costs, associated with the portion of the GWR Project's output purchased by Cal Am.

C. As the CPUC regulated entity, Cal Am will have the primary role with respect to the CPUC, including but not limited to, obtaining the approvals required by that agency.

D. Cal Am will bear its own costs with respect to all of its efforts in furtherance of realizing a GWR Project.

4. Good Faith Commitment

A. In order to explore the potential public and private benefits of this project, and to ensure that each Party's efforts in furtherance of realizing such a project are well spent, the Parties hereby make a good faith commitment to pursue development of such a GWR, in compliance with all applicable laws. The Parties shall meet with the goal of reaching agreement by June 30, 2012, on the criteria for determining the viability of a GWR Project, which criteria shall include but not be limited to (1) providing for a schedule and for adjustments of same for the timeframe within which the GWR Project will be operational, and (2) a process and timeframe for verifying that the range of estimated costs for GWR Project water are consistent with the MRWPCA current cost estimates of $2500-$3000 per acre foot.

5. Term and Termination

A. This GWR MOU shall expire upon the earlier of (1) full execution of a GWR Agreement, or (2) upon written agreement of the Parties to terminate.

B. Upon thirty days advance written notice to all Parties, and upon the withdrawing Party's good faith determination that further participation is not feasible for any reason, any Party may withdraw from this MOU. If two Parties withdraw, this MOU is terminated.

C. Any obligation to pay survives termination until such payment is made in full.

III.
NON-BINDING PRELIMINARY TERMS

The provisions in this Section III set forth the Parties' preliminary understanding that may be included in a final project agreement or agreements ("GWR Agreement"). These provisions are not intended to be, nor should they be considered as, binding on the Parties. Each Party expressly retains discretion with respect to whether it will enter into a GWR Agreement, or on what terms.

1. The GWR Project is intended by the Parties to provide approximately 3500 AF of advanced treated wastewater ("Replenishment Water") that can be made available, conveyed to the Seaside Basin and injected therein using new wells, by MRWPCA. MRWPCA will design, construct, own and operate the facilities to convey the water from the RTP and inject it into the Basin.

2. Upon payment by MPMWD to MRWPCA as set forth below, MPWMD shall take title to the Replenishment Water that has been injected into the aquifer. MPWMD will make the Replenishment Water available for purchase by Cal Am for the purpose of serving Cal Am's retail water customers in the Monterey Peninsula area.

3. Upon permanent financing, MPWMD will pay to MRWPCA the full amount of MRWPCA's costs to design, construct, obtain regulatory approvals, treat, deliver and inject the Replenishment Water. The commodity cost for the Replenishment Water shall recover at minimum all costs associated with GWR operation, maintenance, repair, replacement and administration, including regulatory compliance.

4. MRWPCA, MPMWD, and Cal Am shall coordinate the scheduling of injection of recycled water, Carmel River water, and any other water.

5. Subject to CPUC ratemaking approval, Cal Am shall enter into a contract to purchase the Replenishment Water from MPWMD. This contract will inter alia promptly

reimburse MPWMD for the following prudently incurred costs: MPWMD's annual cost of debt service, Replenishment Water payments to MRWPCA for operations and maintenance, reimburse MRWPCA for any of its project development costs not previously reimbursed by MPWMD, as well as for MPWMD's costs.

6. The parties anticipate that terms addressing the following non-exhaustive list of topics will also be needed:

- Additional Financial Provisions;
- No Partnership, Joint Venture or JPA.
- Coordination with others
- CPUC approvals
- Regulatory Compliance
- Storage and Recovery Agreement with Seaside Basin Watermaster
- Brine Disposal
- Additional Acts
- Representations and Warranties.
- Litigation; Cooperation in Litigation
- Force Majeure
- No Third Party Beneficiaries.
- Dispute Resolution
- No Assignment
- Default, Cure and Remedies
- Attorneys Fees
- Notices
- Miscellaneous Provisions

The Parties re-confirm that neither a GWR Agreement, nor any replenishment project, can proceed unless and until the Parties have negotiated, executed and delivered mutually acceptable GWR Agreements, with any public agency action performed in compliance with CEQA and on other public review and hearing processes, and subject to all applicable governmental approvals. The Parties intend by this GWR MOU to inform and focus the work necessary to develop and review a water transfer program, not to pre-determine what that program may be.

WHEREFORE, this GWR MOU was executed by the parties on the date first above written.

MRWPCA

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY,

By: _____
Ron Stefani, Board Chair
MRWPCA Board of Directors

MPWMD

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT,

By: _____
David Stoldt
General Manager

CAL AM

CALIFORNIA AMERICAN WATER COMPANY,

By: _____
Robert MacLean
President

EXHIBIT B

MRWPCA-MPWMD
GROUNDWATER REPLENISHMENT PROJECT

COST SHARING AGREEMENT

This Cost Sharing Agreement is entered into as of May 20, 2013, by and between the Monterey Regional Water Pollution Control Agency, a joint powers authority ("MRWPCA") and the Monterey Peninsula Water Management District, a California special act district ("MPWMD"), collectively the "Parties", based upon the following facts, intentions and understandings of the Parties.

I.
BACKGROUND

A. The Agency was formed as a Joint Powers Agency by a Joint Exercise of Powers Agreement for the Monterey Regional Water Pollution Control Agency, effective as of June 29, 1979. Member entities formed the Agency in order to seek joint solutions to their wastewater treatment needs. The Agency owns and operates the Regional Treatment Plant ("RTP"), 25 wastewater pump stations, a land and ocean outfall. From the RTP, MRWPCA produces tertiary treated wastewater for agriculture irrigation. MRWPCA could treat waste waters through advanced treatment to provide for additional reuse.

B. MPWMD was created by the California Legislature in 1977 for the purposes of "conserving and augmenting the supplies by integrated management of ground and surface water supplies, for control and conservation of storm and wastewater, and for the promotion of the reuse and reclamation of water." The MPWMD's specific functions are "management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects." It is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and "fix, revise, and collect rates and charges for the services, facilities, or water furnished by it".

C. The parties believe that an additional increment of water supply should be generated for the benefit of Cal Am's Monterey District customers, many of whom are within the service areas of MPWMD and MRWPCA, by conveying advanced treated wastewater from the MRWPCA to the Seaside Basin, where it could be injected for storage and subsequent recovery ("GWR Project").

D. The Parties and California American Water Company jointly entered into a Groundwater Replenishment Project Planning Term Sheet And Memorandum of Understanding To Negotiate In Good Faith ("GWR MOU") on April 20, 2012 to, among other things, enable planning and environmental evaluation of a groundwater replenishment project by the following:

- to commit themselves to evaluate the ways in which a groundwater replenishment project could be effectively accomplished;

- to commit themselves to negotiate in good faith to reach agreement on such a project, should it be deemed viable;
- for MRWPCA to commit to act as lead agency to achieve California Environmental Quality Act ("CEQA") compliance for such a project, should it be deemed viable;
- for MPWMD to assist MRWPCA in providing the necessary financial support for the foregoing planning and CEQA compliance activities; and
- to identify non-binding preliminary terms of a GWR project agreement, which will assist in focusing the development of a GWR project responsive to the Parties' capabilities and needs.

E. Since 2005, MRWPCA has incurred costs of about $2,698,265 for conceptual planning for a Groundwater Replenishment Project.

II.
AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts recited and the mutual goals and objectives contained herein, the Parties agree as follows:

A. Finance

1. **Planning and Development Costs Defined**
This Agreement is by its terms limited to sharing of costs of planning and development of the GWR Project, incurred beginning April 1, 2012. Examples of those costs include:

    a. CEQA
    b. Feasibility Review
    c. Facilities Planning
    d. Monitoring Well Construction and Testing
    e. Pilot Treatment and Pilot Injection
    f. Public Outreach

2. **Financing of GWR Project Planning and Development Costs**
The Parties estimate that the costs described in Section 1., immediately above, will total $6,957,352 as shown in the budget in Appendix A. Beginning FY2013-14, MPWMD shall pay seventy-five percent (75%) of such costs, and MRWPCA shall pay twenty-five percent (25%) of such costs. Seventy-five percent (75%) of full employee costs (salary and benefits) incurred by MRWPCA for up to two (2) of its employees' allocable time committed to tasks falling within the components described in Section 1., immediately above, shall be paid (reimbursed) by MPWMD. Prior to FY2013-14, such costs are shared fifty percent (50%) by each Party. Other employee costs incurred by either Party and allocable to the GWR Project will be reimbursed from the proceeds of the permanent financing pursuant to any reimbursement resolution adopted by MPWMD or MRWPCA.

3. **Grants and Loans**
   MRWPCA or MPWMD may each pursue and receive grants, state revolving fund loans, or other forms of reimbursement from local, state, or federal sources. All such receipts will be delivered to MRWPCA and credit the GWR Project ledger as received. Such receipts will be deemed to offset project costs.

4. **Reimbursement**
   MRWPCA shall invoice MPWMD and MPWMD shall pay, subject to the conditions described in Section 10.

5. **Limited Obligation**
   MPWMD's financial obligations are limited obligations payable from its Water Supply Charge. MPWMD will provide a quarterly report to MRWPCA indicating the status of available funds.

B. Ownership

6. **System Ownership**
   MRWPCA shall hold title to all GWR Project facilities to be constructed under this Agreement.

C. Governance of Agreement

7. **Scope of Work**
   MRWPCA shall be the lead Party for performance and completion of work under this Agreement. However, the Parties will endeavor to meet regularly to monitor the progress of work under this Agreement.

8. **GWR Project Budgets**
   The Boards of MRWPCA and MPWMD shall approve a joint budget each fiscal year for phases of the GWR Project ("GWR Project Budgets".) To the extent that additional funds are required to complete work authorized by this Agreement the Parties will meet to discuss appropriate modifications to the GWR Project Budget, and neither Party shall unreasonably refuse to modify the GWR Project Budget as necessary to complete work authorized by this Agreement. MRWPCA shall meet at least quarterly to review the budget and provide MPWMD updates and modifications to the budget on a timely basis.

D. MRWPCA's Obligations

9. **Day-to-Day Management**
   MRWPCA shall provide day-to-day management of the work authorized by this Agreement, subject to applicable terms and conditions herein. MRWPCA shall serve as the contracting authority for the Parties for the GWR Project and, with MPWMD's concurrence, contract directly with all professionals, firms, and outside contractors.

10. **Payment**
MRWPCA shall pay for consultants, contractors, and other GWR Project-related costs in accordance with the terms of this Agreement. MRWPCA shall submit monthly invoices to MPWMD which will include back-up documentation substantiating the GWR Project-related costs incurred by MRWPCA.

11. **Purified Water Sales Agreement**
Before final design and construction proceeds, MRWPCA shall work jointly with MPWMD to develop a Recycled Water Sales Agreement under which MRWPCA will deliver recycled water to MPWMD for storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, quality, Watermaster storage and recovery agreement, metering and measurement of flows, invoicing, and other matters.

E. MPWMD's Obligations

12. **Payment of Invoices**
MPWMD shall have the right to review and confirm that the invoices submitted by the MRWPCA are in conformance with the terms of this Agreement. Payments will be made within 30 days of receipt of invoice. If during the review of invoice MPWMD disputes any payments as not being in accordance with this Agreement, the MPWMD will notify the MRWPCA within the 30 days to resolve any disputes.

13. **Wholesale Water Purchase Agreement**
Before final design and construction proceeds, MPWMD shall work jointly with California American Water Company to develop a Wholesale Water Purchase Agreement under which MPWMD will deliver potable water to California American from storage in the Seaside Groundwater Basin. Such agreement will address quantity delivered, cost, minimum annual purchase amounts, water quality, metering and measurement of flows, invoicing, and other matters.

F. Term and Termination

14. **Term**
This Agreement shall remain in force and effect for five years. Before final design and construction proceeds, and in no case later than within thirty (30) days after the fourth anniversary of the date of adoption of this Agreement, the Parties shall meet to decide whether to extend this Agreement. Any extension of this Agreement shall be in writing and on mutually acceptable terms and conditions.

G. Events of Default; Dispute Resolution

15. **Event of Default**
The failure of a Party to comply with any provision of this Agreement that has a material and adverse effect on the other Party, except to the extent caused by a breach of this Agreement by the other Party, shall constitute an Event of Default under this Agreement;

provided, however, that the defaulting Party shall first have a period of thirty (30) days following receipt of notice from the other Party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period shall extend for a total of one hundred eighty (180) days, so long as the defaulting Party is diligently trying to cure such failure throughout such period.

16. **Dispute Resolution**
Staffs of both Parties shall meet and use their best efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement. To that end, staffs of both Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first meeting of the staff regarding a Dispute, then the Parties shall pursue non-binding mediation to be completed within sixty (60) days after the first meeting of the Parties regarding the Dispute. If the Parties do not settle the Dispute within the sixty (60) day period, either Party may pursue any and all available legal and equitable remedies.

H. <u>Miscellaneous.</u>

17. **Force Majeure**
Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive or regulatory government bodies or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either Party of any of its obligations hereunder shall be extended by the Parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected Party shall: (i) promptly notify the other Party of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent commercially reasonable.

18. **Indemnities**
    a. MPWMD Indemnity. MPWMD shall fully indemnify MRWPCA and its respective directors, , employees and agents against, and hold completely free and harmless from, any cost, expense, claim, demand, judgment, loss, injury and/or liability of any kind or nature, including personal or bodily injury, death or property damage ("Losses"), that may arise from (i) any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MPWMD employee specifically retained to provide services with respect to the facilities.

    b. MRWPCA Indemnity. MRWPCA shall fully indemnify MPWMD and its respective directors, employees and agents against, and hold completely free and harmless from, any Losses, that may arise from (i) any grossly negligent act or omission of MRWPCA related to the GWR Project construction, management,

operation, maintenance or repair, except for costs, expenses, claims, demands, judgments, losses, injuries and/or liability arising from any grossly negligent act or omission of MPWMD related to construction of the GWR Project or (ii) any claim made by a MRWPCA employee specifically retained to provide services with respect to the GWR Project.

19. **Insurance/Self Insurance**
The Parties are either insured or self-insured as to any requirements under this Agreement. No policies or bonds are required of either party as to any provisions of this Agreement.

20. **Notices**
All notices to MPWMD required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940
Attention: General Manager

All notices to MRWPCA required or permitted under this Agreement shall be in writing and shall be deemed delivered (i) when delivered in person, (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; (iv) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission; or (v) via electronic mail provided the sender's system is capable of creating a written record of such notice and its receipt in each case to the parties at the following addresses or to other such addresses as may be furnished in writing by one party to the other:

Monterey Regional Water Pollution Control Agency
5 Harris Court, Building D
Monterey, CA 93940
Attention: General Manager

21. **Successors And Assigns**
The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, representatives, successors and permitted assigns.

22. **Further Acts and Assurances**
The Parties agree to execute, acknowledge and deliver any and all additional papers, documents and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations hereunder and to carry out the intent of the Parties.

23. **Captions**
The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affects this Agreement. Words of any gender in this Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense so requires.

24. **Severability**
Should it be found that any part of this Agreement is illegal or unenforceable, such part or parts of this Agreement shall be of no force nor effect and this Agreement shall be treated as if such part or parts had not been inserted.

25. **Entire Agreement**
All previous negotiations had between the Parties hereto and/or their agents or representatives with respect to this Agreement are merged herein and this Agreement alone fully and completely expresses the Parties' rights and obligations.

26. **Modifications In Writing**
This Agreement shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

27. **Interpretation**
Each of the Parties hereby waives any provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the Party that drafted the contract, agreement or instrument.

28. **Governing Law**
This Contract shall be governed by and construed according to the laws of California.

29. **No Third-Party Beneficiaries**
Nothing in this Agreement is intended to create any third-party beneficiaries to the Agreement, and no person or entity other than the Parties, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Agreement.

30. **Assignment**
Neither Party may assign its interest in this Agreement without the prior written consent of the other Party.

31. **Representation and Warranties**
No representations or warranties are made or have been relied upon by either Party other than those expressly set forth herein, if any.

WHEREFORE, this Cost Sharing Agreement was executed by the parties on the date first above written.

MRWPCA

MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY,

By: _____
Dennis Allion, Board Chair
MRWPCA Board of Directors

MPWMD

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT,

By: _____
David Pendergrass, Chair
MPWMD Board of Directors