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8 STATE OF CALIFORNIA

9 STATE WATER RESOURCES CONTROL BOARD

10 CEASE AND DESIST ORDER HEARING
11 CALIFORNIA AMERICAN WATER
12 COMPANY - CARMEL RIVER IN
13 MONTEREY COUNTY

PREHEARING BRIEF OF THE
DIVISION OF RATEPAYER
ADVOCATES

14
15 I. INTRODUCTION

16 Consistent with the procedures established by Board Member and Hearing Office Arthur
17 Baggett of the State Water Resources Control Board ("SWRCB"), the Division of Ratepayer
18 Advocates ("DRA") hereby files this prehearing brief in the above-captioned matter.¹ DRA
19 submits this prehearing brief to address the scope of issues for the SWRCB to consider in
20 connection with the January 15, 2008 Draft Cease and Desist Order, which would require
21 California American Water Company ("Cal-Am") to reduce unauthorized diversions from the
22 Carmel River until all unauthorized diversions are curtailed. The Draft Cease and Desist Order
23 provides for increasing percentage reductions of withdrawals from the Carmel River beginning
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26 ¹ DRA is an independent division of the California Public Utilities Commission created by the
27 Legislature. DRA's statutory mandate is to obtain the lowest possible rate for utility service consistent
28 with safe and reliable service levels. See, California Public Utilities Commission Section 309.5.

1 with 15 percent in 2008-2009 and reaching 50 percent by 2014. DRA recommends that the
2 SWRCB should consider potential impacts to Cal-Am's ratepayers as well as ongoing regional
3 water supply planning efforts on the Monterey Peninsula that may result from adoption of the
4 Draft Cease and Desist Order. **Specifically, the SWRCB should recognize that the Draft Cease
5 and Desist Order, if adopted, could have significant financial impacts on Cal-Am's ratepayers.
6 If adopted, the Cease and Desist Order should require Cal-Am to detail how regional water
7 supply planning efforts may assist Cal-Am to comply with the schedule for reducing
8 unauthorized diversions from the Carmel River.**

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10 **II. THE SWRCB SHOULD CONSIDER POTENTIAL IMPACTS OF THE DRAFT
11 CEASE AND DESIST ORDER ON CAL-AM'S RATEPAYERS**

12 **The Draft Cease and Desist Order's schedule for Cal-Am to reduce its unauthorized
13 diversions may have significant adverse impacts on ratepayers. Cal-Am serves approximately
14 38,000 service connections in its Monterey district. In its current ratesetting applications before
15 the California Public Utilities Commission, Cal-Am is proposing to raise Monterey district rates
16 by over 100%, which would result in its Monterey district customers paying some of the highest
17 water rates in the United States.²**

18 **If adopted, the SWRCB's Draft Cease and Desist Order will likely require Cal-Am to
19 implement aggressive conservation measures and possibly a moratorium on service connections
20 and a rationing program. In addition, Cal-Am will probably need to pursue significant water
21 infrastructure improvements. Depending on the schedule for Cal-Am to cease unauthorized
22 diversions from the Carmel River, Cal-Am may seek immediate cost recovery of these
23 programs, which if approved by the California Public Utilities Commission would likely result**

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25 ² Cal Am's application dockets for the Monterey district before the California Public Utilities
26 Commission are A.07-12-010, A.08-010-24, and A.08-010-27. Documents pertaining to these
27 proceedings can be found online at: http://docs.cpuc.ca.gov/published/proceedings/docket_flash.htm

1 in steep rate increases for Cal-Am's ratepayers. There is also the risk that Cal-Am's ratepayers
2 may face exposure for Cal-Am's liability arising from the Cease and Desist Order. At this time,
3 it is difficult to project specific ratepayer costs that may result from adoption of the Draft Cease
4 and Desist Order. Nevertheless, DRA recommends that the SWRCB consider that the potential
5 ratepayer impacts of the Draft Cease and Desist Order may be significant.
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8 **III. THE SWRCB SHOULD RECOGNIZE ONGOING REGIONAL WATER**
9 **SUPPLY DIALOGUES ON THE MONTEREY PENINSULA WHICH HAVE**
10 **THE POTENTIAL TO REDUCE UNAUTHORIZED DIVERSIONS FROM THE**
11 **CARMEL RIVER**

12 The Draft Cease and Desist Order would require Cal-Am to submit a work plan
13 explaining how it will comply with the schedule for reducing unauthorized diversions from the
14 Carmel River.³ Any such work plan should also require Cal-Am to detail how regional water
15 supply planning efforts may assist Cal-Am to comply with the schedule for reducing
16 unauthorized diversions from the Carmel River.

17 DRA is an active party in proceedings before the California Public Utilities Commission
18 examining the proposal of Cal-Am to build the Coastal Water Project, which includes a
19 desalination plant at Moss Landing, California and an Aquifer Storage and Recovery system in
20 Seaside, California for winter flows from the Carmel River.⁴ Currently, the California Public
21 Utilities Commission is conducting an environmental impact review of the Coastal Water
22 Project.⁵ The Draft Cease and Desist Order states that Cal-Am has been attempting to develop
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24 ³ Draft Cease and Desist Order at p. 6, ordering paragraph 3.

25 ⁴ See, Application 04-09-019 before the California Public Utilities Commission (*Application of*
26 *California American Water Company for a certificate of public convenience and necessity to construct*
27 *and operate its Coastal Water Project to resolve the long-term water supply deficit in its Monterey*
28 *District and to recover all present and future costs in connection therewith in rates*).

⁵ See, <http://www.cwp-eir.com/>

1 the Coastal Water Project.⁶ The SWRCB should also recognize that Cal-Am has been
2 participating in regional water supply discussions, which may result in a viable alternative to
3 the Coastal Water Project and reduce unauthorized diversions for the Carmel River.

4 Since January 2007, DRA has sponsored a series of meetings or dialogues facilitated by
5 the University of California Santa Cruz Center for Integrated Water Research to explore a
6 comprehensive water resource plan for the Monterey Peninsula.⁷ The purpose of the dialogues
7 is to explore solutions to supplying the water needs of the Monterey Peninsula in a cost-
8 effective and sustainable way. Participants in these dialogues have included among others
9 DRA, Cal-Am, California Water Service Company, consumer groups, legislative
10 representatives, and a number of federal, state, regional, county and city agencies and boards.
11 The dialogues participants have formed the Regional Plenary Oversight Group to assess
12 specific project alternatives to the Coastal Water Project. Cal Am and the Marina Coast Water
13 District are funding additional necessary technical analysis for the Regional Plenary Oversight
14 Group so that a defined regional plan may be assessed as an alternative in the ongoing
15 environmental impact review of the Coastal Water Project. The regional plan will include
16 elements of conservation, stormwater reuse, water recycling, surface and groundwater
17 conjunctive management, and brackish groundwater desalination.

18 The Draft Cease and Desist Order may well increase the urgency to define and complete
19 water supply projects, which may include the Coastal Water Project or supply alternatives that
20 the Regional Plenary Oversight Group is examining. From DRA's perspective, a positive
21 impact of the Draft Cease and Desist Order would be if it spurred completion of the regional
22 water supply planning process initiated by the dialogues. A negative outcome of the Draft
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25 ⁶ Draft Cease and Desist Order at p. 3, paragraph 10.

26 ⁷ See, <http://urbanwater.ucsc.edu/monterey/>

1 Cease and Desist Order would be the unraveling of emerging regional cooperation on
2 developing cost-effective and sustainable alternatives to the Coastal Water Project. At this
3 time, DRA is unable to project when various alternatives under consideration by the Regional
4 Plenary Oversight Group may be completed. For this reason, DRA recommends that the
5 SWRCB consider requiring Cal-Am to detail in any work plan how regional water supply
6 efforts are assisting Cal-Am to comply with the schedule for reducing unauthorized diversions
7 from the Carmel River.

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9 **IV. CONCLUSION**

10 Based on the foregoing, the SWRCB should consider potential impacts to Cal-Am's
11 ratepayers as well as ongoing regional water supply planning efforts on the Monterey Peninsula
12 that may result from adoption of the Draft Cease and Desist Order.
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Respectfully submitted,

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