

1 Lloyd W. Lowrey, Jr. (State Bar No. 51936)
Myron E. Etienne, Jr. (State Bar No. 23977)
2 NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation
3 333 Salinas Street
Post Office Box 2510
4 Salinas, California 93902-2510
Telephone: (831) 424-1414
5 Facsimile: (831) 424-1975

6 Attorneys for MONTEREY COUNTY
HOSPITALITY ASSOCIATION
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8 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
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11 In the Matter of Whether the Draft Cease
and Desist Order Concerning California
12 American Water's Diversion from the
Carmel River Should be Issued.
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**REPLY BRIEF OF MONTEREY COUNTY
HOSPITALITY ASSOCIATION TO
CLOSING BRIEFS**

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15 This Reply Brief is submitted on behalf of the Monterey County Hospitality Association
16 (“MCHA”).

17 **I. INTRODUCTION**
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19 The MCHA concurs with and supports the position set forth in the Joint Closing Brief of
20 the Monterey Peninsula Water Management District (“MPWMD”) and the Seaside Basin
21 Watermaster Board (“Watermaster”).

22 The State Water Resources Control Board (“Board”) appropriately considered and
23 balanced public health and safety with public trust impacts in Order No. WR 95-10 (“Order 95-
24 10”) (See page 37).

25 The alternatives discussed in the Joint Closing Brief to mitigate impacts on the public trust
26 resources and to augment the water supply can achieve the objectives of Order 95-10 without
27 compromising public health and safety on the Monterey Peninsula.

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1 **II. DISCUSSION**

2 Mark Bastis of the MCHA testified that the MCHA members want to protect the natural
3 resources of the Monterey Peninsula and resolve the water issue in a sensible manner so they can
4 conduct their businesses. (Hearing Transcript, Phase II August 7, 2008, 1180:21-1181:10). The
5 MCHA believes that the position articulated in the Joint Closing Brief, and the remedies
6 discussed at pages 21 and 22 of the Joint Closing Brief represent a sensible way of resolving the
7 water issue and protecting the public trust resources while also considering the public health and
8 safety.

9 The recent decision in *Center For Biological Diversity, Inc v. FPL Group, Inc.* (2008) 166
10 Cal.App.4th 1349, affirmed an action of the Alameda County Board of Supervisors approving
11 permit extensions with conditions found to be necessary for the public health and safety “while
12 also maintaining sustainable levels of wind energy production as a renewable, non-polluting
13 source of energy.” (*Id.*, at 1357-1358). The court held that a delicate balancing of the conflicting
14 demands for energy and for the protection of other environmental values must be made, and that
15 the public trust requires the balancing of competing uses. (*Id.*, at 1369-1370). Expressions of
16 public policy in federal and state legislation were important to the court’s decision. (*Id.*)

17 In this proceeding, the Board’s Order 95-10, including its consideration of public health
18 and safety, has been affirmed by specific legislative action in A.B. No. 1182, Chapter 797 of the
19 Statutes of 1998, in which the California Legislature also stated a policy for water supply
20 planning and directed the California Public Utilities Commission and the Department of Water
21 Resources to prepare a long-term contingency plan to secure the Monterey Peninsula’s water
22 supply.

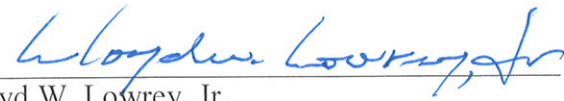
23 As did CALFED in the CALFED PEIS/R discussed *In re Bay-Delta Programmatic*
24 *Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, at 1169, the
25 Board in Order 95-10, at page 37, properly applied the rule of reason in considering the public
26 health and safety. The draft Cease and Desist Order in this proceeding recognizes the
27 consideration of public health and safety, but differs from the MPWMD and the Watermaster in
28 the amount of water required and the timing of possible reductions in amounts committed to

1 domestic use under Water Code section 106. All parties apparently agree that the long-term
2 water supply plan required by AB 1182 will likely be completed, approved and implemented by
3 2015. MCHA has also testified that the pricing of water provides an incentive to conserve water.
4 (Hearing Transcript, Phase II August 7, 2008, 1180:10-15). Rather than create a “regulatory
5 drought” (Joint Brief, p. 20), the Board should allow for completion of the legislatively-mandated
6 planning process, should support the mitigation measures described in the Joint Brief, and should
7 support water rates that encourage conservation.

8 Dated: November 10, 2008

Respectfully submitted,

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

11 By 
12 Lloyd W. Lowry, Jr.
13 Attorneys for Plaintiff MONTEREY COUNTY
14 HOSPITALITY ASSOCIATION

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1 **PROOF OF SERVICE**
2 (Code Civ. Proc. §§ 1013(a), 2015.5)

3 STATE OF CALIFORNIA)
4 COUNTY OF MONTEREY)

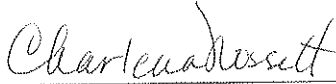
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6 I am a citizen of the United States and a resident of Monterey County. I am over the age
7 of 18 years and not a party to the within entitled action; my business address is: 333 Salinas
Street, Post Office Box 2510, Salinas, CA 93902-2510.

8 On the date below, I served the attached document(s) entitled: **REPLY BRIEF OF**
9 **MONTEREY COUNTY HOSPITALITY ASSOCIATION TO CLOSING BRIEFS**, on the
following named person(s) in said action at:

10 SEE ATTACHED SERVICE LIST

- 11 by personal service on the above-named person(s) at the above stated address(es).
- 12 by placing said copy(ies) in a sealed envelope(s), postage thereon fully prepaid,
13 and placed for collection and processing for mailing following the business's
14 ordinary practice with which I am readily familiar. On the same day
15 correspondence is placed for collection and mailing, it is deposited in the ordinary
16 course of business with the United States Postal Service at Salinas, California,
addressed as stated above.
- 17 by electronic mail in PDF format from my electronic mail address of
18 canossett@nheh.com, a true and correct copy of the above-named document as
follows: cau@cpuc.ca.gov, rbaiocchi@gotsky.com, bobmck@mbay.net,
19 info@mcha.net, christopher.keifer@noaa.gov, dave@laredolaw.net,
meurer@ci.monterey.ca.us, hbm@carmellaw.com, jrubin@diepenbrock.com,
20 jminton@pcl.org, larrysilver@earthlink.net, jgwill@dcn.davis.ca.us,
mjatty@sbcglobal.net, michael@rri.org, PMurphey@waterboards.ca.gov,
rsato@waterboards.ca.gov, RMcGlothlin@BHFS.com,
21 TJamison@FentonKeller.com, lhowrey@nheh.com.
- 22 by causing to be transmitted a true copy thereof to the above-named recipient via
the following facsimile transmission telephone number ("Fax"): _____,
23 and no interruption of transmission was reported.

24 I declare, under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on November 10, 2008, at Salinas, California.

25
26 
27 Charlena Nossett
28

NOLAND, HAMERLY, ETIENNE & HOSS
ATTORNEYS AT LAW
SALINAS, CALIFORNIA

CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER
JUNE 19, 2008 HEARING

SERVICE LIST OF PARTICIPANTS
(March 14, 2008)

**(PARTICIPANTS TO BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS
AND OTHER DOCUMENTS.)**

(Note: The participants whose E-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

California American Water
Jon D. Rubin
Diepenbrock Harrison
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
jrubin@diepenbrock.com

State Water Resources Control Board
Reed Sato
Water Rights Prosecution Team
1001 I Street
Sacramento, CA 95814
rsato@waterboards.ca.gov

Public Trust Alliance
Michael Warburton
Resource Renewal Institute
Room 290, Building D
Fort Mason Center
San Francisco, CA 94123
Michael@rri.org

Sierra Club – Ventana Chapter
Laurens Silver
California Environmental Law Project
P.O. Box 667
Mill Valley, CA 94942
larrysilver@earthlink.net
jqwill@den.davis.ca.us

Carmel River Steelhead Association
Michael B. Jackson
P.O. Box 207
Quincy, CA 95971
mjatty@sbcglobal.net

Monterey Peninsula Water Management District
David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950

City of Seaside
Russell M. McGlothlin
Brownstein, Hyatt, Farber, Schreck
21 East Carrillo Street
Santa Barbara, CA 93101
RMcGlothlin@BHFS.com

City of Carmel-by-the-Sea
Donald G. Freeman
P.O. Box CC
Carmel-by-the-Sea, CA 93921

City of Sand City
James G. Heisinger, Jr.
Heisinger, Buck & Morris
P.O. Box 5427
Carmel, CA 93921

Pebble Beach Company
Thomas H. Jamison
Fenton & Keller
P.O. Box 791
Monterey, CA 93942-0791
TJamison@FentonKeller.com

Monterey County Hospitality Association
Bob McKenzie
P.O. Box 223542
Carmel, CA 93922
info@mcha.net
bobmck@mbay.net

Jonas Minton
1107 9th Street, Suite 360
Sacramento, CA 95814
jminton@pcl.org

California Public Utilities Commission
Andrew Ulmer
505 Van Ness Avenue
San Francisco, CA 94102
eau@cpuc.ca.gov

California Salmon and Steelhead Association
Bob Baiocchi
P.O. Box 1790
Graeagle, CA 96103
rbaiocchi@gotsky.com

National Marine Fisheries Service
Christopher Keifer
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
christopher.keifer@noaa.gov

LIST OF PARTICIPANTS MAKING POLICY STATEMENTS ONLY
(DO NOT SERVE THE FOLLOWING PARTICIPANTS WITH WRITTEN TESTIMONY, EXHIBITS
AND OTHER DOCUMENTS)

City of Monterey
Fred Meurer, City Manager
Colton Hall
Monterey, CA 93940
meurer@ci.monterey.ca.us