

Exhibit CAW-032

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EXHIBIT CAW-032

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California American Water Company

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8 **BEFORE THE CALIFORNIA**
9 **STATE WATER RESOURCES CONTROL BOARD**

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11 In the Matter of Draft Cease and Desist Order
No. 2008-00XX-DWR Against California
12 American Water Company

TESTIMONY OF F. MARK SCHUBERT

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15 My name is F. Mark Schubert and I am employed by California-American Water (“CAW”)
16 as the Director of Engineering. In this position, I manage all engineering projects and capital
17 planning activities on a state-wide basis; supervise asset planning, engineering design and
18 construction management on a state-wide basis; supervise engineering colleagues in three separate
19 offices; provide rate case support and testimony as an expert witness on capital project planning in
20 California; act as a liaison for federal, state and local regulatory agencies to ensure compliance with
21 all state and federal regulations; and supervise developer plan/engineering review activities. My
22 Statement of Qualifications is marked as Exhibit CAW-032A.

23 Because the evidentiary hearings for Order 95-10 and Decision 1632 were combined and
24 both issued by the State Water Resources Control Board (“State Water Board”) on the same day,
25 CAW believed Order 95-10 and Decision 1632 were interrelated, and the initially presumed
26 solution to Order 95-10 was the New Los Padres Dam project (“NLP Dam project”), as authorized
27 by Decision 1632.

28 The NLP Dam project included a dam with a growth component that would allow a

1 54 percent build-out to accommodate both new development and legal lots of record. As of 1995,
2 the NLP Dam project had a certified environmental impact report and permits from the State Water
3 Board and the U.S. Army Corps of Engineers. The only approval missing was funding support
4 from voters, necessary to finance the project.

5 In November 1995, by a vote of 57 percent against to 43 percent in favor, Monterey
6 Peninsula Water Management District (“MPWMD”) voters rejected a bond issue to finance the
7 NLP Dam project. As a new dam on the Carmel River was the most feasible alternate water supply
8 project, CAW proposed it become the dam proponent and fund the project. The MPWMD agreed,
9 in principle, it would seek to transfer its NLP Dam project permits to CAW. CAW proposed the
10 construction of a 24,000 acre-foot reservoir on the Carmel River, renamed the Carmel River Dam
11 and Reservoir Project (“CR Dam project”). The CR Dam project was substantially similar to the
12 NLP Dam project. One significant difference was, under the CR Dam project, CAW reallocated the
13 water supply designated for growth by the NLP Dam project to be used for fire protection
14 and release to the Carmel River.

15 CAW became the project proponent for the CR Dam project and the MPWMD served as the
16 lead agency for purposes of compliance with the California Environmental Quality Act (“CEQA”).
17 The NLP Dam project environmental impact report (“EIR”) was used as the basis for the CR Dam
18 project EIR to save time and money.

19 In January 1998, the CAW Board of Directors passed a resolution reaffirming the CR Dam
20 project as the most cost-effective and environmentally responsible project to provide an alternative
21 water supply. A draft supplemental EIR was released in the fall of 1998 with the expectation that
22 the MPWMD Board of Directors would certify the document in early spring of 1999. The
23 MPWMD Directors delayed certification of the supplemental EIR at the request of the community.
24 Since the CR Dam project did not include water for growth, the MPWMD wanted more time to
25 explore water needs for citizens with legal lots of record and those proposing to add bathrooms.

26 In late 1998 or early 1999, the CPUC issued Decision 98-08-036, which required CAW
27 prepare a long-term water supply contingency plan describing the program or combination of
28 programs it would pursue if it could not complete the CR Dam project. In late 1998, Assembly Bill

1 1182 directed the CPUC, in consultation with CAW and other interested parties, to prepare a long-
2 term contingency plan. This contingency plan is colloquially known as the “Plan B Report.”

3 Through the Plan B process, approximately fifteen potential water supply components in
4 five general categories were considered. The five categories of options were: (a) desalination; (b)
5 groundwater development; (c) importation; (d) reclamation; and (e) legal strategies. The evaluation
6 of these options resulted in the publication of four major reports.

7 The first report, published in December 1999, addressed the objectives and criteria of Plan
8 B options. This report set forth Plan B’s objectives; to obtain a reliable water source consistent
9 with Order 95-10 and minimize impacts to biological and community resources and economically
10 implement the project. The report also set forth the following criteria for evaluating the water
11 supply options: (a) legal; (b) institutional; (c) regulatory; (d) land use; (e) demand; (f) demand
12 variation; (g) supply availability; (h) drought protection; (i) aquatic resources; (j) terrestrial
13 resources; (k) marine resources; (l) agricultural resources; (m) visual resources; and (n) recreation
14 resources.

15 In December 1999, a public workshop was held to provide the opportunity for public
16 participation and the participation of other interested agencies regarding the first Plan B report.
17 From this workshop, written and oral comments were collected, compiled, and used to inform the
18 next stage of the process.

19 The second report, made available in April 2000, characterized the components of each
20 water supply option, which included identifying all attributes and drawbacks of each option. A
21 public workshop was held on the second report in August 2000. From this workshop, written and
22 oral comments were collected, compiled, and used to inform the next stage of the process.

23 In November 2000, the third report was published. It applied the criteria for selecting a
24 project to each of the project components. Specifically, it included the results for each component’s
25 rating against the identified criteria. Based on how well the component rated, it was placed into a
26 “carry forward”, “hold”, or “exclude” category. A public workshop on the third report was held in
27 December 2000. From this workshop, written and oral comments were collected, compiled, and
28 used to inform the next stage of the process.

1 The final report was the public draft of the Plan B Project Report. It was released in
2 September 2001 and contained a mix of water supply alternatives, including desalination, Seaside
3 Basin storage and recovery, reclamation and water rights. A public workshop was held to address
4 the draft in October 2001. From this workshop, written and oral comments were collected,
5 compiled, and used to inform the next stage of the process.

6 It is important to note that after each of the reports, a public workshop was held to allow the
7 consideration of public input. In July 2002, the Plan B final report was complete. Plan B consisted
8 of two components which would develop new water supplies for the Monterey Peninsula: the Moss
9 Landing Desalination Plant and the Seaside Basin Storage and Recovery. This final document was
10 circulated for public comment as “Carmel River Dam Contingency Plan – Plan B Project Report –
11 Final Report” in August of 2002.

12 In 1997 the steelhead trout and the California Red Legged Frog were listed as "threatened"
13 under the ESA. Thereafter, the National Marine Fisheries Service (“NMFS”) issued a nationwide
14 policy opposing the construction of new dams and supporting the removal of existing dams.
15 NMFS has expressed opposition to the construction of any new dam on the main stem of the
16 Carmel River.

17 Also, on April 18, 2001, the State Water Board issued Order 2001-04, which, among other
18 things, ordered CAW to cease all diversions at San Clemente Dam and instead pump water
19 necessary to serve the Carmel Village from two wells (“Russell Wells”) adjacent to the
20 Carmel Valley Filter Plant. In May of 2001, NMFS sent a letter to MPWMD which criticized
21 CAW’s petition for reconsideration of Order 2001-04. In June of 2001, CAW met with NMFS to
22 address the difficult issues presented by what NMFS believes is necessary to protect steelhead and
23 their habitat. CAW and NMFS eventually worked out a resolution to the issues presented in Order
24 2001-04.

25 In January 2002, due to concerns related to steelhead habitat, among other matters, the
26 MPWMD formally requested CAW withdraw its application for the CR Dam project. CAW
27 rejected the request because it felt compelled to continue diligently pursuing the water supply from
28 the CR Dam project for its Monterey District. Withdrawal of the application for the CR Dam

1 project, without substituting another project with an equivalent level of environmental review,
2 would have left CAW without another significant alternative water supply project.

3 In June 2002, NMFS reported it will oppose any application for additional or new water
4 rights in the Carmel River unless conditioned upon compliance with NMFS' minimum flow
5 requirements. Similarly, NMFS has repeatedly voiced support for a water supply project that
6 minimizes use of the Carmel River, including desalination, ASR, and reclamation. NMFS informed
7 CAW it believes a desalination facility that utilizes an already existing outfall is environmentally
8 superior to continued pumping from the Carmel River.

9 Against this backdrop, and prior to the release of the final Plan B report, CAW began its
10 own preliminary evaluation of whether the Plan B project would address the directives of the State
11 Water Board and the Endangered Species Act issues on the Carmel River and whether CAW could
12 construct and operate the project in a manner which minimizes environmental impacts and
13 maximizes operational efficiency.

14 After the release of the final Plan B Report, CAW began full scale evaluation of the project
15 proposed in the Plan B Report. In late 2002, CAW prepared an internal analysis of proposed
16 Monterey water supply projects to determine the best option between competing projects to provide
17 an alternative water supply. This effort caused CAW to embrace the recommendations of the Plan
18 B report and develop the Coastal Water Project ("CWP"). The CWP is a combination of
19 desalination, aquifer storage and recovery and associated conveyance infrastructure. The CWP
20 proposal replaced the CR Dam project.

21 As a regulated utility, CAW requires authorization from the CPUC in the form of a
22 Certificate of Public Convenience and Necessity ("CPCN") prior to constructing new or expanding
23 existing infrastructure. CPUC rules require a CPCN application to be accompanied by a
24 Proponent's Environmental Assessment or "PEA" that analyzes the potential environmental
25 impacts of the proposed project and alternatives. On February 11, 2003, CAW undertook the first
26 action it believed was necessary for the CWP and filed an amendment to CPCN application 97-03-
27 052 for the CR Dam project. The amendment requested the CPUC be designated as the lead agency
28 for CEQA purposes and temporary relief from the requirement of performing a Proponent's

1 Environmental Assessment (“PEA”) in order to expedite the process. On September 4, 2003, the
2 CPUC issued Decision 03-09-022, which: (a) designated itself as the lead agency for environmental
3 review of the CWP; (b) dismissed Application 97-03-0524 in its entirety; (c) ordered CAW to file a
4 new application for a CPCN; and (d) ordered CAW to prepare a PEA.

5 By 2004, CAW was in the midst of parallel efforts to comply with Decision 03-09-022.
6 CAW began holding public sessions in order to educate and receive feedback from the community
7 on the CWP. In the summer and early fall of 2004, CAW gave numerous presentations on the CWP
8 to local city governments and councils as well through “townhall” meetings. Additional
9 community forum meetings were held in 2005. As directed by the CPUC, on September 20, 2004,
10 CAW submitted CPCN Application 04-09-019 for the CWP, and soon thereafter began preparing
11 the PEA.

12 In 2004, CAW prepared and circulated a Request for Proposals (“RFP”), seeking proposals
13 from consulting firms to perform the required environmental analysis and permitting work for the
14 PEA. CAW selected RBF Consulting to prepare the environmental analysis and other permitting
15 work for the CWP. (Exhibit CAW-032B). The PEA evaluated numerous alternative projects,
16 including a regional alternative, an over-sized pipeline alternative, a horizontal directional drilling
17 intake alternative, a North Marina site alternative and a no project alternative. On July 14, 2005,
18 CAW submitted the final PEA to the CPUC, which contained thousands of pages of scientific and
19 engineering data.

20 After submission of the PEA in July 2005, control of the permitting process rested with the
21 CPUC, as the lead agency for compliance with CEQA. In June 2006, the CPUC hired its own EIR
22 consultant to prepare the EIR. The CPUC issued a Notice of Preparation required by CEQA and
23 conducted scoping meetings in the last half of 2006.

24 Despite CAW not having control over the permitting process, it continues to pursue actions
25 in order to best facilitate the process. It has participated in many public workshops and meetings in
26 order to ensure the environmental review process provides transparency and public participation.
27 In addition, CAW and its consultant have performed other activities related to the CWP while the
28 CEQA process is on-going. (Exhibit CAW-032C).

1 As testified to by other representatives of CAW, CAW applied for and received permits to
2 construct and operate a desalination pilot plant. On or about June 22, 2007, construction began on
3 the Pilot Desalination Plant at the Moss Landing Power Plant. (Exhibit CAW-032D). Construction
4 was essentially complete in the fall of 2007, and initial testing of equipment began in the first
5 quarter of 2008. CAW eventually expects the CWP will cost \$191,000,000.00.

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