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**BEFORE THE STATE WATER
RESOURCES CONTROL BOARD**

In the Matter of the State Water Resources) Hearing Date: June 19, 2008
Control Board (State Water Board))
Hearing to Determine whether to Adopt a) Carmel River in Monterey County
Draft Cease & Desist Order against)
California American Water Regarding its)
Diversion of Water from the Carmel River)
in Monterey County under Order WR 95-10)
_____)

**TESTIMONY OF DARBY W. FUERST
INTERIM GENERAL MANAGER
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

1 resources, and water demand divisions. I previously served as the General Manager of the Water
2 Management District for five years between December 1995 and June 2001. During my tenure as
3 General Manager, I supervised development of MPWMD's first formal strategic plan, initiated
4 work on the Seaside Basin Aquifer Storage and Recovery (ASR) Test Program, and implemented
5 an Expanded Water Conservation and Standby Rationing Plan. In addition, during this time, I
6 interacted with the Water Rights Division staff of the SWRCB on a number of matters relating to
7 the Carmel River system.

8 3. In addition to serving as General Manager, I have also served as the Water
9 Resources Manager with the Water Management District. In this position, I have been responsible
10 for the management of the programs, services, and staff of the Water Resources Division including
11 surface and ground water data collection programs, development and application of computer
12 simulations models, administration of the fishery protection activities in the Carmel River basin,
13 development of quarterly water supply strategies and budgets for CAW's main water distribution
14 system, and negotiation of the annual Carmel River Memorandum of Agreement (MOA) among
15 CAW, California Department of Fish and Game (CDFG), and the Water Management District that
16 governs reservoir releases to the lower Carmel River during the low-flow season. I am also
17 responsible for the development, maintenance, and application of the Water Management District's
18 computer simulation model of the water resources of the Monterey Peninsula area. This model, the
19 Carmel Valley Simulation Model (CVSIM), is the Water Management District's principal analytical
20 tool for assessing the performance of the water resources system under varying physical, structural,
21 and operational conditions. I have been involved with the development, testing, calibration, and
22 application of CVSIM since 1985.

23 4. In my employment as a hydrologist with the Montana Department of Natural
24 Resources and Conservation (1981-1984) and the National Park Service (1988-1989), I was
25 involved in a number of studies designed to optimize reservoir operations and quantify the amount
26 of water needed to maintain selected instream flow requirements.

1
2 **Q2. PLEASE PROVIDE AN OVERVIEW OF THE MONTEREY PENINSULA WATER**
3 **MANAGEMENT DISTRICT AND ITS LEGISLATED FUNCTIONS AND PROGRAM**
4 **ACTIVITIES.**
5

6 5. The Monterey Peninsula Water Management District is a special district created
7 by the California State Legislature. Specifically, the California State Legislature created the
8 Water Management District following its passage of a 1977 statute (Water Code Appendix, Sec.
9 118, et. seq.) enacted into law by the governor, which required ratification by a majority of
10 voters within the proposed MPWMD boundary. That ratification vote occurred in June 1978.
11 MPWMD boundaries encompass the six cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey,
12 Pacific Grove, Sand City, and Seaside; the Monterey Peninsula Airport District; and portions of
13 unincorporated Monterey County, primarily in Carmel Valley. With minor exceptions, the entire
14 CAW Monterey Division distribution system lies within the jurisdictional boundary of
15 MPWMD. MPWMD covers a geographical area of approximately 170 square miles and consists
16 of the urbanized portion of the Monterey Peninsula, and the contiguous unincorporated portions
17 of Monterey County. Based on recent census figures, the Association of Monterey Bay Area
18 Governments (AMBAG) has estimated that approximately 111,500 people resided within the
19 MPWMD boundaries in 2007.

20 6. MPWMD is governed by a seven-member Board of Directors: Five Directors
21 are elected by voter divisions created within the District; one Director is a member of the
22 Monterey County Board of Supervisors and appointed by the Board of Supervisors; and one
23 Director is a mayor, or member of the governing body, or chief executive officer of a city that is
24 wholly within the MPWMD boundary, and who is appointed by the city selection committee of
25 Monterey County.
26

1 7. With respect to water resource management, the MPWMD statute provides the
2 sole legislative authority for integrated management of water resources within the Monterey
3 Peninsula area, encompassing the surface and subsurface waters of the Carmel River, the Seaside
4 Groundwater Basin, and all other water-bearing geologic formations within the MPWMD
5 boundaries.

6 8. Because the MPWMD statute directs the District to integrate the management of
7 all water resources of the Monterey Peninsula area, MPWMD is uniquely empowered to regulate
8 and manage all local water distribution systems and water sources. With respect to water system
9 management, the MPWMD controls formation of new water systems and additions of new
10 sources of supply, connections, or service territory to existing systems. The MPWMD manages
11 water demand by setting a maximum number of connections and quantity of annual production
12 for each water distribution system.

13 9. MPWMD regulates all water distribution systems within its boundaries,
14 including the main¹ and several satellite systems (currently Hidden Hills, Bishop, and Ryan
15 Ranch) owned and operated by CAW. CAW must obtain approval of MPWMD to amend its
16 main or satellite water distribution systems, which includes a change in service area, annual
17 production or connection limit, and/or major water supply facilities.

18 10. Under Sections 20 and 364 of the Water Management District statute, MPWMD
19 is authorized to cause reductions in the use of surface and groundwater production, and has
20 devised a unique water supply regulatory process to effectively manage the Monterey Peninsula
21 area's limited sources of potable water supply. This process involves MPWMD guiding each
22 water distribution system deriving its supply from more than one hydrologic management unit in
23 annually preparing, and updating quarterly, an operational water supply "budget" to ensure
24 compliance with the water management strategy set by the MPWMD. Currently, only CAW's
25 main system draws water from more than one hydrologic unit.

26 _____
¹ CAW's main system serves approximately 38,300 connections in the Monterey Peninsula area.

1 11. Consistent with its legislative mission, MPWMD has adopted numerous rules
2 and regulations, and proactively implements various programs and projects that have effectively
3 promoted water conservation and substantially reduced demand. This MPWMD regulatory
4 function is of critical importance to the community as the Monterey Peninsula area suffers from
5 both a physical shortage of potable water, and a limited quantity of water from both of its
6 principal resources for which legal rights have been secured. The MPWMD *Expanded Water*
7 *Conservation and Standby Rationing Program* was adopted in 1999 to aid CAW in meeting the
8 Carmel River production limit set by the SWRCB in Order No. WR 95-10. This program
9 established seven “stages” of increasingly rigorous water conservation measures and water
10 rationing restrictions. The first three stages of water conservation must be continuously adhered
11 to by all CAW water users; identifies prudent water use practices for all customers; and defines
12 “water waste” that is enforced by MPWMD staff. The upper four stages of this program are
13 intended to respond to a drought-driven or other emergency need for water rationing. In
14 conjunction with CAW, the Water Management District also promotes and administers a highly
15 successful water conservation incentive program that provides cash rebates to customers that
16 have purchased water saving plumbing fixtures and water appliances including “dual-flush”
17 toilets, evapotranspiration (ET) irrigation controllers and the other latest advances in water
18 conservation technology. According to a 2006 survey by a national engineering firm, the multi-
19 faceted water conservation regulations and incentive programs operated by MPWMD have
20 resulted in the lowest average residential water usage (700 cubic feet per month or approximately
21 170 gallons per day per single-family residence) of any community in California.

1 **Q3. PLEASE DESCRIBE THE WATER MANAGEMENT DISTRICT'S**
2 **RELATIONSHIP WITH CAW.**

3
4 12. As described above, the MPWMD regulates CAW's water distribution systems
5 and cooperates with CAW on water conservation programs in the Monterey Peninsula area. In
6 addition, the MPWMD, as part of its Water Allocation Program, mitigates the impacts of CAW's
7 diversions from the Carmel River on aquatic resources, riparian vegetation, and wetlands in the
8 Carmel Valley. The MPWMD also works closely with CAW to develop new sources of supply
9 to (1) replace existing supplies that are being diverted without valid water rights (Carmel River
10 supplies) and existing supplies that are being diverted and that are scheduled for reduction by
11 court action (Seaside Groundwater Basin supplies) and (2) meet future water demands in the
12 Monterey Peninsula area, consistent with local land-use plans.

13 13. In this latter role, the MPWMD has provided technical assistance to CAW and
14 its consultants on elements of the proposed Coastal Water Project (CWP). In particular,
15 MPWMD staff designed, constructed, and operates the Seaside Basin ASR Test Program and the
16 Phase 1 ASR Project, in consultation and cooperation with CAW staff and consultants.

17
18 **Q4. PLEASE DESCRIBE CAW'S DIVERSIONS FROM THE CARMEL RIVER SINCE**
19 **SWRCB ORDER 95-10 WAS ADOPTED.**

20
21 14. SWRCB Order 95-10 was adopted on July 6, 1995, and specified conservation
22 goals for CAW beginning in Water Year (WY) 1996, i.e., October 1, 1995 through September
23 30, 1996. **Exhibit DF-2** shows CAW's annual diversions from its Carmel River sources for WY
24 1996 through WY 2007. As noted in the exhibit, the diversion or production values are based on
25 Monthly Production Reports provided to the Water Management District by CAW. Also, as
26 noted, the production values do not include diversions made by CAW for the Phase 1 ASR

1 Project. In this regard, the production values represent CAW diversions from the Carmel River
2 for customer service in its main distribution system.

3 15. As shown in **Exhibit DF-2**, CAW's diversion from its Carmel River sources
4 during the specified period have ranged from 10,133 acre-feet (AF) in WY 1998 to 12,847 AF in
5 WY 1997 and have averaged 10,967 acre-feet per year (AFY) during this 12-year period.
6 **Exhibit DF-2** also shows the conservation goal or "limit" specified for CAW in Order 95-10 for
7 each water year and the difference between the limit and CAW's reported production in acre-feet
8 and percentage. **Exhibit DF-2** also shows the "Water Year Class" for the Carmel River, which
9 is based on estimated unimpaired streamflow at the San Clemente Dam site in the Upper Carmel
10 River Basin.

11 16. Significantly, as shown in **Exhibit DF-2**, CAW diversions from its Carmel River
12 sources have complied with the conservation goal specified in Order 95-10 in 11 of the 12 years
13 since Order 95-10 was adopted. During this 12-year period, CAW's diversion from its Carmel
14 River sources have been reduced an average of 3,139 AFY from the pre-Order 95-10 average of
15 14,106 AFY. This reduction represents a 22% decrease in CAW's diversions from the Carmel
16 River.

17 17. **Exhibit DF-3** shows a monthly breakdown of CAW's production from all of its
18 sources for customers in its main system for the period October 1995 through May 2008. These
19 sources include surface water from San Clemente Reservoir, groundwater from the Upper
20 Carmel Valley Alluvial Aquifer, groundwater from the Lower Carmel Valley Alluvial Aquifer,
21 and groundwater from the Coastal Subareas of the Seaside Groundwater Basin. These monthly
22 production values reflect the monthly production targets that are developed each quarter by
23 MPWMD staff in consultation with CAW, CDFG, and the National Marine Fisheries Service
24 (NMFS). This quarterly budget process is described below.

1 **Q5. PLEASE DESCRIBE THE DISTRICT'S QUARTERLY WATER SUPPLY**
2 **STRATEGY AND BUDGET PROCESS AND HOW IT RELATES TO CAW'S**
3 **DIVERSIONS FROM THE CARMEL RIVER AND SWRCB ORDER 95-10.**
4

5 18. Under Water Management District Rules, CAW's main system, as a multi-source
6 water distribution system, is required to develop a quarterly water supply budget that specifies the
7 quantity of water that CAW will produce each month from each of its production sources to meet
8 customer demand and comply with various regulatory constraints, such as Order 95-10. These
9 budgets are developed cooperatively by staff from CAW, MPWMD, CDFG, and NMFS and are
10 approved by the Water Management District Board. The budgets are designed to maximize the
11 long-term production potential and protect the environmental quality of the Carmel River and
12 Seaside Groundwater Basins, based on current hydrologic and system conditions. Exhibit DF-4 is
13 an example of a recent water supply budget that was adopted for CAW's main system for the April
14 through June 2008 quarter.

15 19. As noted in Exhibit DF-4, the anticipated production values in the budget assume
16 that annual production for CAW's main system will not exceed 14,789 AF in WY 2008, including
17 11,285 AF from the Carmel River and 3,504 AF from the Coastal Subareas of the Seaside
18 Groundwater Basin, consistent with Order 95-10 and the Seaside Basin adjudication decision. In
19 addition, the April – June 2008 water supply budget is structured to maximize production from the
20 Coastal Subareas of the Seaside Basin and reduce CAW's diversions from the Carmel River starting
21 in May 2008. Also, as noted in the budget, CAW will operate its wells in the Lower Carmel Valley
22 in a downstream-to-upstream order to meet customer demand and protect instream habitat in the
23 Carmel River in the Upper Carmel Valley, consistent with SWRCB Orders 95-10, 98-04, and 2002-
24 02.

25 20. The quarterly water supply budgets are useful in tracking CAW's compliance with
26 both SWRCB Order 95-10 and the Seaside Basin Decision during the water year. Based on the

1 amounts actually diverted each month during the quarter, adjustments in production can be made to
2 ensure that CAW complies with all regulatory and legal constraints.

3
4 **Q6. PLEASE DESCRIBE ANY OTHER MANAGEMENT ACTIONS TAKEN BY THE**
5 **WATER MANAGEMENT DISTRICT TO ASSIST CAW WITH COMPLIANCE WITH**
6 **SWRCB ORDER 95-10.**

7
8 21. At each regular monthly meeting of the Water Management District, District staff
9 summarizes CAW's year-to-date compliance with SWRCB Order 95-10 and the Seaside Basin
10 Decision. Exhibit DF-5 is a copy of the PowerPoint presentation that was made at the District
11 Board's May 16, 2008 meeting. The report shows CAW's compliance through May 15, 2008. As
12 shown, CAW was 104 AF under the SWRCB-based production limit for CAW from its Carmel
13 River sources for customer use through May 15, 2008.

14 22. The monthly compliance reports, which are based on daily production values, are
15 useful in detecting emerging water use trends and operational problems in the CAW main system.
16 By identifying these trends, MPWMD and CAW staff are able to make adjustments to the water
17 supply budgets and ensure compliance with SWRCB Order 95-10 and the Seaside Basin Decision.

18 23. Also as noted above, the Water Management District developed an *Expanded Water*
19 *Conservation and Standby Rationing Plan* in 1999 to help CAW comply with SWRCB Order 95-
20 10. Specifically, Water Conservation Stages 1 through 3 are designed to maintain CAW's
21 diversions from the Carmel River below the regulatory limit set by SWRCB Order 95-10. Under
22 Stage 1, all water users in CAW's main system are subject to the District's water waste and non-
23 essential water use prohibitions. Examples of these prohibitions include no irrigation between 9:00
24 a.m. and 5:00 p.m., no more than two days per week of outdoor watering, no washing down of hard
25 surfaces with potable water, and no drinking water in restaurants unless requested. In addition,
26 under Stage 1, users in CAW's main system with a dedicated irrigation meter, or an irrigated area

1 greater than three acres, or average monthly residential use greater than 32 units² (approximately
2 24,000 gallons) are required to obtain a Landscape Water Audit. These audits are provided at no
3 charge and are used to develop water budgets for individual properties. Also, under Stage 1, all
4 residential customers within CAW's main system are required to complete surveys indicating the
5 number of people in each household, lot size, and the number of large animals on the property. This
6 information is used to develop per capita-based water rate structures specific to each household and
7 determines the width of each block in each user's rate structure.

8 24. Under Stage 2, all CAW customers with Landscape Water Budgets are required to
9 adhere to their budgets or face water waste fines. Under Stage 3, CAW is authorized to implement
10 an emergency rate schedule that doubles the cost of each unit of water in the two upper blocks of the
11 five-block residential rate structure. For example, the current cost of each unit in the fourth block is
12 four times the cost of each unit in the first block, i.e., \$1.6804 per unit in the first block and \$6.7217
13 per unit in the fourth block. If Stage 3 is triggered, the cost of each unit of water in the fourth block
14 rises to \$13.4434 per unit. Similarly, the current cost of each unit in the fifth block, which is eight
15 times the cost of each unit in the first block, i.e., \$1.6804 per unit in the first block and \$13.4434 per
16 unit in the fifth block, will rise to \$26.8868 per unit in the fifth block.

17 25. The triggers for moving to Water Conservation Stages 2 and 3 are shown in **Exhibit**
18 **DF-6**, which is taken from the District's *Expanded Water Conservation and Standby Rationing*
19 *Plan*, i.e., District Rule 162. As noted in **Exhibit DF-6**, the monthly production targets and the
20 associated year-to-date at month-end production targets are based on the annual production limit
21 specified for CAW from the Carmel River by SWRCB Order 95-10 (11,285 AFY) and the initial
22 annual production limit specified for the CAW main system from sources in the Coastal Subareas of
23 the Seaside Groundwater Basin in the Seaside Basin Decision (3,504 AFY). The monthly
24 distribution is based on CAW's reported monthly average production for its main system during the
25 1986 through 2006 period.

26 _____
² One "unit" equals one hundred cubic feet (Ccf) or 748 gallons.

1 26. Stage 2 is enforced when CAW's production from the Monterey Peninsula Water
2 Resource System³ (MPWRS) exceeds the year-to-date at month-end production target shown in
3 **Exhibit DF-6**. For example, if CAW's reported production from the MPWRS exceeded 6,162 AF
4 at the end of March, then Stage 2 would be enforced. Similarly, Stage 3 is enforced when CAW's
5 production from the MPWRS exceeds the year-to-date at month-end production targets twice during
6 the October through March period or once during the April through September period.

7 27. Since the District's *Expanded Water Conservation and Standby Rationing Plan* was
8 implemented in 1999, CAW has complied with the conservation goal specified in SWRCB Order
9 95-10 every year. In WY 2004, which was a "critically-dry" year in the Carmel River Basin, it was
10 necessary to move to Stage 3 Water Conservation and impose emergency rates for excessive use.
11 Imposition of these emergency rates, in combination with extensive public outreach and cooler
12 temperatures, allowed CAW to reduce its diversions from the Carmel River and comply with
13 SWRCB Order 95-10 in WY 2004.

14
15 **Q7. PLEASE DESCRIBE ACTIONS THAT CAW HAS TAKEN TO REDUCE ITS**
16 **UNLAWFUL DIVERSIONS FROM THE CARMEL RIVER.**
17

18 28. Condition 2 of SWRCB Order 95-10 requires that CAW diligently implement one or
19 more of three suggested actions to terminate its unlawful diversions from the Carmel River. These
20 actions include: (1) obtain appropriate permits for water being unlawfully diverted from the
21 Carmel River, (2) obtain water from other sources of supply and make one-for-one reductions in
22 unlawful diversions from the Carmel River, and (3) contract with another agency having
23 appropriate rights to divert and use water from the Carmel River. CAW has pursued each of these
24 actions, which are described below.

25
26 ³ The Monterey Peninsula Water Resource System refers to the interconnected sources of supply that serve CAW's main distribution system and includes surface water in the Carmel River and its tributaries, groundwater in the Carmel Valley Alluvial Aquifer that underlies the Carmel River, and groundwater in the Coastal Subareas of the Seaside Groundwater Basin.

1 29. **Obtain appropriative permits:** It is my understanding that since SWRCB
2 Order 95-10 was adopted in July 1995, CAW has submitted four applications to obtain
3 appropriative permits to lawfully divert water from the Carmel River. In November 1996, CAW
4 submitted Application No. 30644 to appropriate a total of 36,130 AFY from the Carmel River for
5 municipal, irrigation, and fish and wildlife purposes. Of this total, 11,330 AFY would be by direct
6 diversion and 24,800 AFY would be diversion to storage in a proposed 24,000 AF Carmel River
7 Reservoir. In January 1998, CAW submitted Application No. 30715 for 16.1 cubic feet per second
8 (cfs) of direct diversion between January 1 and April 30, for a total of 3,900 AFY for municipal use.
9 In February 1998, CAW submitted Application Nos. 30215A and 30215B. Both of these
10 applications were based on Application No. 30215 that CAW had filed in May 1992 for direct
11 diversion of 30,178 AFY for municipal and irrigation uses. Specifically, Application No. 30215A
12 was for 4.1 cfs of direct diversion from January 1 through December 31, for a total of 2,964 AFY
13 for municipal use. Application No. 30215B was for 40 cfs of direct diversion from January 1
14 through December 31, for a total of 27,729 AFY for municipal use and 5 cfs of direct diversion
15 from May 1 through October 31, for a total of 60 AFY for irrigation use. It is my understanding
16 that each of these applications is pending action by the SWRCB.

17 30. **Obtain other sources of supply and make one-for-one reductions:** MPWMD
18 and CAW have worked together on testing and developing the Seaside Basin Phase 1 ASR Project.
19 This project, which operates under SWRCB Amended Permit 20808A, relies on diverting "excess"
20 winter flows from the Carmel River for treatment, transmission, and injection into the Seaside
21 Basin. Excess water is defined as daily streamflow in the Carmel River that exceeds the daily
22 bypass flow requirements recommended by NMFS to protect the Carmel River steelhead population
23 and are included in Permit 20808A. This excess water is temporarily stored in the Seaside Basin
24 and recovered during the summer and fall months to meet customer demand, thereby offsetting
25 CAW's need to pump this amount of water from the Carmel River during its lowest flow period.
26 Under a separate Memorandum of Understanding (MOU) with CDFG and NMFS, MPWMD and

1 CAW have agreed to reduce the amount of water that CAW diverts from the Carmel River under
2 SWRCB Order 95-10 by the amount of water that is actually recovered each year by the Phase 1
3 ASR Project. For example, in WY 2008, 60 AF were diverted by CAW from the Carmel River
4 during the December through May period for injection into the Seaside Basin via the District's ASR
5 wells. This amount of water will be recovered during the July through September period.
6 Accordingly, in WY 2008, CAW will divert no more than 11,225 AF (11,285 AF – 60 AF = 11,225
7 AF) from the Carmel River for customer service. When fully operational, the Phase 1 ASR Project
8 is projected to yield an average of 920 AFY. As a result CAW's unlawful diversions from the
9 Carmel River will be reduced by an average of 920 AFY.

10 31. In addition, it is my understanding that CAW has signed an agreement with the City
11 of Sand City to purchase water from the City's seawater desalination facility. This facility, which is
12 under construction and expected to be completed in 2009, is designed to produce 300 AFY in the
13 near term. Under this agreement, CAW would purchase the entire yield from the facility and
14 deliver approximately 94 AFY to existing CAW customers in Sand City and initially deliver
15 approximately 206 AFY to customers in its main system outside Sand City. Under this
16 arrangement, CAW's unlawful diversions from the Carmel River will potentially be reduced by 300
17 AFY. Over time, as buildout served by the desalination facility occurs in the Sand City area, the
18 reduction in unlawful diversions will decrease to 94 AFY.

19 32. In November 1996, CAW submitted an application to the Water Management
20 District to amend its water distribution system permit to construct and operate the proposed Carmel
21 River Dam and Reservoir Project and comply with SWRCB Order 95-10. This project, which was
22 structurally identical to the District's earlier proposed New Los Padres Project, centered on a new
23 24,000 AF reservoir on the Carmel River mainstem, immediately below the existing Los Padres
24 Reservoir. Unlike the proposed New Los Padres Project, the Carmel River Dam Project did not
25 include any yield for new connections or "growth". Instead, the purpose of CAW's Carmel River
26 Dam and Reservoir Project was to: (1) address requirements of SWRCB Order 95-10 that compel

1 CAW to make lawful its diversions from the Carmel River, (2) restore streamflow in the Carmel
2 River to protect the public trust resources, and (3) improve drought protection for the community.

3 33. In March 1997, CAW's Carmel River Dam and Reservoir Project application was
4 deemed complete by the Water Management District. As lead agency under the California
5 Environmental Quality Act (CEQA) and based on an Initial Study, the Water Management District
6 determined that an Environmental Impact Report (EIR) on the project must be prepared.
7 Accordingly, a Draft Supplemental EIR (SEIR) on CAW's Carmel River Dam and Reservoir
8 Project was prepared by the Water Management District. The SEIR supplemented information
9 provided in the Final EIR prepared for the New Los Padres Project in 1994 and responded to Court
10 direction to prepare a focused SEIR to address viticulture issues. The draft SEIR was completed
11 and circulated for public review in November 1998.

12 34. Work on finalizing the SEIR was delayed due to uncertainty regarding action on
13 CAW's San Clemente Dam Seismic Retrofit Project, lack of progress on the California Public
14 Utilities Commission's (CPUC) "Plan B" Project, and a decision by the Water Management District
15 Board to include an analysis of water for future needs in the SEIR. In August 2003, following
16 CAW's announcement in February 2003 that CAW was proposing to develop the Coastal Water
17 Project, the Water Management District Board denied CAW's application for the proposed Carmel
18 River Dam Project. No further action has been taken on the Draft SEIR for CAW's Carmel River
19 Dam and Reservoir Project.

20 35. As referenced above, CAW announced its plans to proceed with the CWP in
21 February 2003. As proposed at that time, the CWP included a seawater desalination plant at Moss
22 Landing and groundwater banking in the Seaside area that would yield a total of 10,730 AFY to
23 satisfy SWRCB Order 95-10. CAW submitted an application for a Certificate of Public
24 Convenience and Necessity (CPCN) to the CPUC in September 2004 to construct and operate the
25 CWP to resolve the long-term water supply deficit in its Monterey Division. CAW submitted a
26 Proponent's Environment Assessment (PEA) report on the CWP and possible alternatives to the

1 CPUC in September 2006. As lead agency under CEQA, the CPUC is preparing an EIR on the
2 CWP. The Water Management District is a responsible agency in this CEQA process. The Draft
3 EIR is scheduled to be released for comment by the end of 2008. As presently proposed, the
4 “basic” CWP will provide 11,730 AFY to satisfy SWRCB Order 95-10 and a portion of the Seaside
5 Basin Decision. The CPUC has approved approximately \$12,306,000 in preconstruction costs for
6 the CWP incurred through 2006 and is reviewing additional costs incurred by CAW in 2007.

7 36. **Contract with another agency having appropriative rights:** As part of its
8 November 1996 application to amend its water distribution system permit, CAW requested that the
9 Water Management District transfer or license use of the District’s existing state and federal permits
10 for the then-proposed New Los Padres Reservoir Project to CAW for its then-proposed Carmel
11 River Dam and Reservoir Project. At that time, the Water Management District advised CAW that
12 a decision on licensing or transferring the District’s permits to CAW cannot legally be completed
13 before complying with CEQA and other requirements.

14 37. In March 2006, the Water Management District and CAW executed a Management
15 and Operations Agreement for the Phase 1 ASR Project. A copy of this agreement is included as
16 **Exhibit DF-7**. The agreement was developed to satisfy permitting requirements of the California
17 Department of Public Health, expand and clarify the operations of the existing ASR facilities, and
18 accelerate implementation of future ASR facilities. As part of the agreement, MPWMD and CAW
19 agreed to cooperate and support the acquisition of water rights needed for the Phase 1 ASR Project
20 and jointly hold all relevant applications and water right permits. MPWMD and CAW also agreed
21 to enter into good faith negotiations to establish one or more agreements pertaining to the
22 acquisition and joint ownership of present and future water rights used or usable from any water
23 source suitable to provide potable water for municipal supply for the benefit of the Monterey
24 Peninsula area.

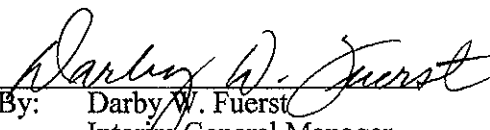
1 **Q8. HAS THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**
2 **BOARD OF DIRECTORS TAKEN A POSITION ON THE DRAFT CEASE AND DESIST**
3 **ORDER AGAINST CALIFORNIA AMERICAN WATER?**
4

5 38. Yes, the Water Management District Board adopted Resolution No. 2008-08
6 opposing Cease and Desist Order WR 2008-00XX-DWR, as drafted, on May 29, 2008. A copy of
7 this resolution is included as Exhibit DF-8. As indicated in the resolution, the proposed amounts
8 and timetable for reductions in existing water use need to be realistic and not jeopardize the public
9 health and safety in the Monterey Peninsula area.
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1 I, Darby W. Fuerst, declare under penalty of perjury that I have read the foregoing "Testimony of
2 Darby W. Fuerst" and know its contents. The matters stated in it are true of my knowledge except
3 as to those matters which are stated on information and belief, and as to those matters I believe them
4 to be true.

5
6 Executed on June 5, 2008, at Monterey, California.

7
8 MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT

9
10 
11 By: Darby W. Fuerst
Interim General Manager

12 5 Harris Court, Building G
13 P. O. Box 85
Monterey, CA 93942-0085
14 Telephone: (831) 658-5651
Facsimile: (831) 644-9560
15 Email: darby@mpwmd.dst.ca.us

16 U:\Darby\wpl\wr\CDO_08\dwf_phase1_testimony_19jun08.doc

1 **PROOF OF SERVICE**

2
3 I, Wanda Gooch, declare as follows:

4 I am employed in the City of Pacific Grove and County of Monterey, California. I
5 am over the age of eighteen years, and not a party to the within cause; my business address is DE
6 LAY & LAREDO, 606 Forest Avenue, Pacific Grove, California 93950. On June 5, 2008, I
served the within:

7 • **TESTIMONY OF DARBY W. FUERST**

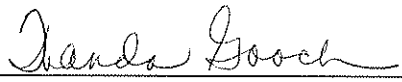
8
9 on the interested parties in this action by placing a true copy thereof in a sealed envelope,
addressed as follows:

10 *Please see attached list*

11 (BY E-MAIL SERVICE) By transmitting such documents electronically from De
12 Lay & Laredo, Pacific Grove, California, to the electronic mail addresses list above. I am
13 readily familiar with the practice of De Lay & Laredo for transmitting documents by
14 electronic mail, said practice being that in the ordinary course of business, such electronic
mail is transmitted immediately after such document has been tendered for filing.

15 (BY MAIL) By placing such envelope, with postage thereon fully prepaid for first
16 class mail, for collection and mailing at De Lay & Laredo, Pacific Grove, California
17 following ordinary business practice. I am readily familiar with the practice being that in
18 the ordinary course of business, correspondence is deposited in the United States Postal
Service the same day as it is placed for collection.

19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct and that this declaration was executed on June 5, 2008, at Pacific
Grove, California.

21 
22 _____
Wanda Gooch

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

Service by Electronic Mail:

California American Water
Jon D. Rubin
Diepenbrock Harrison
400 Capitol Mall, Suite 1800
Sacramento, CA 95814
(916) 492-5000
jrubin@diepenbrock.com

State Water Resources Control Board
Reed Sato
Water Rights Prosecution Team
1001 I Street
Sacramento, CA 95814
(916) 341-5889
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
(415) 383-7734
larrysilver@earthlink.net
lgwill@dcn.davis.ca.us

Carmel River Steelhead Association
Michael B. Jackson
P.O. Box 207
Quincy, CA 95971
(530) 283-1007
mjatty@sbcglobal.net

Calif. Sportfishing Protection Alliance
Michael B. Jackson
P.O. Box 207
Quincy, CA 95971
(530) 283-1007
mjatty@sbcglobal.net

City of Seaside
Russell M. McGlothlin
Brownstein, Hyatt, Farber, Schreck
21 East Carrillo Street
Santa Barbara, CA 93101
(805) 963-7000
RMcGlothlin@BHFS.com

The Seaside Basin Watermaster
Russell M. McGlothlin
Brownstein, Hyatt, Farber, Schreck
21 East Carrillo Street
Santa Barbara, CA 93101
(805) 963-7000
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Monterey Peninsula Water Management
District
David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950
(831) 646-1502
dave@laredolaw.net

City of Sand City
James G. Heisinger, Jr.
Heisinger, Buck & Morris
P.O. Box 5427
Carmel, CA 93921
(831) 624-3891
hbm@carmellaw.com

Pebble Beach Company
Thomas H. Jamison
Fenton & Keller
P.O. Box 791
Monterey, CA 93942-0791
(831) 373-1241
TJamison@FentonKeller.com

City of Monterey
Fred Meurer, City Manager
Colton Hall
Monterey, CA 93940
(831) 646-3886
meurer@ci.monterey.ca.us

Monterey County Hospitality Association
Bob McKenzie
P.O. Box 223542
Carmel, CA 93922
(831) 626-8636
info@mcha.net
bobmck@mbay.net

California Salmon and Steelhead Association
Bob Baiocchi
P.O. Box 1790
Graeagle, CA 96103
(530) 836-1115
rbaiocchi@gotsky.com

Planning and Conservation League
Jonas Minton
1107 9th Street, Suite 360
Sacramento, CA 95814
(916) 719-4049
jminton@pcl.org

National Marine Fisheries Service
Christopher Keifer
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
(562) 950-4076
christopher.keifer@noaa.gov

Division of Ratepayer Advocates
Andrew Ulmer
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2056
eau@cpuc.ca.gov

Service by U.S. Mail:

City of Carmel-by-the-Sea
Donald G. Freeman
P.O. Box CC
Carmel-by-the-Sea, CA 93921
(831) 624-5339 EXT. 11