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4 **BEFORE THE STATE WATER**  
5 **RESOURCES CONTROL BOARD**  
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7 In the Matter of the State Water Resources )  
8 Control Board (State Water Board) ) Hearing Date: July 23 - 25, 2008  
9 Hearing to Determine whether to Adopt a )  
10 Draft Cease & Desist Order against )  
11 California American Water Regarding its ) Carmel River in Monterey County  
12 Diversion of Water from the Carmel River )  
13 in Monterey County under Order WR 95-10 )  
14 )

15 **EXHIBIT MPWMD-HS1**

16 **TESTIMONY OF HENRIETTA STERN**

17 **PROJECT MANAGER / PUBLIC INFORMATION REPRESENTATIVE**

18 **MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**  
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2 **TESTIMONY OF HENRIETTA STERN**  
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4 I, Henrietta Stern, provide the following prepared testimony under penalty of perjury,  
5 under the laws of the State of California, in relation to the State Water Resources Control Board  
6 (State Water Board or SWRCB) hearing to determine whether to adopt a draft Cease and Desist  
7 Order (CDO) against California American Water (CAW or Cal-Am) regarding its diversion of  
8 water from the Carmel River in Monterey County under SWRCB Order WR 95-10.  
9

10 **Q 1: PLEASE STATE YOUR NAME AND QUALIFICATIONS.**

11 1. My name is Henrietta Stern. My education includes a M.S. degree in Aquatic  
12 Ecology (1979) and a B.S. degree in Zoology (1976), both from the University of California, Davis.  
13 In addition, I hold a Certificate in the Habitat Evaluation Procedure from the U.S. Fish and Wildlife  
14 Service (1988) and a Certificate in Project Management from U.C. Santa Cruz Extension (1990). I  
15 have also taken many courses in the California Environmental Quality Act (CEQA), National  
16 Environmental Policy Act (NEPA), and the Endangered Species Act as part of ongoing professional  
17 development. I am presently employed as the Project Manager/Public Information  
18 Representative for the Monterey Peninsula Water Management District (MPWMD or District).  
19 I have served the District in this or a similar position since 1986. My resume is provided as  
20 **Exhibit MPWMD-HS2.**

21 2. As Project Manager, I am responsible for CEQA and NEPA compliance by the  
22 District as a CEQA Lead Agency or Responsible Agency for MPWMD water supply projects, or  
23 projects proposed by other entities for which an MPWMD permit or other approval is needed. I had  
24 substantial involvement in the Environmental Impact Report and Statement (EIR/EIS) and state and  
25 federal permits for the New Los Padres Dam and Reservoir Project on the Carmel River obtained in  
26 1995, the revised EIR for the Carmel River Dam and Reservoir Project proposed by California

1 American Water in late 1996, and the environmental review process for non-dam alternatives  
2 proposed by MPWMD and other entities since 1996, including desalination projects and the  
3 MPWMD Phase 1 Aquifer Storage and Recovery (ASR) Project EIR, certified in August 2006. I  
4 also manage the MPWMD Water Distribution System (WDS) permit program for proposed wells or  
5 other water-producing facilities within the District, with emphasis on permit application processing  
6 and CEQA compliance for approved Water Distribution System permits. I am extensively involved  
7 with each permit approved by the District.

8 3. My responsibilities include knowledge of federal, state, and local laws that affect  
9 water supply projects; knowledge of MPWMD Rules & Regulations relating to Water Distribution  
10 Systems; assessment of water supply alternatives; preparation and review of technical reports; and  
11 coordination with many governmental agencies, consultants and technical staff.

12 4. In my role as MPWMD Public Information Representative, and as a 22-year  
13 employee, I have general knowledge of nearly all facets of the District functions and history, with  
14 emphasis on water supply planning, water supply alternatives and environmental programs. I am  
15 often the first contact to answer questions from the public and media.

16  
17 **Q 2: PLEASE REVIEW WATER SUPPLY ALTERNATIVES AS THEY RELATE TO**  
18 **WATER PRODUCTION IMPACTS TO THE CARMEL RIVER AND/OR**  
19 **COMPLIANCE WITH SWRCB ORDER WR 95-10.**

20 5. Since 1980, the District, as a CEQA lead agency, has evaluated dozens of water  
21 supply alternatives at varying levels of detail. Throughout the years, the effect alternative water  
22 supply projects would have on the Carmel River, associated habitat and dependent fish and  
23 wildlife, has been an important consideration, particularly the ability of any project to help  
24 restore year-round streamflow in the lower Carmel River. Since 1995, a primary consideration  
25 has been the ability of an alternative project (or combination of projects) to result in full  
26 compliance with SWRCB Order WR 95-10.

1           6.     Reservoir Projects: The District evaluated more than 70 alternatives in the  
2 EIR/EIS for the MPWMD-proposed New Los Padres (NLP) Dam and Reservoir Project during  
3 the period from 1980 through 1995. The District then made a comprehensive review of water  
4 supply project alternatives beginning in 1996, after voters rejected funding for NLP Project  
5 construction in November 1995. As a CEQA lead agency, the District again reviewed  
6 alternatives in the 1998 Draft EIR (DEIR) for the Carmel River Dam and Reservoir Project  
7 proposed by CAW. Appendix A of the 1998 DEIR reviewed all of the alternatives evaluations  
8 from 1980 through 1998.

9           7.     Plan B/CWP: From 1998 to 2003, the District actively participated in the multi-  
10 year assessment of non-dam alternatives for the “Plan B” process led by the California Public  
11 Utilities Commission (CPUC), as directed by the State Legislature. The defined “Plan B” project  
12 evolved into the Coastal Water Project (CWP) proposed by CAW in February 2003. The CWP  
13 is comprised primarily of a desalination project at Moss Landing and a small ASR project in the  
14 Seaside Groundwater Basin. The yield goal for the “basic project” is defined as 11,730 AFY to  
15 address (a) the 10,730 AFY replacement of CAW’s unlawful Carmel River withdrawals  
16 estimated in SWRCB Order WR 95-10, and (b) help alleviate over-pumping in the Seaside  
17 Groundwater Basin by 1,000 AFY. The CPUC determined it would be the CEQA lead agency  
18 for the CWP in September 2004. Since then, MPWMD as a CEQA responsible agency has been  
19 actively involved in the environmental review of the CWP as well as alternatives to it.

20           8.     Regional Projects: For the past year, the District actively participated in the  
21 Regional Plenary Oversight Group (REPOG), now known as the “Water for Monterey County  
22 Coalition,” initiated by the CPUC’s Division of Ratepayer Advocates (DRA) to develop a less  
23 costly alternative to CAW’s Coastal Water Project. A draft concept developed by the Marina  
24 Coast Water District (MCWD), Monterey County Water Resources Agency (MCWRA),  
25 Monterey Regional Water Pollution Control Agency (MRWPCA) and CAW, currently known as  
26 the “Monterey Regional Water Supply Program,” is also expected to be evaluated in the CPUC’s

1 Draft EIR on the CWP. This concept continues to evolve, and currently consists of multiple,  
2 incremental components that include conservation, stormwater reuse, ASR, recycled water from  
3 the MRWPCA regional treatment plant for non-potable uses (agricultural and urban) and  
4 groundwater injection for potable use, brackish-water desalination project in North Marina area,  
5 diversion from the lower Salinas River ("rubber dam"), and pumping water from the Salinas  
6 Groundwater Basin.

7 9. Since 2006, the District General Manager has participated in Monterey County-  
8 led meetings of a Managers Working Group, comprised of water/wastewater districts and cities  
9 from the Monterey Peninsula and northern Monterey County, regarding a potential governance  
10 structure for a regional water supply planning entity currently known as the Monterey Bay  
11 Regional Water Authority. At its June 18, 2007 meeting, the District Board approved a final  
12 Memorandum of Understanding (MOU) to form the Monterey Bay Regional Water Solutions  
13 Task Force and a contribution of \$5,000 towards technical analyses that the Task Force will  
14 require.

15 10. **MPWMD Desalination and ASR Projects:** Since the year 2000, District  
16 emphasis for its own projects has been on desalination and ASR. The District evaluated many  
17 non-dam alternatives as the CEQA lead agency in the preparation of an administrative draft EIR  
18 for its 8,400 acre-foot per year (AFY) Desalination Project proposed by MPWMD in the Sand  
19 City area in the 2001-2003 timeframe; this project and the EIR were tabled by the MPWMD  
20 Board in 2004 to allow time to assess multi-agency regional projects that were being proposed at  
21 that time. Notably, this desalination project is being pursued again in 2008 as the "MPWMD 95-  
22 10 Project." The District evaluated several alternatives in the EIR for the MPWMD Phase 1  
23 ASR Project, which was certified in August 2006. The project was constructed in late 2007.

24 11. **MPWMD Comparative Matrix:** Beginning in 2004, the District has prepared  
25 an annual Comparative Matrix of Water Supply Alternatives, which was most recently updated  
26 at the March 27, 2008 Board meeting. Seven alternatives are currently highlighted in the

1 matrix, which is comprised of three detailed spreadsheets with technical, financial,  
2 environmental, logistical and other information about each alternative. The alternatives include  
3 four desalination proposals, ASR, wastewater reclamation and groundwater replenishment. As  
4 part of this effort, the District has hosted town-hall meetings, public hearings, invited  
5 presentations by project proponents, commissioned an ad hoc Citizens Advisory Committee to  
6 review water supply options in the matrix, and retained third-party engineering consultants to  
7 review the reliability of the cost and engineering information provided by the project proponents.

8 12. Each calendar quarter, a review of progress on water supply alternatives is  
9 provided to the MPWMD Board. The Board held a special workshop on water supply  
10 alternatives on March 27, 2008 that summarized efforts in recent years, and provided the most  
11 current technical information, including the revised 2008 Comparative Matrix. The March 2008  
12 Comparative Matrix of Alternatives is provided as Exhibit MPWMD-HS3.

13  
14 **Q 3: PLEASE IDENTIFY CEQA, NEPA, STATE AND FEDERAL ENVIRONMENTAL**  
15 **LAWS THAT AFFECT WATER SUPPLY PROJECTS WITHIN THE DISTRICT.**

16 13. MPWMD staff has extensive experience complying with state and federal laws  
17 and working with regulatory agencies, including writing EIR/EIS sections and technical  
18 evaluations. MPWMD has retained and closely worked with expert consultants in the fields of  
19 hydrology, hydrogeology, cultural resources, fisheries, biology, environmental planning,  
20 engineering and project construction. Examples of water supply projects for which the District  
21 has played a major role include:

- 22 ➤ New Los Padres Dam and Reservoir Project – CEQA lead agency and  
23 proponent/applicant; U.S. Army Corps of Engineers was NEPA lead; extensive  
24 assessments to comply with Clean Water Act (Section 401 and 404) and all related  
25 agreements, Endangered Species Act, National Historic Preservation Act, federal  
26 wetlands policy, Coastal Zone Management Act and others.  
➤ Carmel River Dam and Reservoir Project – CEQA lead agency and regulator for CAW  
project; similar issues as for New Los Padres Project.

- MPWMD 8,400 AFY Desalination Project – CEQA lead agency and proponent/applicant; issues include compliance with Endangered Species Act (state and federal); coastal zone, recreation/access, public safety.
- MPWMD Phase 1 ASR Project – CEQA lead agency and proponent/applicant; U.S. Army BRAC as NEPA lead; compliance with Endangered Species Act (Habitat Management Plan); unexploded ordnance/toxics issues.
- Coastal Water Project (CAW) – CEQA responsible agency; assist with alternatives evaluation prior to release of Draft EIR (in progress).
- San Clemente Dam Seismic Retrofit – Interested agency; provided extensive technical input and gained extensive understanding of issues and process necessary for dam retrofit or removal.
- Responsible agency for several large subdivision projects (WDS permits for non-CAW water supply systems).

**Q 4: PLEASE DESCRIBE TIMELINES ASSOCIATED WITH ENVIRONMENTAL LAW COMPLIANCE FOR A MAJOR WATER SUPPLY PROJECT.**

14. Compliance with environmental regulations entails a complex web of state, federal and local laws, and interrelationships between agencies. The primary environmental regulations are embodied in CEQA and NEPA (where federal land or permits are involved). However, many other laws and governing agencies come into play, each with their own specific focus and requirements, as described in Exhibits MPWMD-HS4 through MPWMD-HS10. The water rights process associated with use of Carmel River water is another time-consuming process, which can hold back initiation or completion of other project components. This translates into extensive time and money expended by the applicant, typically with much more time and cost than originally planned.

15. Exhibit MPWMD-HS11, *History of Process for Cal-Am Permit to Construct Carmel River Dam and Reservoir Project*, is an example of the many years of delay that may occur when concurrent regulatory processes overlap, which often are out of the applicant's and/or CEQA lead agency's control, especially when federal agencies are involved. In that case, the CPUC "Plan B" process, required by the State Legislature, took four years to complete when the original estimate described by the CPUC was 1-2 years. Delay by the CPUC to define the "Plan B" alternative was a major factor that delayed MPWMD's completion of the DEIR on the

1 Carmel River Dam and Reservoir Project proposed by CAW. Federal requirements related to  
2 cultural resources and endangered species (along with overt opposition by fishery agencies)  
3 added further cost and delays to the point that CAW requested termination of work on the  
4 required environmental review for these elements.

5 16. More recently, the time estimates for the Coastal Water Project in 2004, as shown  
6 in Exhibit MPWMD-HS12, estimated certification of the Final EIR by the CPUC in February  
7 2006 and completion of project construction by Fall 2008. Updated timeline estimates in  
8 October 2006 (included in the March 2008 matrix, Exhibit MPWMD-HS3) estimated  
9 completion of the FEIR in Summer 2007 and project water delivery in 2010. As of June 2008,  
10 the DEIR is still in preparation and is expected to be completed in early 2009; certification of the  
11 FEIR is not likely to occur until late 2009 at the earliest. Project completion is not expected until  
12 mid-2015 (assuming DEIR completion in July 2008, which will not occur), a delay of seven  
13 years as compared to year 2004 projections. Similarly, a desalination pilot project required by  
14 the State Department of Health Services (Exhibit MPWMD-HS9) was delayed due to  
15 challenges by the Coastal Commission and other groups due to issues related to the impacts of  
16 operating the Moss Landing Power Plant, again out of CAW's and the CPUC's control.

17 17. It is reasonable to assume that most local water supply projects may take at least  
18 five years to navigate through the environmental review process. Approval by permitting  
19 agencies is not guaranteed. Even after approval, any project will then take several years to  
20 complete project funding, final design and construction. Examples of this process include:

- 21 ➤ New Los Padres Project— Began as New San Clemente Dam in 1982; project site  
22 changed in 1989; FEIR certified in 1994; key permits granted in July 1995; voters  
rejected funding in November 1995.
- 23 ➤ Carmel River Dam and Reservoir Project—Applications submitted to MPWMD and  
24 CPUC in November 1996; DEIR completed by MPWMD in November 1998; 1,000  
25 pages of comments received in January 1999; FEIR never completed due to delays from  
26 Plan B process, opposition from fishery agencies and decision by CAW to propose CWP  
in early 2003. Project applications formally denied by MPWMD and CPUC in August-  
September 2003.



1       ➤ Coastal Water Project— CPUC directs CAW to file application and determines it will be  
2       CEQA lead agency in September 2003; CAW files application in September 2004;  
3       submits Proponent’s Environmental Assessment in July 2005; CPUC issues Notice of  
4       Preparation in September 2006; DEIR has yet to be completed (anticipated in early  
5       2009).

6       18.     Even relatively simple small projects that enjoy widespread support take several  
7       years to complete due to complex regulatory and technical issues. For example, the Notice of  
8       Preparation for the MPWMD Phase 1 ASR was issued in December 2004; a joint  
9       FEIR/Environmental Assessment (NEPA) was certified in August 2006. The SWRCB issued the  
10      water rights permit for the project in December 2007.

11      19.     Any substantive change in the environmental setting, environmental laws, or new  
12      information can require that an EIR/EIS be revised and re-circulated. For example, the NLP  
13      Project entailed a Draft EIR, Supplemental Draft (SD) EIR/EIS, and a SDEIR/EIS-II before the  
14      Final EIR was certified in 1994. Also, lack of resource agency staff (or a change in key staff)  
15      and budget constraints by agencies can adversely affect a project timeline. Projects I have  
16      worked on have been slowed by the need to educate a new agency staff member who replaces an  
17      experienced staff member familiar with the project. Potential or actual litigation over a  
18      CEQA/NEPA document can significantly affect a project timeline, especially if the certified  
19      environmental document is overturned by the Court, thus invalidating any approvals based on the  
20      certified EIR.

21      20.     Several federal permit processes require significant research and documentation  
22      above and beyond an EIR or EIS. These include the Endangered Species Act, National Historic  
23      Preservation Act, water rights, wetlands, coastal zone, toxics issues and others. Adverse  
24      “surprises” beyond the applicant’s and/or lead agency’s control may occur, such as change in  
25      ownership of a parent company (and new corporate philosophy or reorganization), or sale of a  
26      planned project site.

1 **Q 5: CAN NEW WATER SUPPLY PROJECT(S) REALISTICALLY BE ON-LINE TO**  
2 **SATISFY THE DRAFT CDO SCHEDULE?**

3 21. No. In short, new water projects cannot be constructed fast enough to meet the  
4 production reduction schedule in the Draft CDO, especially when concurrent cutbacks in the  
5 Superior Court's Seaside Basin adjudication decision must also be considered. Importantly, the  
6 CDO does not exist in a vacuum. The Seaside Basin adjudication cutbacks imposed on CAW in  
7 the Superior Court's Final Decision in March 2006 further complicate the matter as the  
8 reductions to address the Seaside Basin overdraft are additive to the proposed CDO reductions,  
9 and also "compete" for the benefits to the Carmel River that result from conservation savings  
10 and/or new water supplies. Further, the potential near-term projects are too small to meet CDO  
11 and Seaside Basin interim yield targets before 2015, and the larger long-term projects that could  
12 provide adequate yield will not be completed until after 2015. Hence, the reasonably anticipated  
13 project yield timeline is not "in synch" with the required CDO and adjudication cutbacks. Some  
14 other means such as conservation will be necessary to meet the reduction targets.

15 22. Exhibit MPWMD-HS13 summarizes in table format year-by-year production  
16 cutbacks (equivalent to new yield needed from water projects and/or savings from conservation)  
17 required for the CAW "main" system based on the cutback schedule on the Court's adjudication  
18 decision as well as the schedule in the proposed CDO. The column titled "Cumulative  
19 Production Reduction" (second column from right) calculates the required reduction in  
20 community water use starting in 2009 assuming both the proposed CDO and adjudication are in  
21 effect.

22 23. By the end of WY 2009 (September 30, 2009), the community will need to save  
23 2,006 AF, a 13.6% cutback as compared to allowed uses in WY 2008. Notably, the WY 2008  
24 values reflect a community that already has achieved a 20% cutback as compared to the original  
25 baselines in SWRCB Order WR 95-10.  
26

1           24.     Reductions of nearly 3,100 AFY will be required by year 2012, a reduction of  
2 nearly 21% compared to 2008 values. One year later, the reduction requirement jumps to 4,785  
3 AFY (a 32.4% reduction) in 2013, and another major reduction totaling nearly 6,900 AFY (a  
4 46.6% reduction) is scheduled for 2015. Notably, the cutback goals more than double between  
5 2012 and 2015, from roughly 3,100 AFY to nearly 6,900 AFY. After year 2015, additional  
6 cutbacks are required by the adjudication through years 2021 (7,653 AFY cutback, or a 51.7%  
7 total reduction as compared to 2008).

8           25.     Though not directly related to the CDO, CAW cutbacks of roughly 420 AFY are  
9 also required in the Laguna Seca subarea of the Seaside Basin. The above values do not address  
10 full compliance with SWRCB Order WR 95-10 or water to serve existing legal lots of record,  
11 remodels or expansion of existing homes and businesses.

12           26.     As noted above, the cumulative effect of the draft CDO and adjudication decision  
13 is the need to replace, through additional conservation and/or new water projects, over 2,000  
14 AFY immediately (year 2009) and nearly 6,900 AFY by year 2015. The key question is: "Is  
15 yield from water projects available and/or is there the ability through conservation to meet these  
16 production reduction targets in the prescribed timelines?" My testimony will focus on water  
17 projects. Other witnesses (e.g., Stephanie Pintar) will address feasible conservation savings.  
18 The following paragraphs review the yield and timing of the major water supply projects in the  
19 March 2008 matrix (Exhibit MPWMD-HS3).

20           27.     Regarding the proposed Coastal Water Project ("basic" project with estimated  
21 yield of 11,730 AFY), in a presentation to the MPWMD Board on March 27, 2008 (Agenda Item  
22 #1), CAW Vice President of Operations, Tom Bunosky, estimated the CWP would be on-line by  
23 July 2015 assuming completion of the DEIR in July 2008. Given that the DEIR is not expected  
24 to be released for public review until first quarter 2009, completion of the CAW project should  
25 not be expected until early 2016. One reason the CPUC has not yet issued a DEIR for the CWP  
26 is that it is awaiting a project description and analysis of the regional "Monterey Regional Water

1 Supply Program,” developed by the CPUC/REPOG group. This regional project will be a  
2 primary alternative to the CWP to be analyzed at a similar level of detail in the DEIR.

3 28. The Pajaro/Sunny Mesa Community Services District has not started the CEQA  
4 process on its Moss Landing desalination project, though the 2008 matrix information states  
5 certification of an EIR is expected in June 2008. A Notice of Preparation of an EIR has not been  
6 filed to date. This project could meet CAW’s water supply needs described above, but it is clear  
7 that it would be constructed several years later than CAW’s CWP project.

8 29. The MPWMD 8,400 AFY desalination plant (“MPWMD 95-10 Project”) would  
9 also be completed in the 2015-2016 timeframe based on a recent MPWMD staff analysis (April  
10 21, 2008 Board meeting, Item #23). The environmental timeline information in the March 2008  
11 matrix (Exhibit MPWMD-HS3) is out of date for this project.

12 30. MPWMD is currently preparing a Constraints Analysis of the MPWMD  
13 desalination project, due by mid-August 2008, which will determine whether fatal flaws exist,  
14 based on updated environmental, regulatory and technical data. An EIR for this project would be  
15 prepared in year 2011 if no fatal flaws are found, based on completion of a revised detailed  
16 facilities plan. Final design through the bid issuance and award process would be three years,  
17 and the construction period would be two years, assuming key components would be done in  
18 parallel, as feasible. Thus, project operation would begin in the 2015-2016 timeframe.

19 31. No specific project description, environmental review process or lead agency has  
20 been identified for the offshore Seawater Desalination Vessel to date. Thus, no definitive  
21 timeframe can be provided, but it is reasonable to assume timelines would be similar to the other  
22 desalination projects noted above.

23 32. I believe that the desalination project proponents have not carefully considered  
24 NEPA requirements and the impact on timelines included in the most recent matrix (i.e.,  
25 compare matrix timeline projections in Exhibit MPWMD-HS3 with general agency timelines  
26 described in Exhibits MPWMD-HS7 and MPWMD-HS8). Thus, the environmental review

1 and permitting timelines may be too optimistic, resulting in longer timelines than portrayed to  
2 date.

3 33. The Marina Coast Water District has certified an EIR that includes a limited  
4 amount of water (300 AFY) for CAW uses within the District. According to the March 2008  
5 matrix, project completion is expected in year 2009, but little progress on intermediate steps has  
6 been identified. Thus, for the purposes of this analysis, I assume project implementation may be  
7 delayed until 2010.

8 34. The Monterey Regional Water Pollution Control Agency has identified an initial  
9 yield of 2,400 AFY for its Groundwater Replenishment Program (GRP) proposal, but it is not  
10 clear who the recipients of this water would be. The GRP could potentially be part of the CPUC-  
11 sponsored regional alternative project noted above. The MRWPCA has not started the CEQA  
12 process on a specific project to date.

13 35. MPWMD has certified an EIR and constructed only Phase 1 of its ASR project,  
14 with a potential incremental yield of 920 AFY, on average. However, there is presently  
15 inadequate CAW infrastructure to enable full use of the two Phase 1 ASR injection wells.  
16 Current yield capacity is about 310 AFY in an average year (defined as 70 days of injection) due  
17 to a limited injection capability of 1,000 gallons per minute (4.42 AF/day). Once defined, this  
18 infrastructure will need to go through the CEQA/NEPA process and obtain various permits,  
19 depending on property ownership when an application is made. MPWMD and CAW are  
20 meeting regularly to determine the specific improvements to CAW infrastructure that are needed  
21 to facilitate full use of Phase 1 as well as an expanded ASR project in the future. It is anticipated  
22 that the Phase 1 ASR Project should be fully operational in Water Year 2010.

23 36. Four projects are not on the matrix, but should be noted. First, the City of Sand  
24 City is currently constructing a 300 AFY desalination project geared solely for build-out of the  
25 City. The project should be completed in late 2009. Water will be delivered to CAW to be  
26 incorporated into the CAW system. In October 2007, the District approved a Water Distribution

1 System permit and in January 2008 approved an ordinance to enable a 206 AFY entitlement for  
2 CAW water for new construction and redevelopment in Sand City. The remaining 94 AFY is  
3 currently being used by CAW customers in Sand City. Until the City fully builds out, water  
4 from the 300 AFY plant will be available to CAW to help offset water production in the Carmel  
5 River and Seaside Basin. However, this 300 AFY amount will decrease to 94 AFY over time.

6 37. Second, the REPOG/Water for Monterey County Coalition is still defining its  
7 regional project components, some of which overlap projects described in the 2008 matrix. No  
8 timing estimates have been developed for these components or specific production amounts  
9 designated for recipient agencies or areas. In a March 17, 2008 presentation to the MPWMD  
10 Board, project engineer Lyndell Melton estimated component yields as: conservation (300  
11 AFY); storm water reuse (500 AFY); ASR (up to 7,400 AFY); recycled water from the  
12 MRWPCA regional treatment plant for non-potable uses (up to 10,000 AFY and 3,000 AFY,  
13 respectively, for agricultural and urban reclamation markets); groundwater injection for potable  
14 use (up to 2,500 AFY in the Seaside Basin); brackish-water desalination project in North Marina  
15 area (9,000 AFY); diversion from the lower Salinas River (7,800 AFY); and pumping water from  
16 the Salinas Groundwater Basin (10,000 AFY). Certain smaller components may be able to be  
17 accomplished by 2015, but the major components entail larger project increments with uncertain  
18 timeframes as described above.

19 38. Third, MPWMD and CAW are presently meeting to develop a project description  
20 for a Phase 2 ASR Project, which would entail two new ASR wells in the Seaside Basin, with  
21 existing CAW diversion facilities in Carmel Valley. As explained in the testimony of Joseph  
22 Oliver, an additional yield of 1,000 AFY on average is estimated in Water Year 2012.

23 39. Fourth, my understanding is that improvements to the Carmel Area Wastewater  
24 District Treatment Plant are scheduled to be completed this year which will correct salinity  
25 problems associated with use of reclaimed water for golf course irrigation. Once the Forest Lake  
26 Reservoir is filled with desalinated reclaimed water during the winter of 2008-2009, the Pebble

1 Beach Reclamation Project is expected to satisfy essentially all of the irrigation needs in the Del  
2 Monte Forest. This will represent roughly a 150 AFY reduction in CAW current water use.

3 40. Exhibit MPWMD-HS14 is a table that summarizes the above information. It  
4 shows insufficient water is available from new water supply projects to meet the combined  
5 requirements of the draft CDO and adjudication decision, including interim targets and  
6 reductions in year 2015. The earliest a major water supply project could come on line to address  
7 these needs is in the year 2016. In the meantime, meeting targets will require additional  
8 conservation savings.

9  
10 **Q 6: WHAT ALTERNATIVE CAW PRODUCTION CUTBACK SCHEDULE COULD**  
11 **BE STRUCTURED IN THE CDO?**

12 41. Any CAW production cutback should consider the combined effect of the CDO  
13 and the Seaside Basin adjudication decision, as summarized in Exhibit MPWMD-HS13, not  
14 just the CDO alone. Specific production cutbacks should be tied to realistic and achievable water  
15 project yield timelines as well as reasonable conservation measures. The table provided as  
16 Exhibit MPWMD-HS14 shows that an estimated 1,670 AFY in yield from new water projects  
17 can be expected in the next two years; another 1,000 AFY would be available in Water Year  
18 2012; then no major new source of supply is likely to be available until after Water Year 2016.  
19 Thus, conservation must make up the difference. Given the increasingly onerous reduction  
20 amounts after year 2013, with no reasonably foreseeable water project currently identified to  
21 provide yield, one may question whether conservation alone is reasonable or realistic to achieve  
22 additional savings of 2,100 AFY to more than 4,200 AFY in the years 2013 through 2015,  
23 especially considering the significant conservation savings the community has already achieved  
24 through 2008, and the additional savings that will be required between 2009 and 2012 if the  
25 CDO is adopted.

1           42.     The CDO cutback, in both its timing and quantity, must correlate to what is  
2 reasonably achievable in each year. Timelines for all water projects are uncertain and typically  
3 are subject to delays, often beyond the control of the applicant and lead agency. CDO milestones  
4 should not be based on simplistic pre-set dates for projects expected after year 2010. Instead,  
5 “adaptive management” techniques should be employed. Reasonable timeframes associated with  
6 various environmental review, permitting, construction and operation milestones should be  
7 considered. An example might be: “Within ‘X’ months of certification of the project EIR,  
8 permits should be obtained. Within ‘Y’ months of obtaining permits, construction should begin.  
9 Within ‘Z’ months of ground-breaking, water delivery should begin, and a cutback of ‘XX’ acre-  
10 feet of CAW diversions from the Carmel River during specified periods shall then be imposed.”  
11 This holds the water purveyors accountable to continue to pursue projects with due diligence, but  
12 does not penalize the community for not achieving arbitrary reduction goals that are not  
13 consistent with reasonably achievable project milestones.

14           43.     The community must believe a process is fair, and the rationale for an ordinance  
15 or other directive is reasonable, even though they may not agree with it. Otherwise, it is a  
16 frustrating, expensive battle that is harmful to the agency’s credibility to obtain compliance by  
17 the affected public.

18  
19 **Q 7: HOW DOES THE WATER MANAGEMENT DISTRICT REGULATE WATER**  
20 **DISTRIBUTION SYSTEMS, AND HOW DOES IT SET SYSTEM LIMITS? HOW DOES**  
21 **THIS PROCESS RELATE TO PROTECTION OF THE CARMEL RIVER BASIN?**

22           44.     MPWMD has implemented a Water Distribution System permit system since 1980  
23 (Ordinance No. 1), which applies to the entire District. Major revisions to the MPWMD Rules &  
24 Regulations were made in April 2001 with Ordinance No. 96, which defined a well serving a  
25 single-family home as a Water Distribution System. A series of subsequent ordinances has  
26



1 refined the Water Distribution System permit rules. The District's authority is based on its  
2 enabling legislation.

3 45. MPWMD Rules & Regulations include the requirement for a written permit from  
4 District to create or amend a Water Distribution System, including importation of water into or  
5 out of the District. An exemption from the requirement for a WDS permit may apply to certain  
6 situations as defined by MPWMD Rule 20. MPWMD Rule 21 includes procedures for  
7 evaluating permit applications, beginning with a Pre-Application review prior to submittal of a  
8 formal Application. More complex situations not eligible for a CEQA exemption must also file a  
9 Supplemental Questionnaire with environmental and other technical information. Applicants  
10 must submit an application package that includes estimated water demand and an assessment of  
11 hydrogeologic and environmental impacts associated with that demand, in a written report  
12 prepared by a qualified consultant. These documents are then evaluated by District staff and  
13 consultants. Permits for smaller projects are issued administratively by MPWMD staff with  
14 CEQA review. Applicants may appeal a staff decision to the Board and/or apply for variance to  
15 a District rule, based on specific criteria. Larger projects are considered by a staff hearing officer  
16 or the full MPWMD Board with public notice of the hearing.

17 46. Approval of an application must include a series of required findings and  
18 evidence, and show that minimum standards of approval have been met pursuant to Rules 22-B  
19 and C. There is a series of mandatory conditions of approval, including annual water production  
20 and connection limits, as defined in Rule 22-D. Permit conditions include required monitoring  
21 and reporting; staff assesses this information annually and provides notification if conditions are  
22 not being met. A formal step-wise notification and enforcement process is also included in the  
23 Rules & Regulations.

24 47. Since Summer 2006, a special protocol with more rigorous environmental and  
25 water rights review is followed if a well is located within the Carmel Valley Alluvial Aquifer  
26 (CVAA) within the jurisdiction of the SWRCB, even for single-family residential situations. A

1 formal protocol was adopted by the Board in October 2006 as provided in Exhibit MPWMD-  
2 HS15.

3 48. Since April 2001, when the District's Ordinance No. 96 became effective, a total  
4 of forty-three Water Distribution System permits have been issued (Exhibit MPWMD-HS16). A  
5 total of nearly fifty WDS applications or pre-applications, combined, are currently being  
6 processed (as of June 30, 2008). Projects are mostly single-family homes outside of the CVAA  
7 that cannot obtain CAW water. From April 2001 to date, eight WDS permits have been issued  
8 for wells within the CVAA totaling 150 AFY (one with an appropriative water right of 118  
9 AFY); the most recent permit was issued in August 2006 (Exhibit MPWMD-HS17). To date,  
10 34 written exemption requests have been granted District-wide pursuant to MPWMD Rule 22-C.  
11 About half were issued in year 2001, primarily for single-family homes with well construction  
12 permits issued by Monterey County in early 2001 before Ordinance No. 96 was adopted. Since  
13 then, nearly all exemption approvals have been for wells to replace or refurbish existing old or  
14 damaged wells. Rule 22-C-5 requires that the new well "must have substantially the same  
15 purpose and capacity of the structure replaced."

16 49. All CVAA applicants must demonstrate water rights to the satisfaction of  
17 MPWMD. To establish a claim of riparian rights, the District requires the applicant to submit a  
18 professional title search and copies of all deeds associated with each property transfer since the  
19 originating deed (often in the late 1800s or early 1900s), with water rights information  
20 highlighted. This package is then reviewed by District General Counsel and a letter of  
21 concurrence (or rejection) is issued. Without concurrence, the District would require the  
22 applicant to initiate a declaratory relief action to establish the validity of the claimed riparian  
23 water right. Appropriative rights holders must provide the District with evidence of a valid  
24 SWRCB water permit. SWRCB Domestic Registrations may be submitted for small qualifying  
25 systems.  
26

1           50.     Current applicants for new wells that would extract water from the CVAA are  
2 aware that an EIR is also required for CVAA projects, regardless of size, unless future water use  
3 can be shown to be less than or equal to historical diversions. The District, as lead agency,  
4 requires this level of CEQA analysis based upon the request of the California Department of Fish  
5 & Game (CDFG; see letter attached to **Exhibit MPWMD-HS15**). In cases where water use  
6 would not increase beyond the level established for historical diversions, the District shall  
7 consider a Mitigated Negative Declaration.

8  
9           I, Henrietta Stern, declare under penalty of perjury that I have read the foregoing  
10 “Testimony of Henrietta Stern” and know its contents. The matters stated in it are true of my  
11 knowledge except as to those matters which are stated on information and belief, and as to those  
12 matters I believe them to be true.

13           Executed on July 3, 2008, at Monterey, California.

14  
15           MONTEREY PENINSULA WATER  
16           MANAGEMENT DISTRICT

17           

18           By:     Henrietta Stern  
19                     Project Manager/Public  
20                     Information Representative

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