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BEFORE THE CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of:

**TESTIMONY OF MARK STILWELL
PEBBLE BEACH COMPANY**

**CALIFORNIA AMERICAN
WATER COMPANY CEASE AND
DESIST ORDER**

I, Mark Stilwell, provide the following prepared testimony under penalty of perjury in relation to the California State Water Resources Central Board ("State Water Board") hearing, Phase 1, to determine whether to adopt a draft Cease and Desist Order ("CDO") against California American Water ("Cal-Am") regarding its diversion of water from the Carmel River in Monterey County.

Q1. Please State Your Name And Position.

1. My name is Mark Stilwell. I am Executive Vice President and General Counsel for Pebble Beach Company.

Q2. Please Describe Your Responsibilities With Respect To The CAWD/PBCSD Wastewater Reclamation Project.

2. I am responsible for managing all aspects of Pebble Beach Company's involvement with the Carmel Area Wastewater District ("CAWD")/Pebble Beach Community Services District ("PBCSD") Wastewater Reclamation Project (the "Reclamation Project"). This includes planning, engineering, construction, operation, and financing of the Reclamation

1 Project. I sit as a member of the Management Committee for the Reclamation Project with
2 members of CAWD and the PBCSD, and, as such, am familiar with the issues regarding
3 construction, operation, and maintenance of the Reclamation Project. Inasmuch as Pebble Beach
4 Company is the guarantor of payment of the certificates of participation issued for the capital
5 costs of the Reclamation Project, and the guarantor of the operating expense deficiencies of the
6 Reclamation Project, I am intimately involved and familiar with the financial aspects of the
7 Reclamation Project.

8 **Q3. Please Describe The Function And Purpose Of The Reclamation Project.**

9 3. The Reclamation Project provides reclaimed water for irrigation of the golf
10 courses and certain other recreational open spaces located in the unincorporated Del Monte
11 Forest area of Monterey County. The golf courses and recreational open spaces include Pebble
12 Beach Golf Links, Cypress Point Club, Spyglass Hill Golf Course, the Links at Spanish Bay, the
13 Shore and Dunes Courses at Monterey Peninsula Country Club, Peter Hay Golf Course, Collins
14 Field, and the Robert Louis Stevenson School Athletic Fields. The Reclamation Project was
15 completed in September of 1994 and began delivering reclaimed water at that time for irrigation
16 in lieu of the potable water previously supplied by Cal Am for irrigation. Since that time, the
17 Reclamation Project has continuously to the present date delivered reclaimed water to the Del
18 Monte Forest golf courses and other open spaces for irrigation in lieu of potable water previously
19 used.

20 **Q4. Please Describe How The Reclamation Project Has Performed And What Its**
21 **Present And Future Expected Performance Is.**

22 4. The Reclamation Project was originally designed to deliver at least 800 acre feet
23 annually ("afa") of reclaimed water on average freeing up at least 800 afa of potable water
24 annually for other uses and for conservation. On completion of the original Reclamation Project,
25 however, it was discovered that the salinity of the reclaimed water stressed the golf courses,
26 requiring periodic flushing of the golf courses with potable water, and further that there was
27 insufficient storage capacity for the project to meet peak demand, also requiring supplementation
28 with potable water during peak demand periods. As a consequence, until 2006, the Reclamation

1 Project supplied an average of 681 afa of reclaimed water for irrigation, and required an average
2 of 287 afa of potable water supplementation to satisfy all irrigation demand, as shown and
3 calculated in Exhibit PBC-3.

4 5. Starting in water year 2005/2006, however, two improvements were instituted to
5 address each of these issues of the project performance. First, the Forest Lake Reservoir was
6 rehabilitated and completed, providing currently 325 acre-feet of reclaimed water storage. This
7 has rectified the storage problem during peak demand, thereby eliminating approximately half of
8 the potable water previously required for supplementation during peak demand. Second,
9 improvements to the Carmel Area Wastewater District Treatment Plant have been constructed
10 and are scheduled to be operational this year which will reduce the salinity of the reclaimed
11 water through the addition of desalinization facilities. The improvements will eliminate the
12 salinity problem and the requirement for potable water to flush the golf courses. Once the Forest
13 Lake Reservoir is filled with desalinized reclaimed water during the winter of 2008/09, the
14 Reclamation Project is expected to satisfy all of the irrigation needs of the golf courses and open
15 spaces in Del Monte Forest with no potable water supplementation required, thus conserving an
16 additional 285+ afa of potable water from the amount of potable water deliveries existing until
17 2006.

18 **Q5. Please Describe How The Reclamation Project Has Been Funded.**

19 6. The Reclamation Project was made possible only with the guarantee of financing
20 with private funds. Pebble Beach Company guaranteed \$33.9 million dollars in the capital costs
21 of the Reclamation Project, and has guaranteed net operating deficiencies of the Reclamation
22 Project. MPWMD issued \$33.9 million in Certificates of Participation in 1992, with Pebble
23 Beach Company guaranteeing payment of principal and interest on the Certificates of
24 Participation. To date, Pebble Beach Company had paid \$7.1 million in principal and 3.8 million
25 in interest on its guarantee. In return for its financial guarantees, Pebble Beach Company and
26 two other "fiscal sponsors" were granted a 380 afa "Water Entitlement" (365 afa to Pebble
27 Beach Company, 10 afa to J. Lohr Properties, and 5 afa to the Hester Hyde Griffin Trust),
28 representing a vested right to potable water granted by the Monterey Peninsula Water

1 Management District (“MPWMD”) for use on lands owned by Pebble Beach Company and the
2 other fiscal sponsors, pursuant to the Wastewater Reclamation Project Fiscal Sponsorship
3 Agreement between MPWMD and Pebble Beach Company dated as of October 3, 1989,
4 included as Exhibit PBC-4. The financing for the Reclamation Project, including the Water
5 Entitlement, was validated in a judicial action before the Superior Court of California. A copy of
6 the Judgment of Validation is included as Exhibit PBC-5.

7 7. In order to finance the recent improvements to the Reclamation Project (Forest
8 Lake Reservoir for additional storage and desalinization improvements at the Carmel Area
9 Wastewater District plant, which will collectively cost almost \$34 million, consisting of \$12.6
10 million for Forest Lake Reservoir and \$21 million for the Carmel Area Wastewater District
11 Treatment Plant improvements), Pebble Beach Company was authorized by MPWMD
12 Ordinance No. 109 to sell to other landowners in Del Monte Forest up to 175 acre feet of its 365
13 acre feet Water Entitlement for use by those landowners. Ordinance No. 109 was adopted by
14 MPWMD on May 27, 2004, and followed by an extensive set of agreements and amendments to
15 existing agreements for the Reclamation Project, such as the Supplemental Financing Agreement
16 included as Exhibit PBC-13. Sales of portions of the Water Entitlement have been made to
17 approximately 500 other landowners to date, totaling approximately 118 acre feet, and
18 generating approximately \$24 million of the \$34 million additional cost of the project
19 improvements. The balance of this cost of the second phase of the Reclamation Project will be
20 advanced by Pebble Beach Company.

21 **Q6. Please Describe How The Reclamation Project Has Helped Conserve Water From**
22 **The Carmel River.**

23 8. The Reclamation Project has been seen as a substantial contributor to water
24 conservation efforts and the reduction of withdrawals from the Carmel River system. To date the
25 Reclamation Project has delivered an average of 706 afa of reclaimed water for irrigation, saving
26 an equivalent amount of potable water within the Cal-Am system. Starting next year in 2009, the
27 Reclamation Project will supply 100% of the irrigation needs of the golf courses and recreational
28 open spaces, saving at least 800 afa of potable water and likely considerably more. Even at full

1 use of the 380 afa of the Water Entitlement, this will be a long-term savings of at least 420 acre
2 feet each year. And the savings are even greater in the near term because full use of the Water
3 Entitlement may take many years to occur; it is my understanding that only approximately 46 afa
4 of the Water Entitlement is currently actually being used according to MPWMD records.

5 9. The State Water Board has recognized the conservation contribution made by the
6 Reclamation Project, both in Footnote 2 of Order 95-10, a copy of which is included as Exhibit
7 PBC-6, and in the letters dated March 27, 1998, from Edward Anton, Chief, Division of Water
8 Rights to Darby Fuerst of MPWMD and Larry Foy of California American Water Company, and
9 dated October 18, 2001, to Edward A. Avila of MPWMD, copies of which are included as
10 Exhibits PBC-7 and PBC-8, and provide further explanation of the Reclamation Project. In
11 recognition of the efforts of the Pebble Beach Company and the holders of the Water
12 Entitlement, the State Water Board has permitted withdrawals from the Carmel River to fully
13 serve the Water Entitlement, over and above any limitations applicable to Cal Am.

14 **Q7. Please Describe the Coordination and Approvals Necessary to Implement the**
15 **Reclamation Project.**

16 10. The Reclamation Project was an extraordinarily complex project to put together,
17 requiring the participation and cooperation of many public agencies and private entities, backed
18 up complex ordinances, approvals, agreements, commitments, and financing. It required the
19 cooperation and agreements of MPWMD, CAWD, PBCSD, PBC, Cal-Am, the City of Carmel
20 and others, approvals from the California Coastal Commission, Monterey County, the Regional
21 Water Quality Control Board, and others, and a complex set of financing agreements and
22 approvals. The principal agreements related to initial implementation of the Reclamation Project
23 are included as Exhibits PBC-4 and PBC-9 to PBC-12; there were many more that have not been
24 included. The principal agreements for the improvements to the Reclamation Project
25 commenced in 2005 (as described above) are included as Exhibits PBC-13 to PBC-15 (it should
26 be noted that the Agreements for Sale of the Reclaimed Water included as Exhibits PBC-11 and
27 PBC-15 are prototypical agreements which were signed by all Del Monte Forest golf course
28 owners and open space users). Exhibit PBC-16 is a partial list of the governmental approvals

1 required for the project. Exhibit PBC-17 is a copy of the Transcript Index listing all documents
2 required just for the amendments to the financing documents to implement the project
3 improvements in 2004/2005.

4 The Reclamation Project is, in my opinion, a remarkable achievement, a great benefit to
5 the community, and one which Pebble Beach Company is very proud of and committed to.

6 I declare under penalty of perjury that the foregoing is true and correct, except as to those
7 matters stated on my information and belief, and as to those matters I believe them to be true.

8 Executed this 9th day of July 2008 at Monterey, California.

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10 Mark Stilwell

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