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June 29, 2018

**BY OVERNIGHT DELIVERY**

Ms. Eileen Sobeck  
Executive Director  
State Water Resources Control Board  
1001 "I" Street  
Sacramento, CA 95814

Re: May 9, 2018 Petition to Modify Board Resolution 2016-0040

Dear Ms. Sobeck:

I write on behalf of this firm's client, the Marina Coast Water District ("MCWD") to address certain matters raised in a letter sent to you dated June 7, 2018 by Robert Donlan on behalf of the California-American Water Company ("Cal-Am"). Mr. Donlan's letter provided Cal-Am's response to the above-captioned Petition, which seeks modification of Resolution 2016-0040 to include a parallel set of milestones for Cal-Am's compliance with the requirements of the Board's operative Cease and Desist Order ("CDO") with respect to the Carmel River. MCWD is one of the ten petitioners in the above-captioned matter. Mr. Donlan's letter of June 7, 2018 first came to our client's attention by way of its attachment to a filing that was presented by Cal-Am to the California Public Utilities Commission ("CPUC") on June 19, 2018. His letter states that Cal-Am was not served with the Petition; however, Cal-Am and other interested parties were served with a report by the Planning and Conservation League Foundation to the CPUC, which attached a copy of the Petition, on May 9, 2018, the same day the Petition was filed.

As far as MCWD can discern, Cal-Am's letter is driven in large part by an unfounded fear that Cal-Am would somehow be "prejudiced" in its ability to effectively report on CDO compliance efforts if the Board were to accept the May 9, 2018 Petition for consideration, on the ground that the Board's acceptance of the Petition would bar *ex parte* communication concerning matters raised in the Petition. As far as MCWD is aware, Cal-Am's ongoing periodic public reports of its CDO compliance would not constitute "ex parte" communications in a new petition proceeding to consider alternate CDO compliance



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milestones.<sup>1</sup> Nor should the Board's consideration of the new Petition in any way impede Cal-Am's continued ability to comply with the existing requirements of the operative CDO.

Besides mischaracterizing the Petition, which speaks for itself and which does *not* seek to delay or influence the CPUC's processes in any way, Mr. Donlan's letter [at the top of page 2] admits that:

... Cal-Am does not oppose the concept of adding parallel milestones to the Amended CDO tied to alternative water supply projects that, like the MPWSP, are designed to reliably meet the near- and long-term water demands on the Monterey Peninsula.

Mr. Donlan's letter then rejects the proposal for an expanded Pure Water Monterey ("PWM") project, based solely upon Cal-Am's continued misrepresentation of its actual water demand. His letter argues that an expanded PWM project cannot bridge the gap between Cal-Am's legal supply and its severely inflated water demand numbers. As discussed below, and based upon evidence already received in the CPUC proceeding record, the expansion of PWM coupled with the PWM project currently under construction and Cal-Am's other post-December 31, 2021 water sources will reliably meet the near- and long-term water demands on the Monterey Peninsula.

As to demand and supply issues, the June 7th letter, similar to Cal-Am's arguments to the CPUC, proceeds on the false premise that maximum monthly water demand should drive demand estimates for Cal-Am's Monterey District.<sup>2</sup> Thus, the letter perpetuates the false assumption that a total supply of 14,275 acre-feet per year ("AFY") must be secured by Cal-Am, which would include Cal-Am's proposed desalination project. (June 7, 2018 letter, pp. 3-4 and fn. 7.) However, Cal-Am's actual monthly and annual demand data reveal a system demand of approximately 9,500 AFY.<sup>3</sup> Cal-Am's contention that its system would

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<sup>1</sup> Indeed, Cal-Am's response to the May 9, 2018 petition could itself be considered an impermissible *ex parte* communication, due to Cal-Am's apparent failure to promptly provide its response to seven of the ten petitioners (MCWD, Monterey One Water, LandWatch Monterey County, the Sierra Club, Citizens for Just Water, the Public Trust Alliance ("PTA") and Public Water Now ("PWN")). (See June 7, 2018 response letter, pp. 6-7.) As noted above, MCWD did not receive Mr. Donlan's letter until it was attached to a CPUC filing, twelve days after it was initially transmitted.

<sup>2</sup> *But see* Cal. Code Regs., tit. 22, § 64554, subds. (a), (b) (maximum monthly demand is to be utilized by systems that do not have daily demand data available, for purposes of calculating estimated peak hourly demand and sufficiency of supply sources).

<sup>3</sup> See <https://www.watersupplyproject.org/system-delivery>.



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experience a shortfall in supply if its desalination project is not approved, especially in years when no Aquifer Storage and Recovery (“ASR”) supply is available, is not supported by its own data. The argument that there would be a shortfall of as much as 4,281 AFY – apparently based on assumed sources of supply other than ASR and desalination that total 9,994 AFY – is still premised on the false assumption that 14,275 AFY constitutes its customers’ actual demand volume. (June 7, 2018 letter, pp. 3-4.<sup>4</sup>)

In other words, Cal-Am is asking the Board to discount the validity and utility of parallel milestones for expansion of the PWM project based on the false claim that its annual demand is 14,275 AFY, which is over fifty percent higher than its Monterey District’s current average annual demand as revealed by its own data. ( $9,500 \times 1.50 = 14,250$ .)<sup>5</sup> Cal-Am’s argument that it cannot satisfy its near- and long-term demand with available legal supply or even with an expanded PWM project is ironic, given its representations to the CPUC in its ratemaking proceedings that rate restructuring is required to offset a steep and likely permanent decline in customer demand over recent years. The Board and the CPUC should look to the past five years of uncontested updated monthly demand data as provided by Cal-Am itself for the most accurate picture of monthly and annual demand in Cal-Am’s Monterey District.<sup>6</sup> The propriety of this approach is strongly reinforced by the recent enactment of Senate Bill No. 606 and Assembly Bill No. 1668, Water Management Planning, as well as the Governor’s Executive Orders B-40-17 (April 7, 2018) and B-37-16 (May 9, 2016), making conservation a permanent policy in California.

Moreover, Mr. Donlan’s June 7, 2018 letter asserts that the Petition does not establish that Petitioners are in any way aggrieved, so as to require the Board’s intervention. (June 7, 2018 letter, p. 4.) The letter asserts that the possibility of delay in CDO compliance raised in the Petition would simply be a self-perpetuating condition that is insufficient to support review by the Board. (*Ibid.*) To the contrary, several of the Petitioners long ago

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<sup>4</sup> The first page of Revised Att. A to the June 7, 2018 letter incorrectly sums the monthly volume of certain non-ASR, non-desalination sources at 552 acre-feet instead of 834 acre-feet ( $834 \times 12 = 9,994$ ).

<sup>5</sup> Cal-Am’s chart showing purported insufficient supply in summer months reflects demand at 14,275 AFY “long-term” and apparent present “system” demand at 12,270 AFY, a figure which is still inflated by nearly 30% beyond actual average annual system demand of 9,500 AFY. (June 7, 2018 letter, second page of Revised Att. A.) Cal-Am could have instead provided the Board with an accurate demand vs. supply analysis that utilizes its actual monthly demand numbers from recent years, available at <https://www.watersupplyproject.org/system-delivery>. Under such a scenario, even in a very dry winter without any Carmel River ASR and without any desalination supply, it appears there would still be sufficient winter surplus for ASR storage to provide adequate supply in higher-demand summer months.

<sup>6</sup> See <https://www.watersupplyproject.org/system-delivery>.



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demonstrated their aggrieved status due to Cal-Am's decades of illegal withdrawals from the Carmel River, and they have been advocating before the Board in that regard for many years. (See Order WR 95-10, pp. 7-8 (complaints of Sierra Club and Monterey Peninsula Water Management District ("MPWMD")); Order WR 2009-0060, p. 4 (intervening parties include MPWMD, Planning and Conservation League Foundation ("PCLF"), PTA, Sierra Club).) Additionally, other petitioners are necessarily interested in Cal-Am's successful CDO compliance as evidenced by their participation in recent proceedings modifying the CDO. (Order WR 2016-016, p. 13 (Sierra Club and PCLF commenting) and p. 6 (link to record, which includes comments from MCWD, PCLF, Sierra Club, MPWMD, Monterey Peninsula Regional Water Authority, PTA and PWN).) Accordingly, most of the current Petitioners are aggrieved by any further delay in Cal-Am's compliance with the Board's operative Carmel River CDO, which Cal-Am asserts could arise from delay or denial of Cal-Am's request for a Certificate of Public Convenience and Necessity from the CPUC for its proposed desalination project. Therefore, Petitioners' grievances could be fully addressed by implementation of the parallel milestones suggested in the Petition, which would provide Cal-Am, the CPUC and the parties to the CPUC proceeding an opportunity to address the proposed expansion of the PWM project.

Not only would the expansion of PWM meet the near- *and* long-term water demands on the Monterey Peninsula, the capital costs for expanded PWM (Scenario B) would be about 25% of the capital costs for Cal-Am's desalination project, the expanded PWM's annual operating costs and greenhouse gas emissions would be substantially less mainly due to less electricity demand, adverse impacts to the City of Marina's beaches and to MCWD's groundwater supplies would be eliminated, and treated sewage effluent that is now being discharged to the Monterey Bay National Marine Sanctuary would be diverted for beneficial use.

The Board's Order WR 2016-016 and Resolution 2016-0040 extended the operative CDO deadline from December 31, 2016 to December 31, 2021 and provided interim compliance milestones for Cal-Am. (See Order WR 2016-016, p. 19.) Now, the Petitioners have suggested reasonable parallel milestones for Cal-Am to avoid missed MPWSP milestones for the final three years of the extended period to achieve full CDO compliance and to meet the new CDO deadline. The Petition is offered as a viable parallel path for compliance with the CDO, not for purposes of interfering with or influencing the CPUC's decisionmaking processes or procedures. In MCWD's view, this viable parallel path, should be explored by the Board, and it would be beneficial to Cal-Am and the Petitioners alike, as well as for Carmel River habitat and species, including steelhead.



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Sincerely,



Mark Fogelman

cc (via U.S. Mail):

Felicia Marcus,

Chair of the Board

Steven Moore, Vice Chair of the Board

Tam M. Doduc, Board Member

Dorene D'Adamo, Board Member

E. Joaquin Esquivel, Board Member

Michael A.M. Lauffer,

Board Chief Counsel

Steven Westhoff, Board Counsel

Eric Oppenheimer, Chief Deputy Director

Erik Ekdahl, Deputy Director

Robert Donlan

Richard Svindland

Sarah Leeper

Kathryn Horning

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Russell McGlothlin

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