

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California
American Water Company (U210W) for
Approval of the Monterey Peninsula Water
Supply Project and Authorization to Recover
All Present and Future Costs in Rates

Application A.12-04-019
(Filed April 23, 2012)

**Surfrider Foundation and LandWatch Monterey County's
Comments on Proposed Decision**

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I. Introduction

The Proposed Decision in this proceeding would grant a Certificate of Public Convenience and Necessity (“CPCN”) to the Monterey Peninsula Water Supply Project as proposed by the applicant, California-American Water Company. The Monterey Peninsula faces real water-supply challenges. In allowing the Monterey Peninsula Water Supply Project’s desalination plant to go forward, however, the Proposed Decision (“PD”) would impose on the Peninsula, its environment, and the ratepayers, a project that would cause more problems than it solves. Other solutions, more carefully tailored to the Peninsula’s needs, are available to this Commission. The PD disregards these more effective water-supply solutions because it accepts the applicant’s claims regarding how much water the Peninsula needs and how much water is available. In doing so, the PD misapplies the applicant’s burden of proof and misapprehends the factual record.

Intervenors broadly acknowledge that some form of MPWSP is needed. Pursuant to the 2013 Comprehensive Settlement Agreement, LandWatch Monterey County (“LandWatch”) and the Surfrider Foundation (“Surfrider”) have agreed that desalination may be a part of the supply portfolio. Contrary to the PD, however, the facts in the record show that the Commission’s approval of the desalination facility should be conditioned on demonstrated necessity. The desalination plant should be approved only if the Commission determines that the Pure Water Monterey groundwater replenishment project will not meet the region’s needs.

II. The PD Erroneously Accepts the Applicant’s Overestimate of Future Water Demand.

For nearly four years, demand in California-American Water’s Monterey service area has hovered around 9,500 acre-feet per year (afy). The PD would grant a CPCN based on a conclusion that the Monterey service area will require roughly 50% more water, or 14,000 afy, at some undetermined point in the future.¹ This conclusion simply accepts California-American Water’s (“Cal-Am”) demand estimates. Cal-Am, however, has not proved that these estimates are reasonable. Other parties, by contrast, have offered the Commission much lower demand estimates with real evidentiary support.

The PD correctly states that the applicant bears the burden of “affirmatively establishing the reasonableness of its projections of supply and demand.”² But it repeatedly fails to apply that principal. The PD instead accepts Cal-Am’s assertions of supply and demand regardless of whether credible or admissible evidence underlies these conclusions. At the same time, the PD places the burden on intervenors by using the applicant’s unsupported assertions as a baseline and requiring intervenors to prove that applicant is wrong. If intervenors’ arguments do not “reduce” Cal-Am’s projections, the PD reasons that Cal-Am’s conclusions should carry the day.³

This is legal error. Intervenors have set out to prove other estimates of supply and demand, but only Cal-Am has an affirmative burden. If Cal-Am cannot show by a

¹ PD at 39, 42.

² PD at 19 fn 29, citing *In the Matter of the Application of California Water Company* (2003) D.03-09-021, at 17.

³ E.g., PD at 28 (“Monterey Peninsula Water Management District argues to reduce the hospitality industry economic recovery addition . . .”), 30 (“Surfrider recommends reducing the additional demand allocated to Pebble Beach . . .”).

preponderance of the evidence that its supply and demand projections are reasonable, then the Commission cannot grant the requested CPCN, regardless of whether other parties have proved their alternative projections.

As explained further in Surfrider and LandWatch's respective briefs and in these comments, Cal-Am has not carried its burden. The PD erred on the facts and the law in granting the CPCN.

The parties generally agree that the Commission should take action to address the water needs on the Monterey Peninsula. In the absence of evidence establishing the reasonableness of Cal-Am's estimates of supply and demand, the PD should have looked to other, competent evidence in the record. This evidence shows that future demand will be much lower than Cal-Am claims. It further shows that the appropriate response to the Peninsula's water needs is a conditional CPCN, granting the applicant authority to move forward with MPWSP only if Pure Water Monterey, a superior source, proves inadequate.

A. By Erroneously Accepting Cal-Am's Estimate, the PD Overstates Demand in Every Category.

The PD's demand projection is built of four components of estimated demand: existing customers (12,000 afy), new connections to "lots of record" (1,180 afy), demand from Pebble Beach development (325 afy), and tourism bounce back (500 afy).⁴ None of the PD's demand projections is supported by the preponderance of evidence.

⁴ PD at 50.

1. Future Demand From Existing Customers

a. Cal-Am's Unsupported Estimate.

Cal-Am estimates that today's existing customers will use 30% more water in 2021 than they did just five years prior. In 2016, the last year for which the record contains complete data customers used 9,285 acre-feet,⁵ and Cal-Am estimates that this same customer base—not including any new connections—will use roughly 12,000 acre-feet just 3 years from now.⁶ This is an astonishing assertion, which the PD accepts.⁷ According to Cal-Am and the PD, the people and businesses of the Monterey Peninsula will discard years of conservation and cost savings in favor of profligacy and waste.

Initially, Cal-Am includes in its calculation of *existing* customer demand the potential for substantial *future growth* in demand. The PD recognizes that using a baseline 12,000 afy demand number would allow for an increase in tourism activity and general growth on the Monterey Peninsula.⁸ In the PD's calculation, the 12,000 afy intended for existing customers also includes new customers that development and tourism growth have produced. At the same time, the PD embraces Cal-Am's addition of further growth categories for growth in the tourism industry and for development—i.e., new customers-- on top of demand from existing customers. The PD counts the same growth twice, substantially overestimating demand from existing customers.⁹

⁵ SF-12 at 4 (Minton); *see also* <https://www.watersupplyproject.org/system-delivery>.

⁶ CA-51 at 9 (Crooks).

⁷ PD at 152.

⁸ PD at 44-45.

⁹ Demand has been less than 12,000 afy for nearly seven years. *See* CA-51 (Crooks) at 9; <https://www.watersupplyproject.org/system-delivery>.

Moreover, the PD fails to apply the standard of proof with regard to Cal-Am's method of estimating demand growth from existing customers. Cal-Am created two annual averages using two different methods, and then averaged those two averages.¹⁰ The PD justifies this method without explaining how evidence in the record supports its reasonableness:

While the averaging of the two methods used by Cal-Am to project demand for existing customers is somewhat complicated, the Commission finds that both methods provide reasonable results and that the average is a reasonable figure to use for forecasting demand for existing customers. Cal-Am has met its burden of proof in that its forecast of demand, when weighed with those opposed to it, has more convincing force and the greater probability of truth. Cal-Am appropriately considers the maximum demand year, 2012, closest to the anticipated in-service year of 2021. It also considered the Urban Water Management Plan projection methods to forecast water use reduction targets. Both methods have merit given how water use fluctuates over the course of a day, month, season, and year.¹¹

The record does not show that this method is a reasonable way to project how much water existing customers will use in the future. The evidence, rather, shows that this method is unprecedented and unsupported. Testimony from water professionals unaffiliated with the applicant shows that using a simple shorter-term average captures actual use and trends.¹²

¹⁰ CA-51 (Crooks) at 11-13.

¹¹ PD at 43.

¹² SF-12 at 1-2, 9 (Minton) (water planning expert testifying that he had "never encountered a averaging approach to generate demand projections").

In contrast, the PD places the burden of proof on intervenors, asking for a “robust showing” in support of each intervenor’s methodology where no such showing is demanded of Cal-Am.¹³ But it is Cal-Am that must show that the evidence for its method outweighs the countervailing evidence. Other than Cal-Am’s own assertions, there is no evidence supporting the effectiveness or reasonableness of Cal-Am’s average-of-averages. The PD errs in accepting that method’s results.

Cal-Am’s method obscures the effects of recent increases in conservation. Cal-Am believes, and the PD accepts, that customers will soon start using more water than they have in recent years. This is contrary to the evidence. Many conservation measures are permanent, and water rates will rise as Cal-Am passes the costs of the MPWSP to ratepayers.¹⁴

These uncontested facts support continued low demand. Against these facts, Cal-Am offers nothing. The applicant has not carried its burden and the PD therefore errs in accepting its demand projections as reasonable.

b. Intervenor’s Reasonable Estimate.

By contrast, Surfrider’s proposal that future demand should be estimated with the average of the most recent five years is proper because, as MPWMD’s General Manager David Stoldt concluded, use of older demand data would not reflect the effect of “systematic implementation of the District’s permanent conservation measures, coupled

¹³ PD at 52.

¹⁴ See SF-15 (Monterey Peninsula Water Management District graphic depicting declining demand and thirteen separate conservation programs that created permanent conservation in the last two decades); see also Section II.A.1.b immediately below.

with steep increases in customer water bills.”¹⁵ Those conservation measures are permanent and additional measures are planned.¹⁶ Contrary to the PD’s suggestion,¹⁷ the five-year average is not artificially depressed by the drought, because neither 2016 nor 2017 were drought years, and these years were still the lowest demand years in the record.¹⁸

The trend of diminishing annual demand also reflects the increased price of water. Substantial water price increases for the Peninsula have in fact been correlated with decreased demand.¹⁹ Notably, water prices will further increase substantially with the construction of the desalination facility.²⁰

The PD persistently fails to recognize that water on the Peninsula will be vastly more, not less, expensive if the MPWSP is built as proposed. Regardless of any changes to rate structures, water rates will increase.²¹ Thus, Cal-Am’s proposal to change its tiers and thus reduce the pressure to conserve (i.e., encourage customers to waste more water) cannot work. Water rates are going to increase as the huge cost of the desalination plant is passed on to ratepayers. The pressure to conserve will only increase. This simple fact contradicts the PD’s finding that existing customers will soon begin to use more water,

¹⁵ WD-15 (Stoldt) at 10.

¹⁶ WD-15 (Stoldt) at 9; Reporter’s Transcript Volume 24 (“24 RT”) at 4160:5-4161:8; 4162:1-6 (describing conservation measures); SF-15 (listing conservation measures).

¹⁷ PD at 43.

¹⁸ SF-12 (Minton) at 9-10; WD-12 (Stoldt) at 10.

¹⁹ MNA-2 (House) at 3-6; WD-15 (Stoldt) at 9.

²⁰ The MPWSP’s extreme cost is projected to increase average water bills by 75% above current levels (which are already among the highest in the country). MNA-2 at 5-6 (House).

²¹ *Id.*

thus reversing their years of conservation.²² Moreover, endorsing Cal-Am’s undefined proposal to revise rates at some point in the future so that they no longer encourage conservation would contradict this Commission’s “long-standing policy supporting reduced water consumption” through conservation.²³

2. Lots of Record

a. Cal-Am’s Unsupported Estimate.

The PD fails to hold Cal-Am to its burden regarding future demand from lots of record (essentially, undeveloped properties that Cal-Am is obligated to provide with water service if they are developed in the future). Cal-Am asserts that these lots will generate 1,180 afy in demand.²⁴ The PD accepts this assertion, finding that “the assumptions Cal-Am has made for development of the lots of record . . . are reasonable because growth will occur [and] development is halted pending adequate water. . . .”²⁵ The only evidence in the record supporting these assumptions are oral testimony and a document, each describing the results of a previous study.²⁶ As ALJ Minkin noted, the document that purportedly establishes the demand from lots of record is not in evidence.²⁷

²² PD at 44.

²³ D.09-07-021 at 17; *see also* D.16-12-003 at 42, fn. 48 (Commission declining to adopt a proposal for Monterey rates that “may reduce the conservation signal in price-based volumetric rates”).

²⁴ PD at 24 fn.40, citing Exhibit CA-51 at 10-14.

²⁵ PD at 45.

²⁶ 13 RT at 2172:7-13 (WD, Stoldt); Exhibit WD-3.

²⁷ 13 RT at 2171:22-27.

The applicant's projection of demand from lots of record thus rests solely on hearsay: it is "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated."²⁸ As a matter of law, such hearsay cannot carry an applicant's burden before this Commission.²⁹ The Court of Appeal has held that hearsay "cannot be the basis for an evidentiary finding without corroboration where the truth of the out-of-court statements is at issue."³⁰ The record includes no independent corroboration of the demand from lots of record, only repetition of the hearsay.

The PD makes an error of law when it credits Cal-Am's estimate of demand from lots of record.

b. Intervenor's Reasonable Estimate

Because its claim rests entirely on hearsay, Cal-Am has failed to establish *any* demand from lots of record. Surfrider acknowledges that some portion of these lots are in fact likely to be developed and require water service in the future. Actual testimony in this proceeding demonstrates that Cal-Am's hearsay projection of demand, even if it were properly before the Commission, is an overestimate, primarily because many of the lots have already been developed during the 14 years between the compilation of the lot-of-

²⁸ Evid. Code § 1200(a).

²⁹ *Utility Reform Network v. Public Utilities Commission* (2014) 223 Cal.App.4th 945, 960-62.

³⁰ *Id.* (quoting *Investigation on the Commission's Own Motion Into the Fitness of the Officers, Directors, Owners and Affiliates of Clear World Communications Corporation*, D.05-06-033 at 53, 2005 Cal. P.U.C. Lexis 221 at *81; see also *Re Communication TeleSystems Internat.* (1996) 66 Cal.P.U.C.2d 286, 292 fn. 8 (hearsay "may not be solely relied upon to support a finding").

record data and the imposition of the present building moratorium.³¹ These lots are already using water. Their demand is included in the current-customer demand and should not be added to future growth. Moreover, uncontested testimony established that current water-use rates are much lower than those purportedly used to develop Cal-Am's lots of record projection.³² As explained in Surfrider's Phase 1 Opening Brief, 350 afy is a reasonable projection of demand from future customers outside Pebble Beach and includes a substantial buffer against uncertainty. Unlike the 1,180 afy estimate that the PD erroneously accepts, the figure is based on testimony and evidence that was available to the parties to the proceeding and subject to cross-examination.³³ As a matter of law, such evidence carries more weight than the applicant's hearsay.

3. Pebble Beach

Uncontested evidence establishes that Cal-Am's allocation of 325 afy to growth in Pebble Beach double counts lots of record³⁴ and goes beyond what Pebble Beach itself expects to use.³⁵ The PD offers no explanation of how Cal-Am could carry its burden in the face of this evidence. In fact, the PD inappropriately places the burden on intervenors, demanding of them "credible, reliable, and persuasive evidence that double counting

³¹ 24 RT at 4164:23-4166:3, 168:21-4169:9 (WD, Stoldt); SF-17; *see also* Surfrider Foundation's Phase 1 Opening Brief at 16-18.

³² 24 RT at 4166:28-4168:19 (WD, Stoldt) ("Q So in sum, does that mean that any new service connection for a lot of record would require less water today than it was assumed in the 1998 to 2002 study? A Yes, likely.").

³³ *See* Surfrider Foundation's Phase 1 Opening Brief at 19-21 (350 afy growth through 2035 is based on doubling the historic rate of demand growth prior to the moratorium as identified by MPWMD).

³⁴ 24 RT at 4191:21-23 ("Pebble Beach build-out will occur primarily on already existing legal lots of record"), 4206:11-20 (WD, Stoldt).

³⁵ WD-15 (Stoldt) at 13 (2012 Pebble Beach EIR "envisioned only 147 AFY of water needs and includes some facilities unlikely to be built in a decade or more, if at all")

between the lots of records and Pebble Beach allocations has occurred.”³⁶ Cal-Am must affirmatively prove that its estimates are reasonable. Repeating its estimates over the years of this proceeding is not a substitute for providing actual evidence.³⁷ Cal-Am has not carried its burden of proof and the PD errs in holding otherwise.

4. Tourism Bounceback

The only evidence in the record supporting Cal-Am’s “tourism bounceback” estimate of 500 afy is (1) a hearsay assertion in a consultant report that “[r]ecent discussions in the region indicate that . . . tourism demand will increase approximately 500 AF” and (2) the bare assertion that the hospitality industry needs 500 afy, from a witness who knew neither the hospitality industry’s current water use, nor its pre-recession water use.³⁸ Again, this evidence cannot carry Cal-Am’s burden to establish the reasonableness of its demand estimates.

The PD’s finding is largely based on the idea that the MPWSP would end or reduce conservation, leaving the tourism sector free to be profligate with water: “there is additional water demand that the hospitality industry will require when mandatory conservation measures are removed.”³⁹ Even if this were a reasonable approach to water use, it is contrary to basic economics. When Cal-Am passes the costs of the MPWSP to ratepayers, including the tourism industry, rates will go up. The market will govern

³⁶ PD at 56.

³⁷ *Cf.* PD at 45 (“Over the course of this proceeding Cal-Am maintained its projections . . .”).

³⁸ 23 RT at 3398:21-3899:13 (CPB, Narigi).

³⁹ PD at 58.

demand response to increased cost; there is no evidence in the record that the hospitality industry will respond by using more water.

Moreover, with regard to post-recession increases in water use, credible evidence shows that the industry has already substantially recovered. The Draft EIR/EIS states that the Peninsula's occupancy tax receipts are now higher than they were in 2008.⁴⁰ Other evidence shows that County-level visitor-spending is at an all-time high.⁴¹ The PD thus erred in determining the preponderance of the evidence supported the reasonableness of Cal-Am's projection. In fact, no credible evidence supports the applicant and serious evidence contradicts it.

III. The PD's Discussion of Maximum-Day and -Month Demand Is Irrelevant to the Demand Issue and Contrary to the Weight of the Evidence.

Like Cal-Am and the parties, the PD's demand discussion mainly focuses on annual water demand requirements. In places, however, the PD suggests that a 6.4 million gallon per day (mgd) desalination plant is necessary to meet maximum-day and -month demand in the Monterey district.⁴² The record before the Commission does not support this conclusion.

First, as early as 2013, Cal-Am *admitted* that maximum-day demand was irrelevant to sizing the MPWSP because Cal-Am's existing water assets were more-than-sufficient to meet foreseeable maximum-day demand:

⁴⁰ DEIR/EIS at 6-16.

⁴¹ MNA-2 (House) at 10-11.

⁴² PD at 47, 50-51, 58, 63.

[M]aximum daily [de]mand I'm not as worried about. And the main reason is we have all these assets now that have been able to meet maximum daily demands. When we build the new desal plant, they don't go away. They are still there. Can I pump from the Carmel River to meet maximum day? Yes. I probably won't have any impact. Can I pump from the Seaside Basin one day for maximum day demand? Yes. We have system storage. We have -- in the main part of the system right now we have 15 million gallons of storage. . . . *We have never been worried about maximum day demands.*⁴³

The record is devoid of evidence supporting the PD's apparent conclusion that Cal-Am's existing water assets can no longer satisfy maximum-day demand. In fact, since 2013 Cal-Am has added another 3.1 mgd (3,500 afy) to its supply portfolio from the Pure Water Monterey project⁴⁴ while customer demand has dropped nearly 20 percent.⁴⁵ This record completely contradicts the PD's suggestion that the MPWSP is needed to meet maximum-day demands.

Second, the record also undercuts any conclusion that the MPWSP is necessary to satisfy present or future maximum-month demand. Cal-Am is already able to moderate variability in winter and summer supply and demand by using the Seaside Basin aquifer, which has roughly *50,000 acre feet* of storage capacity.⁴⁶ Because the majority of Cal-Am's water sources (the Carmel River, ASR,) reach peak production during the winter months, Cal-Am uses the Seaside Basin aquifer to hold excess winter supplies to deliver

⁴³ 13 RT at 2093:1-2094:6 (CA, Svindland) (emphasis added).

⁴⁴ See D.16-09-021.

⁴⁵ SF-12 at 4 (Minton); see also <https://www.watersupplyproject.org/system-delivery> (containing most recent customer demand numbers).

⁴⁶ 24 RT at 4187:5-9 (WD, Stoldt).

during peak months.⁴⁷ These aquifer reserves allow Cal-Am to meet maximum month demands regardless of the season that the water is produced.⁴⁸

Recently-approved capital expenditures and Cal-Am's existing water rights further increase Cal-Am's ability to meet peak month demand. When the Pure Water Monterey project becomes operational next year, its water supply and new pump stations will only increase Cal-Am's aquifer storage capacity. The project will create a multi-month water reserve in the aquifer before Cal-Am begins withdrawing water for customers' use.⁴⁹ And even if its Seaside Basin aquifer stores run low, Cal-Am's water rights on the Carmel River allow increased withdrawals to meet peak month demand.⁵⁰

Moreover, using any multi-year demand average to size Cal-Am's water supply automatically overestimates demand and furthers Cal-Am's ability to meet maximum-month demand. For this reason, Cal-Am has understandably conceded that even a "five-year average allowed us to make the plant meet the maximum month demand."⁵¹

In sum, the record cannot support a finding that maximum-day or maximum-month demands require a desalination plant of any particular size, much less Cal-Am's proposed 6.4 mgd facility.

⁴⁷ See D.16-09-021 at 3, fn. 1 ("The Monterey ASR project involves the injection of excess Carmel River water into the Seaside Groundwater Basin for later extraction and use. Future water sources for ASR may include the Pure Water Monterey Groundwater Replenishment Project and a desalination plant.").

⁴⁸ 24 RT at 4181:24-4182:16 (WD, Stoldt).

⁴⁹ 16 RT at 2653:14-28 (WD, Stoldt); *see also* 24 RT at 4182:27-4183:3 ("one of the [operating] regimes . . . is to try to bank the Pure Water Monterey water from the winter months so it's more available in the summer months to reduce pumping on the river.") (WD, Stoldt).

⁵⁰ 24 RT at 4181:12-18 (WD, Stoldt).

⁵¹ 13 RT at 3086:19-22 (CA, Svindland).

IV. The PD Failed to Acknowledge the Clear Advantages of Pure Water Monterey Expansion.

A. An additional supply of 2,250 afy from Pure Water Monterey would meet foreseeable demand through at least 2035.

As the PD acknowledges, there is a consensus that there is already a supply of 9,044 afy available to meet the terms of the CDO.⁵² This includes the 3,500 afy supply from the Pure Water Monterey facility approved in the Phase 2 proceedings. The executive director of Monterey One Water (the project's sponsor, formerly the Monterey Peninsula Pollution Control Agency) testified that it is feasible to expand the Pure Water Monterey facility to supply an additional 2,550 afy water by the end of 2020.⁵³ The existing 9,044 supply plus this 2,250 afy expansion would provide 11,294 afy, well in excess of the foreseeable demand of 10,635 through 2035.⁵⁴ Satisfying demand through 2035 would take care of at least half of the estimated 20-30 year life of the proposed desalination plant.⁵⁵ And if demand continued to grow at historic rates from 2035 to 2050, it would still not exceed the available supply by 2050, i.e., through the proposed life of the MPWSP. The proposed Pure Water Monterey expansion would make the desalination plant unnecessary.

⁵² PD at 32.

⁵³ 26 RT at 4651:21-24 (PCA. Sciuto); PCA-7 (Sciuto).

⁵⁴ Foreseeable demand of 10,635 afy represents the sum of future demand for existing customers (10,085 afy, based on average use from the most recent 5 years of data), plus 200 afy for Pebble Beach (rounding up the 147 afy identified as foreseeable demand in the Pebble Beach EIR), plus 350 afy for growth in lots of record (based on doubling historic rate of growth prior to moratorium). *See* Surfrider Foundation's Phase 1 Opening Brief at 21.

⁵⁵ PD at 134 (estimated life of project).

B. Water from the proposed 6.4 mgd desalination project would be at least twice as expensive as water from a Pure Water Monterey expansion.

The cost for the proposed desalination facility has escalated materially over the course of these proceedings. For example, the cost cap in the 2013 Comprehensive Settlement Agreement for the 6.4 mgd facility and the Cal-Am-only facilities totaled \$295 million.⁵⁶ The proposed cost cap on these facilities is now \$329 million.⁵⁷ Cal-Am now estimates the price per acre-foot for water delivered under the 6.4 mgd scenario would be from \$4,265 to \$4,472.⁵⁸ The cost per acre-foot is likely to be much higher if return water estimates are incorrect or if demand is less than Cal-Am has predicted.⁵⁹ Even if Cal-Am assumes some of the risk of price increases, the projected price per acre-foot of \$4,265 to \$4,472 is more than twice the \$1,858 estimated cost per acre-foot for water from a Pure Water Monterey expansion.⁶⁰

C. The desalination facility presents substantial and unique risks, some of which the PD does not address.

In addition to the risk that the price of water would exceed projections, the desalination project is fraught with other risks. There is a substantial risk that demand sufficient to justify the extraordinary fixed costs of the desalination facility would not

⁵⁶ Comprehensive Settlement Agreement at 11, 13; There have been other material changes to the project since the Comprehensive Settlement Agreement, which, as ORA argues, would result in substantial and fundamental reallocation of risk. (ORA Opening Brief at 21.) The PD acknowledges that the Comprehensive Settlement Agreement is outdated because it was based on 2013 conditions, and the PD declines to adopt it in part for that reason. (PD at 80, 88-89.)

⁵⁷ PD at 127, fn. 346.

⁵⁸ PD at 113, fn. 308.

⁵⁹ PD at 126.

⁶⁰ PCA-7 (Sciuto) at 12.

materialize, which would require much higher rates to spread the revenue requirements over the customer demand.⁶¹ While the PD purports to allocate some of these risks to Cal-Am shareholders, there are some risks that it fails to address.

The PD acknowledges that mitigation may be required to address impacts to groundwater users, and that mitigation may require substantial costs be incurred or substantial payments to impaired users.⁶² This risk of this mitigation measure should be expressly allocated to Cal-Am shareholders in the ordering paragraphs.

The most significant risk is that the desalination facility is materially delayed or halted entirely due to litigation over impacts to water rights and the sufficiency of the EIR/EIS analysis of impacts to groundwater resources. There is ample evidence in the record that the dispute over the project's effects on groundwater resources and water rights may not be resolved. In light of risk that litigation may stall or stop the desalination project, it would only be prudent for the Commission to complete the review of the proposed 2,250 afy Pure Water Monterey expansion, as the most promising alternative supply in case it is needed.

V. A Conditional CPCN Would Provide for the Peninsula's Water Needs Without Unnecessary Burden to the Ratepayers or the Environment.

The Commission in this proceeding finds itself situated between two sets of risks. On one side is the risk that the Monterey Peninsula cannot meet its water needs once Cal-Am ceases its excess use of Carmel River water. On the other side are the risks that Cal-Am's proposed replacement, the desalination plant, will be delayed by litigation and will

⁶¹ PD at 135.

⁶² PD, App. D, pp. D-13 to D-15.

be overbuilt with capacity far beyond future demand, thus imposing unnecessary and unfair costs on ratepayers⁶³ and avoidable impacts on the environment⁶⁴.

The route out of this conundrum is clear: a conditional approval allowing for Pure Water Monterey to make its case. The Commission should order a Phase 3 in this proceeding, which would examine the ability of an expanded Pure Water Monterey to meet the region's water needs and consider approval of water purchase agreement between Cal-Am and Monterey One Water. At the same time, the Commission should grant a conditional CPCN for the proposed MPWSP; that CPCN would become effective only if Phase 3 closes without provision for the purchase and use of water from the expansion.⁶⁵ If that condition were met, the MPWSP could go forward with the CPCN. This approach protects the public from both sets of risks and keeps the Peninsula's water supply moving forward.

VI. Conclusion

For the reasons state above, Surfrider and LandWatch respectfully request that PD be revised to condition approval of the MPWSP on completion of Phase 3 of this proceeding, which would consider the ability of a Pure Water Monterey expansion to meet the region's foreseeable water needs, and to allow the desalination portion of the MPWSP to go forward only if Phase 3 determines that Pure Water Monterey cannot meet those needs.

⁶³ See PD at 113.

⁶⁴ See FEIR/EIS 5.5-60 through 5.5-81 (describing environmental impacts of Alternative 5a, the version of the MPWSP now before the Commission).

⁶⁵ The attached appendix, with proposed revisions to the PD, includes language for this conditional approval.

DATED: September 4, 2018

SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Gabriel M.B. Ross
GABRIEL M.B. ROSS

Attorneys for Surfrider Foundation

DATED: September 4, 2018

M.R. WOLFE & ASSOCIATES, P.C.

By: /s/ John H. Farrow
JOHN H. FARROW

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ATTACHMENT 1

Appendix A – Revised Findings of Fact, Conclusions of Law, and Order

Findings of Fact

1. Cal-Am is a Class A investor-owned water utility, regulated by this Commission. Its Monterey District serves most of the Monterey Peninsula, including Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside, as well as the unincorporated areas of Carmel Highlands, Carmel Valley, Pebble Beach, and the Del Monte Forest.
2. Cal-Am supplies the Monterey District with surface water and groundwater from the Carmel River System and the coastal subarea of the Seaside Groundwater Basin (also known as the Seaside Basin). Cal-Am also operates small independent water systems along the Highway 68 corridor east of Monterey that draw water from the Laguna Seca subarea of the Seaside Basin.
3. Water supply on the Monterey Peninsula is available largely from rainfall and has long been constrained due to frequent drought conditions on the semi- arid Peninsula.
4. The Monterey Peninsula population has been dealing with documented water constraints dating back to the 1940s.
5. In 1995, the State Water Resources Control Board issued its Order No. WR 95-10, which concluded that although Cal-Am had been diverting 14,106 afy from the Carmel River, it has a legal right to only 3,376 afy from the Carmel River system, including surface water and water pumped from the Carmel Valley wells.
6. In 1995, Cal-Am served approximately 105,000 customers in its Monterey District, supplying them with approximately 17,000 afy, with 14,106 afy supplied from the Carmel River system.

7. The State Water Resources Control Board ordered Cal-Am to replace what State Water Resources Control Board determined to be unlawful diversions of 10,730 afy from the Carmel River with other sources and through other actions, such as conservation to offset 20 percent of demand.

8. On October 27, 2009, the State Water Resources Control Board issued Order WR 2009-0060, which ordered Cal-Am to cease and desist unlawful diversions of water from the Carmel River by December 31, 2016.

9. On July 19, 2016, the State Water Resources Control Board issued its Order Amending in Part Requirements of State Water Board Order WR 2009-0060, extending the deadline for ending all unlawful diversions from the Carmel River from December 31, 2016 to December 31, 2021. The amending order (Order WR 2016-0016) includes milestones for reducing annually (by water year) the unlawful diversions by 1,000 acre feet by each of the following dates: October 1, 2018 (2018-19), October 1, 2019 (2019-2020), October 1, 2020 (October 1, 2020-21), October 1, 2021-December 31, 2021.

10. In 2006, the Monterey County Superior Court issued a final decision regarding adjudication of water rights of various parties who use groundwater from the Seaside Basin. (*Cal-Am v. City of Seaside et al.*, Super. Ct. Monterey County, 2006, No. 66343). The court's decision established physical limitations to various users' water allocations to reduce the drawdown of the aquifer and prevent additional seawater intrusion and set up a Watermaster to administer and enforce the Court's decision.

11. Cal-Am is currently allocated 3,504 afy from the Coastal subarea of the Seaside Groundwater Basin and 345 afy from the Laguna Seca subareas. These allocations will be reduced over time until they eventually reach 1,474 afy from the overall Seaside Groundwater Basin. Prior to the Seaside Groundwater Basin adjudication, Cal-Am's pumping from the Coastal subarea was 4,000 afy.

12. Cal-Am must also repay the Seaside Groundwater Basin for overdrafts and has therefore assumed a reduction of supply of 700 afy over 25 years, resulting in a net supply available to Cal-Am of 774 afy from the Seaside Groundwater Basin.

13. Cal-Am's existing water supply will consist of 3,376 afy from the Carmel River, 774 afy from the Seaside Groundwater Basin, an average of 1,300 afy from the Aquifer Storage and Recovery, 94 afy from the Sand City Desalination Project, and 3,500 afy from the Monterey One Water Groundwater Replenishment Project. This provides a total water supply of 9,044 afy.

~~14. The Commission evaluated all of the evidence presented along with the arguments of the parties and determines that Cal-Am's water supply portfolio will not exceed 9,044 afy.~~

~~15.~~14. In 2006, the Monterey Peninsula Water Management District issued a technical memorandum, updating the demand in Cal-Am's service territory. The replacement water supply then required to meet total updated demand was 12,500 afy.

~~16.~~15. The estimates of demand in Cal-Am's Monterey service territory as of November 2017 range from 9,675 afy to 15,000 afy.

~~17.~~16. No party estimated demand at a level that was equal to or less than the available supply (9,044 afy).

~~18.~~17. The Commission cannot rely upon the concept of potential expansion of the PWM project absent more concrete and specific information to find that additional supply is available to Cal-Am.

~~19.~~18. ~~Even if~~ completed, PWM expansion alone ~~fails to provide~~ sufficient supply to meet the average demands assumed in MPWSP planning, and will ~~not~~ provide sufficient supply flexibility to meet most peak demands.

~~20.19.~~ Cal-Am's ratepayers will face the burden of having an insufficient water supply if ~~the MPWSP~~ a new water supply is not approved.

~~21.20.~~ Additional water source(s) are needed to allow Cal-Am to continue to provide service to customers after Cal-Am reduces its draw from the Carmel River to allowable levels.

~~22.21.~~ Cal-Am's water supply portfolio will not provide sufficient water to its customers after December 31, 2021, absent a new source of supply and the MPWSP ~~is~~ might be the most reasonable solution to provide that supply.

~~23.22.~~ Absent another source of supply, ~~C~~construction and operation of the MPWSP is necessary to ensure Cal-Am remains within its legal water rights which requires reduction in its diversions from the Carmel River by December 31, 2021, in compliance with the cease and desist order issued by the SWRCB, as well as required reductions to other constrained water supply sources such as the Seaside Basin.

~~24.23.~~ Construction and operations of the MPWSP will allow Cal-Am to ~~meet~~ exceed reasonable demand (e.g., existing customers plus foreseeable growth, ~~lots of record, Pebble Beach, tourism rebound~~), provide a reliable and secure supply, include a reasonable "buffer" against uncertainties, and satisfy all other reasonable needs.

~~25.24.~~ Marina Coast Water District made two proposals to sell water to Cal-Am, however these offers were not accepted by the Watermaster or Cal-Am before our record closed, and the initial durations were limited to six and ten calendar years, thus, the Commission cannot rely with adequate certainty that Marina Coast Water District's proposals are adequately specific, concrete, reliable, affordable, and permanent sources of water supply for Cal-Am.

~~26.25.~~ Marina Coast Water District did not provide the Commission and parties enough time to, among other things, consider and resolve outstanding

questions as to physical transfer of water, renewability of the agreements, and accept the terms such that we could include them in this proceeding.

~~27.~~—Three potential new supply sources claimed by Marina Coast Water District are supply sources that are not available to be allocated to Cal-Am.

~~28.26. The assertions by some parties that the downward trend in water use in the District will continue and that only minimal growth will occur in demand after 2021 are not convincing.~~

~~29.27.~~ The selection of the most recent three years of demand data does not present a more compelling predictor for the next ten plus years of demand the Commission is examining in this proceeding compared to other methods.

~~30.28.~~ A projection of demand for existing customers of approximately ~~12,000~~10,100 afy is appropriately conservative and reasonable.

~~31.29.~~ A projection of additional demand of approximately ~~2,000~~700 afy is appropriately conservative and reasonable.

~~32.30.~~ The maximum daily demand can be calculated to be 60.48 acre-feet and the peak hour demand can be calculated to be 15.12 acre-feet.

~~33.31.~~ Strictly following the methodologies set forth in the Waterworks Standards would result in a projected demand that is significantly higher than is needed given the changes in water use in this system on a month by month basis.

~~34.32.~~ A significant criterion regarding plant size is to ensure the MPWSP is sized to meet maximum monthly demands rather than annual total demand.

~~35.33.~~ It would be a disservice to the public interest if the project were undersized to meet future demands, requiring yet another project to be permitted and constructed.

~~36.34.~~ Both methods used by Cal-Am to forecast demand for existing customers provide reasonable results and their average is a reasonable figure to use for forecasting demand for existing customers.

~~37.35.~~ In projecting water demand for the next 10-20 years, the assumptions Cal-Am has made for development of the lots of record and for Pebble Beach are unreasonable.

~~38.36.~~ There is no evidence ~~persuasively shows~~ that the tourism industry on the Monterey Peninsula has not fully recovered from the economic downturn that started in 2008, ~~and to the extent it has recovered.~~ Although it has taken steps to conserve water in ways it would not do if there were no constraints on the water supply in the area, these conservation efforts would likely continue even with approval of the MPWSP because that project will substantially increase prices for Cal-Am's customers.

~~39.37.~~ Coalition of Peninsula Businesses has not shown that there is a need to identify additional water supply to account for the tourism rebound demand category.

~~40.38.~~ An additional 500 afy is a reasonable figure to represent the additional demand Cal-Am will have to meet in the future to serve the tourism industry.

~~41.39.~~ Public interest considerations do not, weigh heavily in favor of the balanced demand projection of 14,000 afy, which is nearly 50% more water than Cal-Am's customers currently use.

~~42.40.~~ The Commission evaluated all of the evidence presented along with the arguments of the parties and determines that Cal-Am's future water demand will be approximately ~~14,000~~10,100 afy.

~~43.41.~~ The resulting supply deficit of at least ~~4,956~~1,000 afy needs to be addressed in this proceeding to comply with the State Water Resources Control Board's 2016 amended Cease and Desist Order (WR 2016-0016).

~~44.42.~~ Speculation as to ways to close the gap between water supply and water demand, absent credible evidence of feasibility, cost, reliability of supply, timeframes for development, potential opposition, and more is not persuasive.

~~45.43.~~ Other than the MPWSP (and the alternatives examined in the FEIR/EIS) ~~the Commission does not~~ expansion of the PWM project may be a viable alternative proposals ~~before us today~~ for additional water supply.

~~46.44.~~ Cal-Am must have additional water supply to serve its customers.

~~47.45.~~ The MPWSP if feasible, PWM expansion is the most reasonable and cost-effective approach to solving the long-term problem of water supply in the District and is the best option to ensure Cal-Am customers have a sufficient water source going forward.

~~48.46.~~ The Carmel River provides a habitat for the California Red-Legged Frog and the South-Central California Coast steelhead trout, both of which are listed as threatened under the Federal Endangered Species Act.

~~49.47.~~ Any entity that pumps water from the Carmel Valley Aquifer may be liable for an endangered species “take” because such pumping may alter the riparian habitat, affect the steelhead’s ability to migrate, and affect the red-legged frog’s ability to mature.

~~50.48.~~ Cal-Am has entered into a Conservation Agreement with NMFS, with the long-term goal of procuring an alternative water supply source to reduce withdrawals from the Carmel Valley Aquifer.

~~51.49.~~ The focus of Phase 1 of this proceeding was the selection of a long-term water supply solution to address the water shortfall for Cal-Am’s Monterey District.

~~52.50.~~ A combined EIR/EIS is an informational document to inform the Commission, responsible and trustee agencies, and the public in general, of the environmental impacts of the proposed project and alternatives, design a recommended mitigation program to reduce any potentially significant impacts, and identify, from an environmental perspective, the preferred alternative.

53.51. The Commission, as the lead CEQA agency, and Monterey Bay National Marine Sanctuary, as the lead NEPA agency, prepared a joint EIR/EIS.

54.52. The environmental document was prepared as a joint EIR/EIS because a portion of the project impacts the Monterey Bay National Marine Sanctuary, results in potential environmental impacts on resources that are under the jurisdiction of the federal government.

55.53. In addition to this Commission and the National Oceanic and Atmospheric Administration/Monterey Bay National Marine Sanctuary (NOAA/MBNMS), many federal, state, and local agencies are involved in the regulation of water, water rights, and water supply on the Monterey Peninsula, including, but not limited to, the State Water Resource Control Board, the Monterey Peninsula Water Management District, the Monterey County Water Resources Agency, the Monterey Peninsula Regional Water Authority, Monterey One Water (formerly Monterey Regional Water Pollution Control Agency), and the Seaside Groundwater Basin Watermaster.

56.54. The FEIR/EIS examines in considerable detail whether Cal-Am would likely possess legal rights to the supply water for the MPWSP and concludes that there is every reason to believe that Cal-Am will possess the legal water rights necessary for the MPWSP.

57.55. The supply water for the MPWSP will be via underground slant wells that draw water from the aquifers that extend underneath the ocean and would be recharged primarily by seawater.

58.56. The slant wells will be located at the western edge of the SVGB, a large basin that extends approximately 100 miles from the Monterey Bay to the Salinas River headwaters.

59.57. The SWRCB prepared, at the Commission's request, a draft report on water rights that was circulated for public comments and then issued as its July

31, 2013 Final Review of California-American Water Company's Monterey Peninsula Water Supply Project or SWRCB Report. This report determined that extracting water from the ocean does not require water rights and Cal-Am could draw ocean water from the landward area of the Basin.

60.58. A portion of the MPWSP source water is expected to be brackish water, a combination of ocean water and fresh water originating from the inland aquifers of the Basin.

61.59. In order for Cal-Am to possess appropriative rights to fresh water under a "developed water" legal basis whereby the MPWSP essentially creates a new water source, Cal-Am would need to be able to demonstrate that any withdrawal of Basin water that is not ocean water and would not injure or harm other existing Basin water rights holders.

62.60. There is no permit for such an appropriative water right. Cal-Am cannot obtain a water rights permit before MPWSP implementation.

63.61. The MPWSP will primarily draw seawater but could draw some brackish water that includes fresh water, but is not expected to intersect with or draw fresh water on its own.

64.62. Such brackish water is not used and useful in its existing state, therefore the withdrawal of the fresh water component of the source water is not expected to cause harm or injury to existing legal water users.

65.63. Cal-Am proposed that Basin groundwater could be extracted without harm to existing lawful water uses by returning desalinated product water into the Basin in the amount of the fresh water molecules that originated in the Basin that are included in the withdrawn brackish water.

66.64. The return of Basin fresh water would be accomplished by delivering water to CCSD for municipal water supply in lieu of groundwater pumping from the Basin, and to CSIP.

~~67.65.~~ The return water component of the MPWSP ensures that the Basin is made whole with regards to any fresh water withdrawn by the MPWSP supply wells.

~~68.66.~~ The return water component of the MPWSP is proposed by Cal-Am as part of the project and is reflected in the proposed Return Water Settlement.

~~69.67.~~ Cal-Am's extraction from the Basin will not harm the quality of the Basin water, and over the years by returning supply water to the Basin the MPWSP will ultimately benefit the Basin groundwater users.

~~70.68.~~ The record supports the likelihood that Cal-Am will possess legal water rights for the MPWSP and that the MPWSP is not made infeasible by concerns over water rights.

~~71.69.~~ None of the intervenors present demand forecasts that are equal to or less than the supply (9,044 afy) that will be available to Cal-Am at the end of 2021.

~~72.70.~~ There is a need for additional water supplies, over and above any water savings that can be accomplished through conservation, ~~use of recycled water, or other purchased water.~~

~~73.71.~~ Past efforts to solve the long-standing water supply issues on the Monterey Peninsula have not been successful. These include the proposed New Los Padres Dam and Reservoir, which was proposed by the Monterey Peninsula Water Management District in 1989, but turned down by the voters in 1995, and the Carmel River Dam, which was proposed by Cal-Am in 1997, but effectively halted by AB 1182 (Stats. 1998, Ch. 797).

~~74.72.~~ In 2002, the Commission completed a water supply contingency plan in response to AB 1182, known as "Plan B," recommending a combination of desalination and aquifer storage and recovery to address the water supply problem.

75-73. When the MPWSP is online, Cal-Am generally plans to utilize the majority of its Carmel River right in wet and normal water years to provide a base supply for the system during the winter. The Seaside groundwater allocation would provide a base supply in the summer.

76-74. Excess Carmel River water and desalinated or recycled water would be injected and stored in the Seaside Basin aquifer storage and recovery system in the winter for extraction during the summer to meet summer average and peak day demands. Desalinated water would be then used to supplement remaining demand.

77-75. In drought years there is not expected to be water for Carmel River diversions to ASR.

76. Desalinated water is relatively expensive, both in terms of capital costs and in terms of ongoing operations and maintenance costs.

78-77. Recycled water from PWM is substantially less expensive, both in terms of capital costs and in terms of ongoing operations and maintenance costs.

79-78. The FEIR/EIS identifies significant environmental effects of the MPWSP some of which may be mitigated or avoided through mitigation measures or alternatives.

80-79. The FEIR/EIS identifies significant environmental effects of the MPWSP that cannot be avoided or mitigated to less than significant levels.

Without a feasible alternative supply with less-impactful environmental effects,

the benefits of the MPWSP outweigh the significant adverse impacts of the project justifying the statement of overriding considerations needed to approve the MPWSP.

81-80. The FEIR/EIS reviewed seven alternatives (six action alternatives and the No-Project/No-Action Alternative) and identifies the environmentally

superior action alternative for the MPWSP as Alternative 5a, which includes the reduced capacity 6.4 mgd desalination plant.

82.81. The FEIR/EIS finds that Alternative 5a, the environmentally superior action alternative for the MPWSP, is superior to the No-Project/No-Action Alternative, which would not attain the key and basic project objectives.

83.82. The FEIR/EIS identifies the following expected benefits of the project: 1) the MPWSP would provide adequate, reliable water supplies for residents of Cal-Am's Monterey District; 2) The MPWSP would allow Cal-Am to cease illegal diversions from the Carmel River and meet its obligations under the SWRCB's CDO; 3) the MPWSP would allow Cal-am to cease extracting water beyond its allocated limit from the Seaside Groundwater Basin; 4) the MPWSP would protect and promote the Monterey economy; 5) the MPWSP would provide significant environmental benefits to the Carmel River; 6) the MPWSP would arrest seawater intrusion for the Salinas Valley Groundwater Basin; and 7) the return water component of the MPWSP will supply reliable and clean municipal water for CCSD.

84.83. The proposed project and the alternative projects include certain storage, delivery and distribution components that would be owned and operated by Cal-Am.

85.84. The MPWSP (6.4 mgd plant) would be owned and operated by Cal-Am, and the desalination plant would be sited on the upper 25-acre terrace of a 46-acre vacant parcel on Charles Benson Road and sized to produce 6.4 million gallons per day of desalinated water.

86.85. The MPWSP (6.4 mgd plant) utilizes a source water intake system consisting of seven new subsurface slant wells (five active and two on standby; these would consist of the converted test slant well and six new wells), an open-

water brine discharge system through the existing Monterey One Water outfall, a project water conveyance and storage infrastructure.

~~87.86.~~ The MPWSP (6.4 mgd plant) could produce up to 7,167 afy assuming operation at full capacity.

~~88.87.~~ The MPWSP (6.4 mgd plant) would produce approximately 6,250 afy of desalinated water in non-drought years, and in drought years, if used at full capacity, would produce up to 7,167 afy that would be delivered to Cal-Am customers.

~~89.—A 6.4 mgd desalination plant is the best option to ensure Cal-Am is able to meet its maximum day demand and peak hour demand requirements.~~

~~90.88. As long as other options are available, the~~ The MPWSP (6.4 mgd plant) ~~fails to~~ achieves an appropriate balance between supplying a sufficient amount of safe, reliable, potable water and maintaining just and reasonable rates; ~~ratepayers should bear the costs of the MPWSP (6.4 mgd plant) only if it is the only reasonably available option.~~

~~91.89.~~ Cal-am has not fully met its burden, subject to the conditions set out in this decision, in demonstrating the need for the MPWSP sized at 6.4 mgd.

~~92.—A reduction in size of the MPWSP from 6.4 mgd to 4.8 mgd would increase the annual O&M cost by \$340,000.~~

~~93.—There would be a one-time capital cost saving of \$1.84 million if the MPWSP was downsized from 6.4 mgd to 4.8 mgd.~~

~~94.—The annual O&M cost increases for the 4.8 mgd plant would offset the increased one-time capital costs for the larger 6.4 mgd plant within only a few years.~~

~~95.—The desalination plant is appropriately sized at 6.4 mgd.~~

~~96.—The cost savings for deferring one slant well to initially operate the facility at 4.8 mgd is small in comparison to the risks associated with eliminating the well.~~

~~97.90.~~ Seven slant wells are required to operate the MPWSP sized at the 6.4 mgd plant.

~~98.91.~~ The desalination plant is sufficiently sized at 6.4 mgd to allow for return of any source water that originated from the Salinas Valley Groundwater Basin through deliveries to the Castroville Community Service District and/or the Castroville Seawater Intrusion Project.

~~99.92.~~ Because groundwater modeling indicates that source water pumped from the slant wells over the long term could include a small amount of intruded groundwater from the Salinas Valley Groundwater Basin, the proposed project includes a provision for desalinated water to be returned to the Salinas Valley Groundwater Basin via delivery to the Castroville Community Services District in lieu of their pumping an equal amount of groundwater, or the Castroville Seawater Intrusion Project's storage pond. Thus, desalinated water would be delivered for distribution to Cal-Am's customers and the return water would be delivered to other existing groundwater users in the Salinas Valley Groundwater Basin in lieu of their pumping an equal amount of groundwater.

~~100.93.~~ The Commission is the lead agency under CEQA with respect to the environmental review of the MPWSP and preparation of the Final EIR.

~~101.94.~~ The FEIR/EIS is competent, comprehensive, and complies with CEQA.

~~102.95.~~ The CEQA Findings are attached as Appendix C, and accurately reflect the independent analysis contained in the FEIR/EIS, the Commission's policy decisions, as well as other information in the record, and are supported by substantial evidence in the administrative record.

103.96. Feasible changes or alterations have been required in, or incorporated into, the MPWSP, which avoid or substantially lessen significant environmental effects identified in the FEIR/EIS for which feasible mitigation measures are available.

104.97. The MPWSP will cause significant unavoidable adverse impacts in the areas of terrestrial biological resources, traffic and transportation, air quality, noise and vibration, and growth inducement. The benefits of the project outweigh the impacts that may be caused by the MPWSP.

105.98. We further find that, except for potential PWM expansion, specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives that are not required in, or incorporated into, the proposed project.

106.99. Implementation of the No-Project/No-Action Alternative would eliminate all of the impacts of the seven other options analyzed in the FEIR/EIS. However, the resulting water supply deficit would lead to severe rationing and likely water shortages. These conditions, in turn, would likely have significant effects on the local economies within the Monterey Peninsula.

107.100. The No-Project/No-Action Alternative would fail to meet any of the MPWSP project objectives, including the objective to protect the local economy from the effects of an uncertain water supply.

108.101. In selecting the environmentally superior alternative, the FEIR/EIS considered the environmental impact of each option, which of the alternatives evaluated in the FEIR/EIS had the fewest significant and unavoidable impacts, and which, if any, of the proposed alternatives would lessen or eliminate any significant and unavoidable or potentially significant but mitigable impacts.

~~109.102.~~ The FEIR/EIS has identified Alternative 5a (MPWSP sized at 6.4 mgd) as environmentally superior to the other action alternatives evaluated in terms of the scope of the environmental effects.

~~110.103.~~ Because of the State Water Resource Control Board's Cease and Desist Orders, we find that time is of the essence, in terms of developing a new water supply to replace unauthorized withdrawal of water from the Carmel River.

~~111.104.~~ Based on the mandatory cumulative annual reductions, the estimated operational yield from the ASR project and the estimated afy supplied by the Sand City desalination plant, the 2009 Cease and Desist Order found that the total amount diverted from the Carmel River was not to exceed Cal-Am's water rights of 3,376 afy by the end of December 2021.

~~112.105.~~ As required by CEQA, the proposed project or an alternative cannot be approved unless the project has been modified to mitigate or avoid each significant effect on the environment or the Commission finds that specific considerations make the mitigation measures or alternatives identified in the FEIR/EIS infeasible; and specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

~~113.106.~~ Alternative 5a (MPWSP sized at 6.4 mgd) is the most feasible alternative that provides a viable solution to the water constraints on the Monterey Peninsula, given the adverse social and economic consequences associated with taking no action or delayed action, in the timeframe imposed by the State Water Resource Control Board's Cease and Desist Orders, and satisfies the prohibitions on exporting water from the Salinas Basin, and certain technological factors.

~~114.107.~~ The FEIR/EIS concludes that, with the proposed mitigation measures, the MPWSP (6.4 mgd plant) has eliminated or substantially lessened all significant effects where feasible as shown in the findings under CEQA Guidelines section 15091 and consistent with the CEQA Findings set forth at Appendix C.

~~115.108.~~ Significant and unavoidable environmental impacts will result from construction and operation of the MPWSP (6.4 mgd plant); however, all feasible mitigation measures are identified in Appendix D.

~~116.109.~~ Based on the FEIR/EIS, the remaining significant effects on the environment found to be unavoidable under CEQA Guidelines section 15091 are acceptable due to overriding considerations consistent with CEQA Guidelines section 15093 and as described in the CEQA Findings set forth at Appendix C.

~~117.110.~~ The mitigation measures identified in the Final EIR/EIS are reasonable.

~~118.111.~~ The MMRP at Appendix D conforms to the recommendations of the Final EIR/EIS for measures required to mitigate or avoid environmental impacts of the MPWSP where feasible.

~~119.112.~~ The FEIR/EIS, which includes the Errata in Appendix E, were presented to the Commission, which has reviewed and considered the information within it.

~~120.113.~~ The FEIR/EIS represents our independent judgment regarding the environmental impacts of the MPWSP.

~~121.114.~~ Nothing in the FEIR/EIS precludes the MPWSP (6.4 mgd plant) from going forward

~~122.115.~~ The MPWSP (6.4 mgd plant) benefits and economic, legal, social, environmental and other considerations associated with the MPWSP outweigh and make acceptable the unavoidable impacts identified in the FEIR/EIS, for the

reasons set forth in the statement of overriding considerations in the CEQA Findings at Appendix C attached to and incorporated as part of this decision.

123.116. While there may be minor elements of the Comprehensive Settlement terms concerning environmental factors that are not incorporated into the mitigation measures identified in the FEIR/EIS and included in the MMRP, the mitigation measures in the FEIR/EIS in other respects require more detail and embody more rigorous standards than the Comprehensive Settlement. The environmental factors considered in the Comprehensive Settlement (beach erosion, energy consumption and greenhouse gas emissions) have been amply addressed in the FEIR/EIS and the impacts associated with those factors will be ameliorated by the mitigation measures imposed by the decision.

124.117. In July of 2013 a subset of the parties submitted a motion requesting that the Commission adopt the Sizing Settlement Agreement which states that the proposed project provides the most expeditious, feasible and cost-effective alternative to address the water supply constraints on the Monterey Peninsula.

125.118. The Sizing Settlement was submitted more than five years ago and since that time additional information has been presented to the Commission.

126.119. The Sizing Settlement based on the current record is no longer needed as sufficient evidence has been provided to determine the appropriate size for the MPWSP. Therefore, the Sizing Settlement is no longer supported by the record or in the public interest.

127.120. The Comprehensive Settlement Agreement provides a detailed and useful framework for addressing cost caps, O&M costs, financing, ratemaking, and contingency matters required for constructing the MPWSP.

128.121. The Comprehensive Settlement Agreement was submitted by the signatory parties for approval on July 31, 2013. There have been significant changes and additional information regarding the MPWSP that have occurred

since the proposed Comprehensive Settlement was submitted to the Commission.

~~129.122.~~ Parties agree that modifications to the Comprehensive Settlement are needed before it can be adopted by the Commission. Parties disagree as to whether such modifications are minor or significant.

~~130.123.~~ The framework set forth in the Comprehensive Settlement is reasonable given the record, independent of the Comprehensive Settlement.

~~131.124.~~ The framework set forth in the Comprehensive Settlement for financing, O&M costs, ratemaking, and contingencies is reasonable and in the public interest with the additional conditions required by this decision.

~~132.125.~~ The cost caps set out in the Comprehensive Settlement are estimates only and outdated, requiring updates consistent with this decision.

~~133.126.~~ Cal-Am has provided sufficient evidence to support its increased capital costs cap of \$279.1 million (excluding the \$50.3 million authorized in D.16-09-021) for the MPWSP (6.4 mgd plant and remaining Cal-Am only facilities).

~~134.127.~~ ORA has provided sufficient evidence to support the need for additional ratepayer protection and appropriate apportionment of risk between ratepayers and shareholders as to the capital costs for the MPWSP.

~~135.128.~~ It is necessary for Cal-Am to provide quarterly reports regarding costs and expenditures as to the construction of the MPWSP.

~~136.129.~~ It is necessary for Cal-Am to provide quarterly reports as to the operation and maintenance of the MPWSP once it is in operation.

~~137.130.~~ A Construction Funding Charge is reasonable. A separate memorandum account is needed to track collection of such funds, and expenses that are incurred using such funds.

~~138.131.~~ It is not reasonable for ratepayers to pay capital costs for the MPSWP if the project does not become operational. A separate memorandum account for the Construction Funding Charge will allow for proper accounting in the event ratepayers are entitled to a refund of some or all of this charge.

~~139.132.~~ It is reasonable to require Cal-Am to also track all construction costs other than those tracked in the Construction Funding Charge in a separate memorandum account.

~~140.133.~~ The expenses incurred with the funds collected from the Construction Funding Charge are subject to a reasonableness review.

~~141.134.~~ Cal-Am will construct, own, maintain, and operate the desalination plant, three large diameter conveyance pipelines, the source water wells, and aquifer storage and recovery facilities; all of these facilities will provide the infrastructure to serve its customers with the desalinated water.

~~142.135.~~ The brine from the desalination plant would be discharged through the outfall owned and operated by Monterey One Water.

~~143.136.~~ We find that the Brine Discharge Settlement Agreement is reasonable given the record, in compliance with the law, and in the public interest.

~~144.137.~~ Cal-Am agrees it will comply with the Agency Act.

~~145.138.~~ Because water cannot be exported from the Salinas Valley, the return water obligations set forth in the Return Water Settlement becomes a critical component to the proposed project.

~~146.139.~~ The project as proposed with the return water component will ensure that the Salinas Valley Basin is made whole with regards to any fresh water withdrawn by the project supply wells and will satisfy the Agency Act.

~~147.140.~~ Costs for the proposed project include capital costs, financing costs, costs of obtaining indebtedness, a reserve fund for needed replacements, contingency costs, and operations and maintenance costs.

~~148.141.~~ Cal-Am will include costs related to the construction of its facilities in rate base, either as Construction Work in Progress or Utility Plant in Service. Settling Parties propose that all project costs will earn a return on the carrying costs for the project as AFUDC until such time as they are allowed in rate base.

~~149.142.~~ Cal-Am proposes a capital cost of \$279.1 million, that excludes interest during construction and any debt service coverage required to obtain financing for the proposed project.

~~150.143.~~ The \$279.1 million proposed capital cost cap represents Cal-Am's approximation of the various cost components of the proposed project facilities, with slant wells being used as a source water intake facility.

~~151.144.~~ The costs of the various components proposed by Cal-Am have been assessed and analyzed through submission of testimony, cross examination and briefing by the parties.

~~152.145.~~ The \$279.1 million cost cap proposed by Cal-Am, and adopted in this decision, represents the estimated upper cost limit for the proposed project.

~~153.146.~~ \$279.1 million is a reasonable cost cap for the MPWSP, this amount does not include the \$50.3 million authorized for Cal-Am facilities authorized in D.16- 09-021. The total authorized project cost, including the amounts authorized in D.16-09-021 is \$329.4 million.

~~154.147.~~ The financing package is not finalized and Cal-Am, in consultation with parties and Commission Water Division Staff, must evaluate several options for obtaining a financing package that will reduce the costs of indebtedness, including accessing State Revolving Fund financing and federal grants.

~~155.148.~~ Use of low-interest State Revolving Fund loans and federal grants would reduce the cost of indebtedness. Any financing alternative that reduces the cost of project indebtedness will flow through to ratepayers by reducing the cost of the desalinated water.

~~156.149.~~ While use of State Revolving Fund loan and grant opportunities are not guaranteed, Cal-Am alone would not have the ability to access such funding opportunities. This is a potential benefit to ratepayers.

~~157.150.~~ Cal-Am will take on material risk with the development of the MPWSP.

~~158.151.~~ The use of securitization as a component of the MPWSP financing is reasonable if it 1) lowers costs to consumers; 2) does not adversely impact California-American Water Company customers outside of Monterey County District; 3) does not require a separate Cal-Am credit rating; 4) does not alter the Company's current debt to equity ratio for the portion of the MPWSP not financed through securitization; 5) does not alter the Company's currently authorized rate of return; 6) does not materially delay the MPWSP; and 7) does not create a taxable event for Cal-Am or adverse tax implications for the Company or its customers.

~~159.152.~~ The securitization will be for a period of 20-30 years and non-recourse to Cal-Am.

~~160.153.~~ Proceeds from the securitization will be used to finance the MPWSP at the agreed upon level, reimburse public agency fees and expenses associated with the securitization, and reimburse Cal-Am for fees and expenses associated with the securitization.

~~161.154.~~ Cal-Am will need to establish a Special Purpose Entity.

~~162.155.~~ Cal-Am will need to sell to the Special Purpose Entity the right to collect a non-bypassable charge from customers in Cal-Am's Monterey District.

~~163.156.~~ Senate Bill (SB) 936, Chapter 482 authorizes the Commission to issue financing orders to facilitate the recovery, financing, or refinancing of water supply costs, defined to mean reasonable and necessary costs incurred or expected to be incurred by a qualifying water utility. This bill authorizes the Monterey Peninsula Water Management District to issue water rate relief bonds if the Commission finds that the bonds will provide savings to water customers on the Monterey Peninsula. Savings from these bonds would result from the lower interest rates that would apply to this financing compared to market-rate financing.

~~164.157.~~ The Commission will need to issue a financing order to allow for the securitization.

~~165.158.~~ True up adjustments of the securitization will be necessary and can be done through an advice letter process.

~~166.159.~~ A credit agency will need to rate the bonds for the securitization and Cal-Am will be required to request the credit agency to affirm the securitization will not negatively impact its credit rating, as a stand-alone entity, or that of American Water.

~~167.160.~~ It is reasonable to allow Cal-Am to recover related expenses reasonably and prudently incurred regarding the securitization whether it is successful or not from customers in the Monterey District.

~~168.161.~~ If the public agency cannot obtain a tax-exempt securitization Cal-Am will work with the agency to develop an alternative form of public agency financing option.

~~169.162.~~ The financing framework set out in the Comprehensive Settlement provides needed flexibility as to the financing options for the MPWSP.

~~170.163.~~ Cal-Am's current MPWSP financing model assumes completion of the MPWSP construction funding charge at the time the revenue requirement

and securitized bond financing enter rates with completion of the desalination plant.

~~171.164.~~ Acceleration of the securitization will reduce AFUDC.

~~172.165.~~ Securitized bonds have less flexibility than short-term debt.

~~173.166.~~ Long-term financing costs are typically placed in rates when a plant is used and useful.

~~174.167.~~ It is reasonable to adopt contingency measures in the event securitization is not successful.

~~175.168.~~ The contingency framework set out in the Comprehensive Settlement and support by Cal-Am's testimony provides reasonable contingency measures.

~~176.169.~~ It is reasonable to require Cal-Am to separately track and record collection and expenses incurred as to the Construction Funding Charge.

~~177.170.~~ It is reasonable to require Cal-Am to maintain a memorandum account to track and record all MPWSP costs.

~~178.171.~~ While the parties have stated concerns that establishing a capital cost cap could impact the competitive bidding process and could also impact the cost of financing, they acknowledge that a capital cost cap is one way to ensure cost limitations for the protection of ratepayers.

~~179.172.~~ A capital cost cap of \$279.1 million, excluding the amounts authorized in D.16-09-021, will provide the proper motivation to ensure that the proposed project facilities are as cost-effective as possible.

~~180.173.~~ The \$279.1 million capital cost cap that we adopt today will yield a per acre foot cost significantly higher than Cal-Am customers experience today (excluding Cal-Am facilities authorized in D.16-09-021), even if Cal-Am can obtain the low-cost State Revolving Fund financing that is planned.

~~181.174.~~ Any increases in MPWSP costs incurred to comply with the requirements of the MMRP fall within the capital cost cap.

~~182.175.~~ Except as provided in the risk sharing formula, Cal-Am ratepayers should only be responsible for costs exceeding the cost cap ceiling if these costs are due to extraordinary circumstances. Requests for recovery above the cost cap ceiling will be subject to a heightened level of scrutiny and review.

~~183.176.~~ It is important for Cal-Am to provide regular, detailed quarterly reports to the Commission Executive Director, the Director of the Water Division, and the Director of the Energy Division with a copy to the Director of the Office of Ratepayer Advocates.

~~184.177.~~ Cal-Am has agreed to meet quarterly with the Office of Ratepayer Advocates (ORA). There is value in including Commission Water Division staff in these meetings. There is value in providing detailed information as to progress on the MPWSP, particularly with regard to financing plans, construction bids, and permitting.

~~185.178.~~ The public is entitled to an open and transparent process including access to the information provided in the quarterly reports and meetings with ORA and Commission Water Division staff.

~~186.179.~~ The salinity of the seawater and the salinity of the brackish groundwater are approximately equal due to seawater intrusion as set out in the FEIR/EIS.

~~187.180.~~ The water to be desalinated is water which has a Total Dissolved Solids concentration high enough to make it unsuitable for human consumption or agricultural use unless it is treated.

~~188.181.~~ Nothing in the FEIR/EIS or D.16-09-021 alters the cost-effectiveness of the MPWSP.

189-182. The calculations of the amounts of desalinated water that are estimated to be delivered to Cal-Am customers are based on analytical and groundwater modeling methodologies, and parties recognize that some variance will occur.

190-183. Groundwater pumping for municipal and irrigation supply has caused groundwater levels to drop and concomitant seawater intrusion within the Salinas Valley Groundwater Basin.

191-184. Seawater has been migrating gradually into the Salinas Valley Groundwater Basin for decades which has been documented by numerous state agencies, including the Department of Water Resources in 1946.

192-185. Parties have elected to use salinity as a proxy for determining the amount of source water that is seawater and the amount of water that is groundwater, but the salinity calculation cannot be considered in isolation.

193-186. As reflected by the analysis of hydrology and groundwater modeling set out in the FEIR/EIS, the water that originates from the Salinas Valley Groundwater Basin will also be drawn towards the coast, which helps to retard the seawater intrusion dynamic. While the project may over time, reduce the salinity of the groundwater portion of the intake supply, the volume of water available for desalination and delivery to Cal-Am customers will not be diminished by such gradual improvement.

194-187. It is reasonable to require Cal-Am to incur costs for meeting the Return Water Obligation if the return water obligation is increased due to a greater OWP than that estimated in the FEIR/EIS and HWG Report.

195-188. It is reasonable to adopt Cal-Am's proposed \$279.1 million cost cap for the MPWSP, in order to provide certainty for ratepayers and investors.

196-189. Cal-Am should only be compensated for its actual carrying costs.

~~197.190.~~ It is reasonable to require Cal-Am to submit Tier 2 advice letters consistent with this decision and the adopted settlements, in addition to the quarterly reports, and that a true-up process is reasonable.

~~198.191.~~ Cal-Am has agreed to proceed in the most cost-effective manner in constructing its facilities, and to provide a summary of costs and detail the expenditures made in the prior quarter.

~~199.192.~~ Because Cal-Am will construct and own the entire project, it is reasonable to adopt a ratemaking approach similar to that set forth in the Comprehensive Settlement Agreement for the Construction Funding Charge, originally authorized in D.06-12-040.

~~200.193.~~ It is reasonable to require Cal-Am to submit Tier 2 advice letter filings, consistent with this decision, to place the cost into ratebase for the MPWSP and remaining Cal-Am Only Facilities when the facility becomes used and useful.

~~201.194.~~ The Tier 2 advice letter approach will limit the accrual of AFUDC costs, and provide for review of construction costs.

~~202.195.~~ It is reasonable to require Cal-Am to submit a Tier 3 advice letter, after consultation with Water Division staff and parties, to adopt adjustments to the financing and ratemaking framework for the MPWSP consistent with this decision.

~~203.196.~~ No party to this proceeding makes a convincing case that any element of the proposed financial and ratemaking framework set forth in the Comprehensive Settlement should not be adopted.

Conclusions of Law

1. Cal-Am is a Water Corporation as defined in Pub. Util. Code § 241, and may not proceed with the proposed project, or an alternative, absent our

certification that the present or future public convenience and necessity require this project.

2. We have considered how the widely-recognized need may best be met by various water supply alternatives, as evaluated according to the statutory framework established by Pub. Util. Code. § 1001 et seq.

3. As the basis for granting a Certificate of Public Convenience and Necessity, the Commission must consider the need for the project, community values, recreational and park areas, historical and aesthetic values, and the influence on the environment, as set forth in Pub. Util. Code § 1002(a).

4. Cal-Am should be granted a conditional CPCN to construct and operate the MSWSP to meet reasonable demand (e.g., existing customers, ~~lots of record, Pebble Beach, tourism-rebound~~ plus foreseeable growth), provide a reliable and secure supply, include a reasonable “buffer” against uncertainties, satisfy all other reasonable needs, and ensure that Cal-Am remains within its legal water rights as to diversions from the Carmel River in response to the CDO issued by the SWRCB as well as other constrained water supply sources such as the Seaside Basin.

5. Sufficient reason does not exist to deviate from the requirements set forth in statute and our general order regarding the considerations to estimate demand.

6. A reasonable evaluation of source capacity requirements considers the maximum day demand and peak hour demand for the past ten years.

7. There is no requirement in Section 64554 that the Commission only look at the maximum daily demand, peak hour demand, or maximum month in the historical period for water systems such as Cal-Am’s.

8. Our goal, and the goal of Section 64554 is to ensure a public water system can meet the maximum daily demand and for a system of Cal-Am’s size

to meet peak hour demand for 4 hours in a day with source capacity, storage capacity, and/or emergency connections.

9. The Commission is not persuaded that we can rely upon the offers made by Marina Coast Water District ~~or the proposed PWM expansion~~ as available sources of water to Cal-Am.

~~9.10. PWM expansion could provide sufficient water supply to meet demand for Cal-Am's customers and should be evaluated in an additional phase of this proceeding.~~

~~10.11.~~ Projecting any future demand amount less than approximately ~~14,000~~10,100 afy presents unreasonable risk without commensurate public benefit.

~~11.12.~~ Cal-Am has not met its burden of proof in that its forecast of demand when weighed with those opposed to it has more convincing force and the greater probability of truth.

~~12.13.~~ Cal-Am has shown that its forecast of demand considers the maximum day demand and peak hour demand for the past ten years.

~~13.14.~~ Cal-Am has not met its burden of proof that its projections of future demand are reasonable in the circumstances of this case.

~~14.—Based on the evidence presented in support of the project, when weighed with that opposed to it, the supporting evidence has more convincing force and the greater probability of truth.~~

15. Growth resulting in new demand will not occur immediately, but will take time to develop, ~~and~~ in planning for the future, Cal-Am has not shown that the growth it is projecting is reasonable under the California Waterworks standards.

16. The tourism industry recovery projection of 500 afy is not reasonable ~~under the California Waterworks standards.~~

17. Cal-Am has not met its burden to prove that 14,355 afy is a reasonable projection for the system's projected demand, ~~and~~ ~~H~~ intervenors persuade us that a ~~14,000~~ 10,100 afy projection is the most reasonable and appropriate figure to use.

18. The Commission should, as authorized by Senate Bill (SB) 936, Chapter 482, issue financing orders to facilitate the recovery, financing, or refinancing of water supply costs, defined to mean reasonable and necessary costs incurred or expected to be incurred by a qualifying water utility. The Commission should find that the bonds would provide savings to water customers on the Monterey Peninsula, which will allow the Monterey Peninsula Water Management District to issue water rate relief bonds. Savings from these bonds should result from the lower interest rates that would apply to this financing compared to market-rate financing.

19. The proposed financing framework set out in the Comprehensive Settlement should be adopted, including Cal-Am funding \$20 million on the initial costs with short-term debt.

20. The cost cap for the MPWSP (6.4 mgd plant) and remaining Cal-Am Only Facilities should be \$279.1 million, excluding the \$50.3 million authorized in D.16-09-021, with authority for Cal-Am to file a petition for modification if costs exceed the cost cap.

21. Cal-Am should be required to submit a Tier 3 advice letter, after consultation with Commission Water Division Staff and parties to the proceeding, that provides for specific adjustments to the framework set out in sections 7, 8, and 10-15 of the Comprehensive Settlement, as well provides for specific detail to implement such provisions consistent with this decision.

22. Cal-Am should be authorized to file a Tier 2 advice letter to seek recovery of the used and useful portion of the actual MPWSP and Cal-am Only

Facilities; and the advice letter should include evidence that the costs are reasonable, and that the facilities are operating at a proper capacity.

23. Cal-Am should be authorized to file a Tier 2 advice letter upon completion of the MPWSP and remaining Cal- Am Only Facilities to seek recovery of the remaining amount of the used and useful portion of the actual pipeline and when the facilities are completed and fully in service and the advice letter should include evidence that the costs are reasonable.

23.24. Construction and financing of the MPWSP should only continue if Phase 3 of this proceeding shows that PWM expansion is not likely or a reasonable replacement supply for Cal-Am's customers.

24.25. The review process established by CEQA is the primary vehicle for the environmental review. In this instance, the federal National Environmental Policy Act is also involved because approval from federal agencies is required. That makes a joint FEIR/EIS appropriate.

25.26. The Commission is the lead agency for CEQA review of the proposed project.

26.27. CEQA precludes the lead agency from approving a proposed project or project alternative unless that agency imposes as conditions of approval mitigation measures to eliminate or substantially lessen all significant effects on the environment where feasible and determines that any unavoidable remaining significant effects are acceptable due to overriding considerations.

27.28. CEQA requires that, prior to approving the project or a project alternative, the lead agency must certify that the FEIR was completed in compliance with CEQA, that it reviewed and considered the FEIR prior to approving the project or a project alternative, and that the FEIR reflects our independent judgment. (Pub. Res. Code § 21082.1(c)(3), CEQA Guidelines § 15090.) Here, the FEIR/EIS is certified by the Commission in this decision.

28-29. If the U.S. Fish and Wildlife Service and the National Marine Fisheries Service were to take action against Cal-Am for “takes,” under the Endangered Species Act, these enforcement actions could include further reduction of the water supply and heavy fines.

29-30. Based upon the FEIR/EIS and the record as a whole, it appears that the Agency Act will not be violated in light of the return water obligation.

30-31. Based upon the FEIR/EIS and the record as a whole, it appears that the Annexation Agreement does not preclude the project.

31-32. Based upon the FEIR/EIS and the record as a whole, Cal-Am should have sufficient water rights to operate the MPWSP.

32-33. D.09-07-021 ordered Cal-Am to reduce leaks and to carefully account for previously-unaccounted for water and to explore the use of non-potable water to serve non-agriculture landscaping needs.

33-34. The timing associated with water supply constraints is governed by the orders issued by the State Water Resources Control Board, including but not limited to WR 95-10 (July 6, 1995), WR 2009-0060 (October 20, 2009) and WR 2016-0016 (July 19, 2016), and deadlines required of Cal-Am for certification of milestone compliance reporting stemming from those orders.

34-35. Because permitting and building the approved desalination plant and associated infrastructure will take a significant amount of time, it is reasonable to conditionally-approve the MPWSP without delay in order to ensure that the required water supply is available to the Monterey Peninsula as soon as possible.

35-36. The FEIR/EIS for the MPWSP was completed in compliance with CEQA, and the combined FEIR/EIS is the competent and comprehensive informational tool that CEQA requires it to be.

36.37. The FEIR/EIS has been presented to the Commissioners (the decision-making body of the Commission), and has been reviewed, considered, and applied prior to action on the project.

37.38. The FEIR/EIS reflects the Commission's independent judgment and analysis.

38.39. Because we determine that the FEIR/EIS was completed in compliance with CEQA, that the FEIR/EIS has been presented to the Commissioners (the decision making body of the Commission), and has been reviewed, considered, and applied prior to action on the project, and that the FEIR/EIS reflects the Commission's independent judgment and analysis, we should certify the FEIR/EIS in today's decision.

39.40. The CEQA Findings in Appendix C should be incorporated into this decision.

40.41. The mitigation measures in the FEIR/EIS should be adopted.

41.42. It is reasonable to require Cal-Am to implement the mitigation measures set forth in Appendix D as a condition of the approval of its participation in the MPWSP and as a condition for issuing the CPCN.

42.43. The Mitigation Monitoring and Reporting Program in Appendix D should be incorporated into this decision.

43.44. The No-Project/No-Action Alternative would not satisfy the requirements of the State Water Resources Control Board's Cease and Desist Orders, would not protect the Seaside Basin, would not result in a drought-proof water supply, and would not protect the listed species in the riparian and aquatic habitat below the former San Clemente dam site; therefore, the No-Project/No-Action Alternative is not a tenable option.

44.45. Because of the lengthy history of the MPWSP, the FEIR/EIS contains a robust, multi-layered and well thought out alternatives analysis meeting or exceeding requirements of CEQA.

45.46. For the reasons discussed in this decision and in the D.16-09-021, the Commission should conditionally-approve the MPWSP, CEQA Findings set forth at Appendix C, and the MMRP set forth at Appendix D.

46.47. The Commission's approval of the MPWSP should be contingent upon Cal-Am's performance of the MPWSP utilizing the environmentally superior alternative identified in the FEIR/EIS (Alternative 5a), and in compliance with the mitigation measures identified in the FEIR/EIS.

47.48. The Commission's Executive Director should monitor and enforce the mitigation measure set forth in the MMRP for the MPWSP.

48.49. The Executive Director should be allowed to delegate such duties to the Commission staff or outside staff.

49.50. The Executive Director should be authorized to employ staff independent of the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, monitoring and mitigation supervision of construction of the MPWSP. Such staff should be individually qualified professional environmental monitors or be employed by one or more qualified firms or organizations.

50.51. In monitoring the implementation of the mitigation measures included in the MMRP, the Executive Director should attribute the acts and omissions of Cal-Am's employees, contractors, subcontractors or other agents to Cal-Am.

51.52. Cal-Am should comply with all orders and directives of the Executive Director concerning implementation of the mitigation measures set forth in the MMRP.

52.53. Any status report provided to the Commission by Cal-Am should contain the most complete and updated information available, including the updated construction budget for the project, and revised and updated components and contingency factors.

53.54. The Executive Director should not authorize Cal-Am to commence actual construction until Cal-Am has entered into a cost reimbursement agreement with the Commission for the recovery of the costs of the MMRP including, but not limited to, special studies, outside staff, or Commission staff costs directly attributable to mitigation monitoring.

54.55. The Executive Director should be authorized to enter into an agreement with Cal-Am that provides for such reimbursement on terms and conditions consistent with this decision in a form satisfactory to the Executive Director. The terms and conditions of such agreement should be deemed conditions of approval of the application to the same extent as if they were set forth in full in this decision.

55.56. Cal-Am should be required to submit the Tier 2 advice letter required by this decision, including those advice letters required by the adopted settlements. A true-up process will provide some certainty as to cash flow, and can be adjusted to the extent any costs are disallowed.

56.57. The Commission should either require Cal-Am to file an application or it should issue an order instituting and investigation regarding cost recovery if the MPWSP does not become operative or if operations are not at expected capacity to meet customer needs.

57.58. Cal-Am should also be required to file quarterly a progress report and timeline that provides a detailed report on the permitting, construction, budget, timeline and progress report on each component of the project.

58.59. Cal-Am's right to construct the MPWSP as set forth in this decision should be subject to all other applicable federal, state and local permitting processes and approvals.

59.60. Cal-Am should be required to file a written notice in this docket, served on all parties to this proceeding, of its agreement, executed by an officer of Cal-Am duly authorized (as evidenced by a resolution of its board of directors duly authenticated by a secretary or assistant secretary of Cal-Am) to acknowledge Cal-Am's acceptance of the conditions set forth herein. Failure to file and serve such notice within 75 calendar days of the effective date of this decision should result in the lapse of the authority granted herein.

60.61. The Executive Director should file a Notice of Determination for the MPWSP as required by CEQA and the regulations promulgated thereto.

61.62. The Return Water and Brine Discharge settlements are reasonable in light of the whole record, consistent with the law, and in the public interest.

62.63. D.12-03-030, as upheld by D.13-07-048, determined that the Commission preempts Monterey County's local desalination ordinance.

63.64. It is reasonable to set the capital cost cap at \$279.1 million, including contingency, because this approach to capital cost recovery strikes a fair balance that will allow certainty in project financing and protection for Cal-Am ratepayers.

64.65. The Commission should determine the costs associated with the MPWSP are just and reasonable subject to the conditions and reporting requirements of this decision.

65.66. The infrastructure associated with the MPWSP is required to ensure that Cal-Am can continue to provide adequate water supplies and service to its customers, consistent with the requirements of Pub. Util. Code § 789.1(c).

66.67. It is reasonable to require Cal-Am to file and serve the financing plan in this proceeding, once that plan is final.

67.68. The Commission must retain its authority to ensure that Cal-Am ratepayers are paying cost-based rates related to the MPWSP, and its discretion to verify that these costs are appropriate, are project based, and do not include any costs that would otherwise be paid by the Public Agencies in the normal course of business. The Public Agencies have their own transparent processes and procedures. To the extent that these agencies, in exercising their duties to be accountable to their constituencies, find that particular aspects of the MPWSP are not reasonable and cost effective, it is reasonable to require Cal-Am to bring this issue to the Commission for its review and consideration, by filing the appropriate pleading.

68.69. It is reasonable to approve the advice letter filing procedures proposed in the Return Water Settlement for tariff adjustments consistent with the settlement agreement and Cal-Am's return water obligation.

69.70. It is reasonable to require Cal-Am shareholders, not ratepayers, to incur any and all costs for any portion of the return water obligation that is greater than an average of six percent (6%) for years 0-7; four percent (4%) in years 8-15; or 1.5% annually from year 16 forward.

70.71. We intend to fully consider the debt equivalence issue when and if Cal-Am files an application requesting a financing order; however, we are fully cognizant of the need for the investor-owned utilities we regulate to remain financially viable, as set forth with particularity in Pub. Util. Code § 727.5(e).

71.72. While the Commission must consider each Settlement Agreement as a whole, we must also ensure that the various provisions of each Settlement Agreement are in the public interest.

72.73. There may be some risk with the use of slant well technology for the MPWSP, as such project risk should be appropriately apportioned between ratepayers and shareholders.

73.74. The MPWSP and its distribution system will not be deemed used and useful until the MPWSP is completed and operational.

74.75. Cal-Am should be required to obtain authorization from the Commission before it may give its consent or approval of Operations and Maintenance costs as required by the Return Water Settlement Agreement.

75.76. The Commission has continuing jurisdiction over Cal-Am to ensure that rates are just and reasonable.

76.77. For an infrastructure project of this magnitude, the Commission must be apprised of the impact on rates and must have the ability to understand and monitor the costs involved; therefore Cal-Am should be required to track and record all MPSWP costs in a memorandum account; maintain a separate accounting specifically for the Construction Funding Charge; provide detailed quarterly reports on the progress and expenditures for the MPSWP; and track source of funding for each expenditure as set forth in this decision.

77.78. Because we adopt Cal-Am's proposed combined cost cap of \$279.1 million for the MPWSP and remaining Cal-Am only facilities (those facilities not authorized pursuant to D.16-09-021 but needed to operate the MPWSP and deliver water to Cal-Am customers), recovery of costs greater than \$279.1 million will only be approved for ratepayer recovery upon a showing that these costs were the result of extraordinary circumstances and subject to a heightened level of scrutiny.

78.79. Cal-Am should be required to submit a petition to modify for any cost recovery above \$279.1 million for the MPWSP.

79-80. Cal-Am should be ordered to submit a Tier 2 advice letter to reflect the service area extensions set out in Section 5 of the Return Water Settlement to provide water to Castroville Community Services District and Castroville Seawater Intrusion Project.

80-81. Any sale of excess desalinated water should inure to the benefit of Cal-Am ratepayers, who are providing the vast majority of the funding for this MPWSP, subject to the risk sharing formula, and should correspondingly benefit from any sales of the product water.

81-82. The assessment of the MPWSP should consider overall feasibility of the MPWSP. A project of this magnitude should require substantial time for applicable permitting and review by local authorities. Given the exigencies of the Cease and Desist Orders, it is not reasonable to place additional permitting constraints on the Cal-Am facilities.

82-83. It is reasonable to adopt an initial AFUDC rate of 4.00% to compensate Cal-Am for its carrying costs and allow for a true-up to reflect actual carrying costs.

83-84. As we determined in D.07-08-031, effective regulatory oversight and the magnitude of this infrastructure investment deserves thoughtful consideration by the full Commission, as costs are rolled into rates.

84-85. The Commission should find the Return Water Settlement Agreement is reasonable in light of the entire record, in compliance with the law, and in the public interest.

85-86. The Commission should find the Brine Discharge Settlement Agreement is reasonable in light of the entire record, in compliance with the law, and in the public interest.

86-87. Consistent with the understanding that the Commission retains authority to determine appropriate mitigation, compliance, and enforcement as

to measures concerning environmental protection pursuant and with respect to CEQA, the Brine Discharge Settlement Agreement should be adopted.

~~87.88.~~ The Return Water Settlement and the Brine Discharge Settlement Agreements are a fair, just, and reasonable compromise of the long-standing, difficult, and costly issues involved in solving critical issues concerning the water supply constraints on the Monterey Peninsula.

~~88.89.~~ The financing and ratemaking provisions set out in the Comprehensive Settlement are independently supported by the record and should be adopted consistent with the additional conditions set forth in this decision that provide additional ratepayer protections.

~~89.90.~~ Cal-Am should submit an application to the Commission requesting issuance of a financing order to allow for securitization, public financing of the MPWSP to the extent allowed.

~~90.91.~~ Cal-Am should utilize grant funds, public bonds, SRF, and strive for the least cost financing for the MPWSP.

~~91.92.~~ Cal-Am in all likelihood should have sufficient water rights to operate the MPWSP.

~~92.93.~~ Because of the timing of the State Water Resources Control Board Cease and Desist Orders, this decision should be effective today.

O R D E R

IT IS ORDERED that:

1. The Final Environmental Impact Report is hereby certified for the Monterey Peninsula Water Supply Project, and is certified for use by responsible agencies in considering subsequent approvals.
2. California-American Water Company is granted a conditional Certificate of Public Convenience and Necessity for the Monterey Peninsula

Water Supply Project (Alternative 5a), subject to denial of PWM expansion in Phase 3 of this proceeding, and California-American Water Company complying with all feasible mitigation measures identified in the combined Final Environmental Report/Environmental Impact Statement, as set forth and in compliance with the Mitigation Monitoring and Reporting Program contained in Appendix D of this decision.

3. A Phase 3 is hereby ordered to consider whether PWM expansion is a viable, cost-effective, and reasonable replacement water supply that could obviate the need for the MPWSP. Phase 3 shall conclude within six months of this decision.

3.4. The California Environmental Quality Act Findings for the Monterey Peninsula Water Supply Project in Appendix C accurately reflect the independent analysis contained in the combined Final Environmental Report/Environmental Impact Statement, are supported by substantial evidence in the administrative record, and are incorporated as findings herein.

4.5. The Monterey Peninsula Water Supply Project (MPWSP) (Alternative 5a) benefits and economic, legal, social, environmental and other considerations associated with the MPWSP outweigh and make acceptable the unavoidable impacts identified, for the reasons set forth in the statement of overriding considerations in the California Environmental Quality Act Findings attached to and incorporated as part of this decision, and the Commission adopts and makes this statement of overriding considerations.

5.6. The benefits identified in the statement of overriding considerations in the California Environmental Quality Act Findings attached to and incorporated as part of this decision each independently provide a sufficient basis to outweigh the MPWSP's significant unavoidable impacts.

~~6.7.~~ The benefits of the MPWSP outweigh the benefits of any of the other alternatives examined, including the alternatives deemed infeasible, and including the no project alternative

~~7.8.~~ The Mitigation Monitoring and Reporting Program set forth at Appendix D is adopted.

~~8.9.~~ If the Commission does not approve PWM expansion, California-American Water Company shall implement the environmentally superior alternative (Alternative 5a) of the Monterey Peninsula Water Supply Project identified in the Final Environmental Impact Report.

~~9.10.~~ The Return Water Settlement Agreement, filed on June 14, 2016, is approved, subject to the condition that if the return water obligation is greater than an average of six percent (6%) for years 0-7; four percent (4%) in years 8-15; or 1.5% annually from year 16 forward, ratepayers will not bear any costs for meeting the return obligation above these amounts.

~~10.11.~~ Consistent with the understanding that the Commission retains authority to determine appropriate mitigation, compliance, and enforcement as to measures concerning environmental protection pursuant and with respect to California Environmental Quality Act, the Brine Discharge Settlement Agreement, filed on June 14, 2016, and as updated on July 1, 2016, is adopted.

~~11.12.~~ The Commission's Executive Director shall monitor and enforce the mitigation measures set forth in the Mitigation Monitoring and Reporting Program for the Monterey Peninsula Water Supply Project and may delegate such duties to the Commission staff or outside staff.

~~12.13.~~ The Executive Director is authorized to employ staff independent of the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, monitoring and mitigation supervision of construction of the Monterey Peninsula Water Supply Project. Such staff shall be

individually qualified professional environmental monitors or be employed by one or more qualified firms or organizations.

~~13.14.~~ California-American Water Company shall comply with all orders and directives of the Executive Director concerning implementation of the environmental mitigation measures described in the Monitoring and Reporting Program.

~~14.15.~~ The Executive Director shall not authorize California-American Water Company (Cal-Am) to commence actual construction until Cal-Am has entered into a cost reimbursement agreement with the Commission for the recovery of the costs of complying with the Monitoring and Reporting Program set forth at Appendix D including, but not limited to, special studies, outside staff, or Commission staff costs directly attributable to mitigation monitoring.

~~15.16.~~ In monitoring the implementation of the environmental mitigation measures set forth in the Mitigation Monitoring and Reporting Program and required as conditions of this approval, the Executive Director shall attribute the acts and omissions of California-American Water Company's employees, contractors, subcontractors or other agents to California-American Water Company.

~~16.17.~~ California-American Water Company shall submit a Tier 2 advice letter to reflect the service area extensions set out in Section 5 of the Return Water Settlement to provide water to Castroville Community Services District and Castroville Seawater Intrusion Project.

~~17.18.~~ Beginning January 1, 2019, California-American Water Company shall submit quarterly status reports on the permitting, financing, design, bidding, and construction of the Monterey Peninsula Water Supply Project to the Executive Director and to the Director of the Office of Ratepayer Advocates, and publish the reports on a company maintained web site dedicated to the project.

~~18.19.~~ California-American Water Company shall meet quarterly with staff of the Office of Ratepayer Advocates and Commission Water Division during the period prior to the plant going into operation and up until at least six (6) months after the date that the Monterey Peninsula Water Supply Project becomes operational.

~~19.20.~~ Beginning with the commencement of operation of the Monterey Peninsula Water Supply Project and continuing until otherwise directed to stop, California-American Water Company shall submit regular quarterly filings to the Office of Ratepayer Advocates (ORA) and Water Division as to the volume of water delivered to customers, capacity that the MPWSP is operating, amount of return water needed to meet Cal-Am's obligation, and whether and why the facility has been offline for any reason. These filings shall be served on the Directors of the ORA and Water Division, and published on a company maintained web site dedicated to the project.

~~20.21.~~ Rate recovery for any Operations and Maintenance expenditures will not be authorized absent prior Commission authorization as part of the first general rate case after the Monterey Peninsula Water Supply Project is in operation.

~~21.22.~~ The cost cap for the MPWSP and the remaining California-American Water Company (Cal-Am) Only Facilities is \$279.1 million excluding the amounts authorized in D.16-09-021. To expend funds that Cal-Am intends to recover from ratepayers beyond the capital cost cap, Cal-Am must file a petition to modify this decision.

~~22.23.~~ The Commission's Energy Division may approve requests by California- American Water Company for minor project refinements that may be necessary due to the final engineering of the project, so long as such minor project refinements are located within the geographic boundary of the study area

of the Environmental Impact Report/Environmental Impact Statement and do not, without mitigation, result in a new significant impact or a substantial increase in the severity of a previously identified significant impact based on the criteria used in the Final Environmental Impact Report/Environmental Impact Statement; conflict with any mitigation measure or applicable law or policy; or trigger an additional permit requirement. California-American Water Company shall seek any other project refinements by a petition to modify today's decision.

23.24. The Construction Funding Surcharge set forth in this decision is authorized consistent with this decision and the provisions that will be included in the Tier 3 advice letter adjusting the framework set out in the Comprehensive Settlement Agreement.

24.25. California-American Water Company shall file an application with the Commission requesting issuance of a financing order to allow for the securitization financing option consistent with this decision.

25.26. California-American Water Company shall submit a Tier 3 advice letter to the Commission that provides for specific adjustments to the framework set out in sections 7, 8 and 10-15 of the proposed Comprehensive Settlement Agreement, after consultation with Commission Water Division Staff and parties to the proceeding. The Tier 3 advice letters shall also provide specific detail to implement the provisions consistent with this decision. The Tier 3 advice letter shall be submitted no later than January 1, 2019.

26.27. Prior to submitting the Tier 2 advice letters to implement the tariffs in Appendix E of the Return Water Settlement, California-American Water Company shall meet with Commission Water Division Staff and parties to this proceeding to ensure that the tariffs and Tier 2 advice letters submitted consistent with the Return Water Settlement include conditions that limit liability to ratepayers, and clearly recognize that California-American Water Company

bears the risk for non-compliance or increased return water deliveries consistent with this decision.

27.28. California-American Water Company shall record and track separately all collections and expenditures of the Construction Funding Charge in a memorandum account. If the Monterey Peninsula Water Supply Project does not go online or become used or useful to ratepayers the funds collected shall be returned to ratepayers.

28.29. California-American Water Company shall record and track all capital costs for the MPWSP in a memorandum account. All financing, expenditures, schedule, and progress with construction for the Monterey Peninsula Water Supply Project shall be included in Cal-Am's quarterly reports, along with any information that the Commission Water Division staff reasonably requires, and any other information reasonably necessary for a full and complete reporting to the Commission.

29.30. California-American Water Company shall include in its quarterly reports the amounts collected and expended pursuant to the Construction Funding Charge, and all other expenditures for capital costs as of the date of the quarterly report, any other information that Commission Water Division staff reasonably requires, and any other further information reasonably necessary for a full and complete reporting to the Commission of construction costs for the Monterey Peninsula Water Supply Project and remaining Cal-Am Only Facilities.

30.31. California-American Water Company shall file a Tier 2 advice letter, after consulting with parties and Commission Water Division Staff, for the first year revenue requirement after the facility has been built and is online.

31.32. If the Monterey Peninsula Water Supply Project goes offline for any reason other than routine maintenance or operates below production capacity levels required to meet customer need for four weeks or more Cal-Am must

immediately notify Commission Water Division staff and explain why the facility is offline or operating below capacity. The notification shall be filed no later than the beginning of the fifth week of outage or subpar performance. The notification is to include the reasons for the outage or lower capacity.

32.33. If the Monterey Peninsula Water Supply Project (MPWSP) is offline, or the slant wells fail to produce at a level that is cost effective for ratepayers for two or more months, California American Water Company (Cal-Am) shall notify and meet with Commission Water Division staff. The notification and meeting shall occur no later than the beginning of the ninth week of outage or subpar performance. Cal-Am shall provide a proposed process to have the plant back online with a timeline, or proposal to remove the MPWSP from ratebase and determine an appropriate mechanism to reimburse ratepayers for any recovery of costs for the time the MPWSP is not used and useful.

33.34. California-American Water Company (Cal-Am) must make a showing that the expenditures at issue for the Monterey Peninsula Water Supply Project (MPWSP) are reasonable. Each reasonableness showing must include evidence that the MPWSP financing is the lowest cost and most beneficial for ratepayers; that construction is progressing in a timely manner within the cost caps authorized in this decision. Cal-Am will be required to demonstrate the reasonableness of such costs in the first General Rate Case after the MPWSP is operational.

34.35. If circumstances require the Commission may require California American Water Company to submit a separate application or issue an order instituting an investigation to determine the reasonableness of its expenditures on the Monterey Peninsula Water Supply Project (MPWSP) if the MPWSP is not constructed in a timely manner or fails to operate appropriately.

35.36. Three cost factors will be considered by the Commission when reviewing the advice letters submitted pursuant to this decision. These cost factors are: 1) costs are for facilities that are used and useful; 2) costs must be reasonable; and 3) costs are for facilities that operate at an appropriate capacity to minimize costs for ratepayers.

36.37. The motion submitted for adoption of the Brine Discharge Settlement is hereby granted. California American Water Company shall comply with each term and condition set forth in the Settlement Agreement set out at Appendix I to this decision.

37.38. The motion submitted for adoption of the Return Water Settlement Agreement is hereby granted. California American Water Company shall comply with each term and condition set forth in the Settlement Agreement set out at Appendix H to this decision.

38.39. The motion submitted for adoption of the Sizing Settlement Agreement is hereby denied.

39.40. The framework set forth in the Comprehensive Settlement is adopted consistent with this decision, independent of the proposed settlement agreement, based on the testimony and briefing submitted into the record by the parties.

41. The motion submitted for adoption of the Comprehensive Settlement Agreement is denied.

40.42. The motion establishing a Phase 3 to consider PWM expansion is granted.

41.43. To the extent they are not addressed here, any and all outstanding motions are hereby deemed denied.

42.44. Application 12-04-019 ~~is closed~~ remains open. This order is effective today.