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April 28, 2022

Mr. Paul Sciuto
General Manager
Monterey One Water
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Monterey, CA 93940
paul@my1water.org

Mr. David Stoldt
General Manager
Monterey Peninsula Water Management Agency
P.O. Box 85
Monterey, CA 93940

Re: Status of Aquifer Storage and Recovery Well (ASR) - 01

Dear Messrs. Sciuto and Stoldt:

I write on behalf of California-American Water Company ("California American Water") to respond to your joint letter to Christopher Cook of April 18, 2022 in which you conclude: ". . . we find no substantial rationale for changing the source designation of ASR-1 to active at this time or the foreseeable future." California American Water interprets this as your agencies' definitive refusal to take any action to make ASR-1 available to it as an extraction well. That it is within the power of your agencies to restore ASR-1 as an extraction well is clear, as you acknowledge in your letter:

> ". . . we do not believe that DDW will review and accept the data and analysis by the M1W team to demonstrate minimum underground retention time without significant reduction of Pure Water Monterey (PWM) injection capacity."

If reducing the injection capacity of the PWM is what it takes to enable California American Water to extract potable groundwater at ASR-1, then that is what your agencies must do.

As was made clear in Mr. Cook's letter to you dated September 1, 2021, ASR-01 is needed to meet customer demand, and the failure of the PWM project to comply with retention time requirements, directly causing the state to order ASR-01 shut down for extraction purposes, requires a reduction in PWM injection rates. The total loss of ASR-01 is an unacceptable risk to the Monterey Peninsula potable water supply. The right to extract groundwater at ASR-01 is an essential component of California American Water's overall Monterey District water production and delivery system, and its use for extraction of water from the Seaside Basin is specifically authorized under ASR permits and, as discussed more fully below, under the February 1, 2019

Agreement for Storage and Recovery of Non-Native Water from the Seaside Groundwater Basin ("Storage and Recovery Agreement").

Now that diversions from the Carmel River have been reduced to authorized limits in accordance with the Cease and Desist Order, the Monterey Peninsula is dependent on the Seaside Basin for the majority of its water supplies. And beginning in the fall of 2022, California American Water's inability to use this well will critically interfere with its obligation to deliver water to 38,500 household connections – a total population of about 100,000 citizens. It could also interfere with existing water supply agreements with large-scale customers like the Department of the Army's Presidio of Monterey. California American Water is making every effort to comply with the Cease and Desist Order, as it recognizes that violating the CDO could result in harm to threatened species and critical habitat, and it is totally unreasonable to expect California American Water to violate the Order simply because your agencies desire to continue to inject Advanced Treated Recycled Water (AWT) water at full capacity. Further, the inability to use ASR-01 to extract water leaves California American Water without any redundancy if other wells were to become unavailable for any reason. Such a circumstance would be catastrophic.

The refusal of the Monterey Peninsula Water Management District ("District") to take steps to deliver AWT Water that California American Water can extract at ASR-01 raises serious issues of compliance by the District and Monterey One Water ("M1W") with the parties' agreements.

First, Section 12 of the September 19, 2016 Water Purchase Agreement for Pure Water Monterey Project ("Water Purchase Agreement") requires the District to deliver "Company Water" in certain volumes (as high as 3,500 AFY, with a Water Delivery Guarantee of 2,800 AFY). "Company Water" is defined in Section 2 as "the AWT Water delivered to the Delivery Point *to be used* and owned by the Company" (emphasis supplied). AWT Water that the District delivers to the Delivery Point but that California American Water cannot use because it does not stay underground long enough to satisfy state retention time regulations cannot be considered "Company Water." Nor can California American Water be expected to pay for water that it cannot use. The risk that the District's actions that have resulted in California America Water's inability to use ASR-01 will constitute a breach of the Water Delivery Guarantee of Section 12, and of the Water Availability Guarantee of Section 13 as well, is significant.

Second, the unavailability of ASR-01 due to inability to meet minimum retention times constitutes a present breach of the Storage and Recovery Agreement. Section 9 of the Water Purchase Agreement provides that "[d]elivery by the District and recovery by the Company shall be governed by the Storage and Recovery Agreement." The Storage and Recovery Agreement, at paragraph 4, lists ASR-01 as a location at which "Producer" (i.e., California American Water) "will recover the AWT water." (ASR-01, incidentally, had already been publicly identified as an extraction point for AWT water, as shown in Figure 2-17 of the 2016 Consolidated Final

Environmental Impact Report for the PWM Groundwater Replenishment Project.) Thus California American Water has a contractual right under the Storage and Recovery Agreement to extract AWT water at ASR-01. It cannot do so due to inadequate retention times when the District is injecting at full capacity at the injection points that it selected and installed. Having agreed that ASR-01 – along with nine other existing wells listed in paragraph 4 - are the wells from which California American Water will recover AWT water, the District cannot be free under the Storage and Recovery Agreement to inject AWT water at rates and volumes that it knows will deprive Cal Am of the use of significant quantities of that water at extraction wells on that list – particularly a well like ASR-01 that is so essential to Cal Am's delivery of potable water to the public. Compliance is required at *all* existing wells listed in paragraph 4 of the Storage and Recovery Agreement; otherwise, their agreed designation as extraction points is rendered merely theoretical.

Failure to ensure that the retention time between injection and extraction at ASR-01 meets or exceeds the regulatory minimum of two months also constitutes a breach of paragraph 6 of the Storage and Recovery Agreement, which provides, in part:

> The District hereby certifies that prior to the AWT Water being introduced into the Basin for storage in accordance with this Agreement, all such water will meet all of the requirements imposed on the District or M1W by permits and/or approvals issued to the District or M1W by the California Regional Water Quality Control Board and any other water quality standards imposed by any other governmental entity. . . .

In its Order R3-2017-0003, the Central Coast Regional Water Quality Control Board incorporated (at Section VI, paragraph 1) all of the State Water Resources Control Board Division of Drinking Water regulations governing Indirect Potable Re-use, Groundwater Replenishment-Subsurface Application, including the retention time regulations. Thus, non-compliance with the retention time regulations constitutes a breach of the District's water quality certification set forth paragraph 6 of the Storage and Recovery Agreement.

Third, and in a similar vein, the Water Purchase Agreement provides, at section 14:

> All AWT water delivered by the Agency [M1W] to the District or by the District to the Delivery Point must meet the water quality requirements set forth in Applicable Law (the "Water Treatment Guarantee"). AWT Water delivered by the Agency to the District or by the District to the Delivery Point that does not meet the Water Treatment Guarantee shall not be considered Company Water or Excess Water.

There can be no question that the regulations mandating minimum aquifer retention times for potable use of recycled water are water quality regulations. As explained in the Central Coast Regional Water Quality Control Board Order R3-2017-0003, "[r]ecycled water must be retained underground for a sufficient period of time to identify and respond to any treatment failure so that inadequately treated recycled water does not enter a potable water system. . ." As noted above, moreover, the Regional Water Quality Control Board incorporated all of DDW's regulations governing Indirect Potable Re-use, Groundwater Replenishment-Subsurface Application, including the retention time regulations, into Order R3-2017-0003 (Section VI, paragraph 1). Therefore, as with the water quality certification in the Storage and Recovery Agreement, the District is in breach of the Water Treatment Guarantee, and M1W may be as well.

California American Water understands the operational, administrative and political reasons why the District and M1W would want to continue injecting at full capacity, but if doing so deprives California American Water of the use of ASR-01, and it does, it is a breach of and interference with the Storage and Delivery Agreement and the Water Storage Agreement. California American Water therefore notifies the District that it is invoking the dispute resolution process set forth in section 13 of the Storage and Recovery Agreement, and the District and M1W that it is invoking the dispute resolution process set forth in section 21 of the Water Purchase Agreement.

Compliance with the retention time standards is clearly a responsibility of the District, as the District has repeatedly acknowledged. If more distant injection points would have ensured compliance with retention time regulations at ASR-01, then the District should have identified them and built its injection wells there. Given the expected and continued use of ASR-01 to extract water from the Seaside Basin, any failure by the District and Monterey One Water to recognize ASR-01 as a point of compliance in its modeling of PWM retention times appears to have been a critical mistake. The immediate solution now, however, is not to put California American Water in a position of violating the Cease and Desist Order, or to force needless rationing, but instead to take steps to restore ASR-01 to production status as quickly as possible. To fail to do so would be a breach of trust with the public, interfere with California American Water's obligation to serve its customers, and place both public health and safety and Carmel River threatened species and critical habitat at risk. Avoiding these risks has, after all, has necessarily been an objective of the PWM project from the beginning. As the District and M1W observed in the PWM project environmental impact report six years ago:

> The primary purpose of the [PWM] Project is to provide high quality replacement water to allow California American Water Company . . . to extract 3,500 acre-feet per year (AFY) more water from the Seaside Basin for delivery to its customers in the Monterey District service area and reduce Carmel River system water use by an equivalent

amount. (Consolidated Final Environmental Impact Report For The Pure Water Monterey Groundwater Replenishment Project, Section 2.1.1.2, p. 2-3, January 2016.)

Thank you.

Very truly yours,

David D. Cooke

DDC

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