

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



**FILED**

10/14/26  
04:59 PM  
C2606021

Monterey Peninsula Water Management District,  
City of Marina and Marina Coast Water District,

Complainants,

vs.

California-American Water Company (U210W),

Defendant.

Case 26-06-021  
(Filed June 16, 2026)

**CALIFORNIA-AMERICAN WATER COMPANY (U210W) RESPONSE IN  
OPPOSITION TO COMPLAINANTS' EMERGENCY MOTION FOR SUMMARY  
JUDGMENT/ADJUDICATION**

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October 14, 2026

## TABLE OF CONTENTS

|      |                                                                                                                             |    |
|------|-----------------------------------------------------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION.....                                                                                                           | 1  |
| II.  | LEGAL STANDARDS.....                                                                                                        | 3  |
| III. | RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS .....                                                                    | 5  |
| IV.  | ARGUMENT.....                                                                                                               | 20 |
| A.   | The Motion Does Not Satisfy the Summary Judgment Standard Because It Relies on Disputed Material Facts. ....                | 20 |
| 1.   | The CPUC never “expressly rejected” phasing the 6.4 mgd Project.....                                                        | 20 |
| 2.   | The concurrent jurisdiction of the Coastal Commission and the CPUC requires compliance with both agencies’ approvals.....   | 22 |
| 3.   | Every component of the 4.8 mgd phase is a necessary component of the final 6.4 mgd Project. ....                            | 23 |
| 4.   | California American Water has not made any change that requires a petition for modification. ....                           | 24 |
| 5.   | Complainants’ claims of harm rest on disputed facts.....                                                                    | 26 |
| B.   | No Further CEQA Review Is Necessary, and the CPUC Should Decline Complainants’ Request to Revisit Environmental Review..... | 28 |
| C.   | Injunctive Relief Is Not Appropriate Under the Summary Judgment Standard or Any Other Standard.....                         | 30 |
| 1.   | Complainants are not likely to prevail on the merits.....                                                                   | 30 |
| 2.   | Complainants have not shown irreparable harm. ....                                                                          | 31 |
| 3.   | Complainants have not shown that an injunction would cause no harm to the public interest. ....                             | 33 |
| 4.   | An injunction would substantially harm interested parties.....                                                              | 35 |
| 5.   | Absent a violation of D.18-09-017 or another CPUC decision, there is no violation of the Public Utilities Code. ....        | 36 |
| V.   | COMPLAINANTS’ ATTACKS ON CALIFORNIA AMERICAN WATER’S AFFIRMATIVE DEFENSES FAIL .....                                        | 37 |
| A.   | First Affirmative Defense .....                                                                                             | 37 |
| B.   | Second Affirmative Defense.....                                                                                             | 37 |
| C.   | Third Affirmative Defense.....                                                                                              | 37 |
| D.   | Fourth Affirmative Defense.....                                                                                             | 38 |
| E.   | Fifth Affirmative Defense.....                                                                                              | 38 |
| F.   | Sixth Affirmative Defense .....                                                                                             | 39 |
| G.   | Seventh Affirmative Defense.....                                                                                            | 39 |
| H.   | Eighth Affirmative Defense.....                                                                                             | 40 |
| I.   | Ninth Affirmative Defense .....                                                                                             | 42 |
| J.   | Tenth Affirmative Defense .....                                                                                             | 43 |
| VI.  | ATTACHMENTS.....                                                                                                            | 43 |

|      |                 |    |
|------|-----------------|----|
| VII. | CONCLUSION..... | 44 |
|------|-----------------|----|

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**I. INTRODUCTION**

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("CPUC"), Defendant California-American Water Company ("California American Water" or "Company") respectfully submits this response in opposition to the Emergency Motion for Summary Judgment/Adjudication ("Motion") filed by Monterey Peninsula Water Management District ("MPWMD"), City of Marina ("City"), and Marina Coast Water District ("MCWD") (collectively, "Complainants") on September 29, 2026.<sup>1</sup> On August 7,

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<sup>1</sup> This response refers to attachments that were appended to California American Water's Answer to the Complaint ("Answer"), filed August 6, 2026, by new numbers, and to Complainants' Statement of Undisputed Material Facts in the Motion as "UMF." Commonly cited record documents are referred to as follows: California Coastal Commission, Final Adopted Findings, Consolidated Coastal Development Permit Appeal No. A-3-MRA-19-0034, Application No. 9-20-0603 (Nov. 17, 2022) (**Attachment 1**) ("CDP Final Findings"); Five-Year Reaffirmation of CEQA Compliance for State Revolving Fund Financing Application (Apr. 2, 2026) (**Attachment 2**) ("Five-Year CEQA Compliance Reaffirmation"); State Lands Commission Staff Report 60 (June 23, 2026) (**Attachment 3**) ("SLC Staff Report"); SLC

2026, California American Water filed a Motion to Dismiss Complainants’ Complaint, and on August 25, 2026, Administrative Law Judge (“ALJ”) Gerald F. Kelly set a hearing for that Motion to Dismiss for December 8, 2026. In their instant Motion, Complainants ask that the CPUC resolve this Motion for Summary Judgment/Adjudication before that December 8, 2026 hearing, and “instead deny the motion to dismiss as moot upon promptly issuing a POD granting this Emergency Motion without hearing.”<sup>2</sup>

The Motion should be denied. It rests on a core premise that California American Water squarely disputes: that before beginning construction of the Monterey Peninsula Water Supply Project (“MPWSP” or “Project”) with a 4.8 million gallon per day (“mgd”) phase the Company must file a Petition for Modification of D.18-09-017 and the Certificate of Public Convenience and Necessity (“CPCN”) issued by the CPUC in that decision. This is incorrect. In D.18-09-017, the Commission did not prohibit phased construction of the 6.4 mgd desalination plant. The Coastal Commission, the California State Lands Commission (“SLC”), and the Monterey County Superior Court have each recognized that the 4.8 mgd phase is a phased component of the fully analyzed 6.4 mgd Project, and that phasing introduces no new or more severe significant environmental effects.<sup>3</sup> Notably, CPUC staff, informed that California American Water intended

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Evaluation of Prior CEQA Sufficiency (May 2026) (**Attachment 4**) (“SLC Environmental Memorandum”); and State Water Resources Control Board Final Report of the Board as Referee, Monterey Super. Ct. Case No. 20CV001387 (June 25, 2025) (**Attachment 5**) (“AHO Report”).

<sup>2</sup> Mot., pp. 8-9.

<sup>3</sup> **Attachment 3**, SLC Staff Report, p. 6 (“The project approved by the CCC in its Final Adopted Findings is a phased version of the fully analyzed 6.4 mgd per year project approved by the CPUC in 2018.”); **Attachment 4**, SLC Environmental Memorandum, p. 2 (“Compared to the Original Project, the Phase 1 Project would not cause any new or different significant impacts and would not increase the severity of the previously identified significant impacts. ... Additionally, all mitigation measures proposed in the Original Project are still applicable to the Phase 1 Project, and no new mitigation measures are necessary.”); **Attachment 6**, *City of Marina v. Cal. Coastal Com.*, Final Decision, Monterey Super. Ct. Case No. 22CV004063 (May 12, 2025) (“*City of Marina Decision*”), p. 51 (“Petitioners cite no authority that prohibits the [Coastal] Commission, as a responsible agency, under CEQA from approving a phased

to begin construction of the Project with a 4.8 mgd phase, issued Notices to Proceed with construction of the entire 6.4 mgd plant.<sup>4</sup>

Complainants' contrary characterizations of the record, of the CPUC's decisions, and of the Company's plans are, at a minimum, genuinely disputed. Because the Motion relies on disputed material facts and because Complainants have not established the elements required for the extraordinary injunctive relief they seek, the CPUC should deny the Motion in its entirety.

## II. LEGAL STANDARDS

The CPUC looks to Code of Civil Procedure section 437c when evaluating motions for summary judgment.<sup>5</sup> Under that standard, "[i]f the parties' filings disclose the existence of a disputed issue of material fact, the motion must be denied."<sup>6</sup> In applying this standard, "[t]he affidavits and supporting documents of the moving party will be strictly construed; those of the party opposing the motion will be liberally construed."<sup>7</sup> The California courts apply the same rule. The moving party "bears the burden of persuasion" throughout, and all evidence and inferences are viewed "in the light most favorable to the opposing party."<sup>8</sup> Summary judgment is a "drastic remedy ... [i]f there is any issue of material fact to be tried, summary judgment must

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version of a project approved by the lead agency - here, the CPUC."); *id.* (the Coastal Commission did not "impermissibly defer[] consideration of future environmental impacts").

<sup>4</sup> **Attachment 7**, NTP-5a, issued Sept. 14, 2025; **Attachment 8**, NTP-5b, issued May 29, 2026.

<sup>5</sup> D.94-04-082 (*Westcom Long Distance, Inc. v. Pacific Bell*), 54 CPUC 2d 244 (1994), 1994 Cal. PUC LEXIS 339, \*13 ("The motion shall be granted if all the papers show that there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code of Civil Procedure § 437c(c).)").

<sup>6</sup> *Id.*

<sup>7</sup> D.07-01-014 (*Reclamation Dist. No. 2038 v. Pacific Gas & Elec. Co.*), p. 5 ("The affidavits and supporting documents of the moving party will be strictly construed; those of the party opposing the motion will be liberally construed.").

<sup>8</sup> *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.

be denied,” and it may not be granted “based on inferences ... if such inferences are contradicted by other inferences which raise a triable issue of fact.”<sup>9</sup>

Disputes over how CPUC decisions apply to a utility’s conduct are precisely the kind of disputes that preclude summary judgment. In D.16-03-13, the CPUC denied a complainant’s motion for summary adjudication where the parties disagreed about which of two provisions of the utility’s tariff rules governed the facts, holding that the dispute over interpretation “does not include enough uncontested factual information to support a finding for the Complainant.”<sup>10</sup> The same is true here. Complainants’ Motion turns on their interpretation of D.18-09-017, D.19-01-051, and D.26-04-046, and on their characterization of the Company’s actions to implement D.18-09-017, all of which California American Water disputes.

When evaluating a request for a preliminary injunction in a Motion for Summary Judgment or Summary Adjudication, the CPUC may only grant the requested relief if, based on undisputed material facts, the movant is entitled to judgment as a matter of law.<sup>11</sup> Accordingly, based only on undisputed facts, Complainants must demonstrate: (1) irreparable injury to the moving party without [injunctive relief]; (2) no harm to the public interest; (3) no substantial harm to other interested parties; and (4) a likelihood of prevailing on the merits.”<sup>12</sup> As discussed

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<sup>9</sup> *Hepp v. Lockheed-California Co.* (1978) 86 Cal.App.3d 714, 717-18.

<sup>10</sup> D.16-03-013 (*Hetherington v. Pacific Gas & Elec. Co.*), p. 51 (“The dispute over the interpretation of these two specific sections of Rule 16, viewed strictly within the bounds of the first MFSA, does not include enough uncontested factual information to support a finding for the Complainant.”).

<sup>11</sup> D.94-04-082 (*Westcom Long Distance, Inc. v. Pacific Bell*), 54 CPUC 2d 244 (1994), 1994 Cal. PUC LEXIS 339 p. 13 (“The motion shall be granted if all the papers show that there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code of Civil Procedure § 437c(c).)”).

<sup>12</sup> D.23-10-032 (*Nagel et. al. v. Pacific Gas & Elec. Co.*), pp. 35-36.

below, California American Water disputes key assertions of fact on which Complainants rely to make their case for injunctive relief.

Strictly construing Complainants' papers and liberally construing the Company's, the Motion relies on a series of material facts that are in dispute. Accordingly, the Motion cannot be granted, nor can Complainants' request for an injunction halting construction of the MPWSP.

### **III. RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS**

California American Water responds to each of Complainants' statements of undisputed material facts ("UMF") as follows. Where the Company does not dispute that a document "contains the quoted text," it does not concede Complainants' characterization of that text, its relevance to the Company's present plans, or any legal inference that may be drawn from the purported UMF.

California American Water disputes UMF Nos. 24, 41-44, 61, and 62 on their face. California American Water further submits responses to UMF Nos. 2-8, 10-13, 15-16, 20, 22-23, 26-27, 30, 32, 34, 39-40, 47, 49, 53-55, 63-66, and 68-69 that illustrate additional disputes of fact related to the quoted text in Complainants' Motion.

**Response to UMF No. 1.** Undisputed.

**Response to UMF No. 2.** Undisputed. California American Water notes that D.18-09-017 does not state that phased construction of the 6.4 mgd Project is contrary to that decision.

**Response to UMF No. 3.** Undisputed that D.18-09-017 contains the quoted text. However, this statement addresses the alternative of a standalone 4.8 mgd desalination plant, not a 4.8 mgd phase of the 6.4 mgd plant approved in the Decision.<sup>13</sup>

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<sup>13</sup> D.18-09-017, pp. 69-70.

**Response to UMF No. 4.** Undisputed that D.18-09-017 contains the quoted text.

However, California American Water is not eliminating any of the planned slant wells from the overall Project site design; it is developing them in phases (constructing four for the 4.8 mgd phase and two additional slant wells for the 6.4 mgd phase), as required by the Coastal Commission’s conditional coastal development permit (“CDP”).<sup>14</sup>

**Response to UMF No. 5.** Undisputed that D.18-09-017 contains the quoted text.

However, California American Water modified the Project design to reduce the well field from five well pads to three (including the existing test slant well pad), with the pads designed to accommodate an additional well in the second phase without constructing an additional well pad, which reduces the environmental impact and cost of phased well development.<sup>15</sup> Further, no new permit is needed to complete construction of the 6.4 mgd Project; California American Water need only seek an amendment to its existing CDP.<sup>16</sup>

**Response to UMF No. 6.** Undisputed that D.18-09-017 contains the quoted text.

However, California American Water intends to complete the 6.4 mgd Project as soon as the Coastal Commission’s conditions permit, limiting the duration of any operations and maintenance (“O&M”) cost differential.<sup>17</sup>

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<sup>14</sup> **Attachment 1**, CDP Final Findings, pp. 2, 14, 42.

<sup>15</sup> *Id.*, p. 42 (“This proposed first phase would require construction of just two well pads, would allow for a shorter access road, and would reduce the initially required pumping volumes by about a third. As part of this ‘phased’ proposal, Cal-Am also modified the design of these first two well pads to initially accommodate two slant wells and could accommodate a third well during the Project’s second phase (i.e., without constructing an additional well pad) ... .”); **Attachment 4**, SLC Environmental Memorandum, p. 8 (The CDP’s “special conditions are consistent with or impose more restrictive requirements than the mitigation identified in the Final EIR/EIS.”).

<sup>16</sup> **Attachment 1**, CDP Final Findings, p. 14; *see also Attachment 6*, *City of Marina* Decision, p. 52 (CDP “required that any expansion of the operation to 6.4 mgd be by application to the Commission to modify the CDP... .”).

<sup>17</sup> **Attachment 1**, CDP Final Findings, p. 14 (California American Water may apply to amend the CDP after two years of operation); **Attachment 9**, MPWSP Q4 2025 Project Update (reported budget figures

**Response to UMF No. 7.** Undisputed that D.18-09-017 contains the quoted text.

However, all capital expenditures toward the 4.8 mgd phase of the Project will be useful contributions toward the 6.4 mgd Project, because the plant is built in modular 1.6 mgd treatment trains and the 4.8 mgd phase includes three of the four trains of the full plant, along with pipelines, storage tanks, electrical, maintenance, and administrative facilities, and pump stations, which will all serve the Project in both its initial 4.8 mgd and complete 6.4 mgd capacities.<sup>18</sup>

**Response to UMF No. 8.** Undisputed that D.18-09-017 contains the quoted text.

However, California American Water intends to complete the 6.4 mgd Project as soon as the Coastal Commission's conditions permit, limiting the duration of any operations and maintenance ("O&M") cost differential.<sup>19</sup>

**Response to UMF No. 9.** Undisputed.

**Response to UMF No. 10.** Undisputed that D.18-09-017 contains the quoted text.

However, California American Water modified the Project design to reduce the well field from five well pads to three (including the existing test slant well pad), with the pads designed to accommodate an additional well in the second phase without constructing an additional well pad,

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are based on a 6.4 mgd Project); **Attachment 8**, NTP-5b, issued May 29, 2026 (authorizing construction of a plant that will "desalinate 6.4 million gallons of water per day."); **Attachment 10**, American Company, Inc. press release dated Oct. 5, 2022 (announcing California American Water's plan to develop the 6.4 mgd Project in phases pursuant to Coastal Commission conditional approval).

<sup>18</sup> **Attachment 1**, CDP Final Findings, p. 42, n. 3 ("The proposed 4.8 and 6.4 mgd volumes are based on the modular nature of the desalination facility's 'treatment trains,' each of which is designed to produce about 1.6 mgd of potable water."); D.18-09-017, p. 128 ("The MPWSP is made up of 1.6 mgd modular increments."); Answer, pp. 10-12.

<sup>19</sup> **Attachment 1**, CDP Final Findings, p. 14 (California American Water may apply to amend the CDP after two years of operation); **Attachment 9**, MPWSP Q4 2025 Project Update (reported budget figures are based on a 6.4 mgd Project); **Attachment 8**, NTP-5b, issued May 29, 2026 (authorizing construction of a plant that will "desalinate 6.4 million gallons of water per day."); **Attachment 10**, American Company, Inc. press release dated Oct. 5, 2022 (announcing California American Water's plan to develop the 6.4 mgd Project in phases pursuant to Coastal Commission conditional approval).

which reduces the environmental impact and cost of phased well development.<sup>20</sup> Further, no new permit is needed to complete construction of the 6.4 mgd Project; California American Water need only seek an amendment to its existing CDP.<sup>21</sup>

**Response to UMF No. 11.** Undisputed that D.18-09-017 contains the quoted text. However, California American Water has not currently sought to recover any amount in rates in excess of the \$279.1 million cost cap.<sup>22</sup>

**Response to UMF No. 12.** Undisputed. California American Water notes that none of the conditions set forth in D.18-09-017, Ordering Paragraph 22, are triggered by phased construction of the MPWSP.

**Response to UMF No. 13.** Undisputed that D.18-09-017 contains the quoted text. However, the CPUC considered the water supplies available from Pure Water Monterey (“PWM”), including the expansion, when it issued D.25-08-006 and did not require any modification to the MPWSP.<sup>23</sup>

**Response to UMF No. 14.** Undisputed.

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<sup>20</sup> **Attachment 1**, CDP Final Findings, p. 42 (“This proposed first phase would require construction of just two well pads, would allow for a shorter access road, and would reduce the initially required pumping volumes by about a third. As part of this ‘phased’ proposal, Cal-Am also modified the design of these first two well pads to initially accommodate two slant wells and could accommodate a third well during the Project’s second phase (i.e., without constructing an additional well pad) ... .”); **Attachment 4**, SLC Environmental Memorandum, p. 8 (The CDP’s “special conditions are consistent with or impose more restrictive requirements than the mitigation identified in the Final EIR/EIS.”).

<sup>21</sup> **Attachment 1**, CDP Final Findings, p. 14; *see also* **Attachment 6**, *City of Marina* Decision, p. 52 (CDP “required that any expansion of the operation to 6.4 mgd be by application to the Commission to modify the CDP... .”).

<sup>22</sup> D.18-09-017, p. 210, Ordering Paragraph 21 (establishing cost cap).

<sup>23</sup> D.25-08-006, p. 42 (“In this case, Cal-Am has proposed exactly the same water supply estimates for the Carmel River, Seaside Groundwater Basin, the Sand City Desalination Project, and PWM. Neither Cal-Am nor any other party have presented significant new facts that show circumstances have fundamentally changed to warrant substantial revisions to those supply categories. Consequently, we find it reasonable for Cal-Am to continue to rely on the supply estimates adopted in D.18-09-017.”).

**Response to UMF No. 15.** Undisputed that D.19-01-051 contains the quoted text.

However, this statement refers to a standalone 4.8 mgd plant alternative, not a 4.8 mgd phase constructed as an integral part of the 6.4 mgd Project.<sup>24</sup>

**Response to UMF No. 16.** Undisputed that D.19-01-051 contains the quoted text.

However, this statement refers to a standalone 4.8 mgd plant alternative, not a 4.8 mgd phase constructed as an integral part of the 6.4 mgd Project.<sup>25</sup>

**Response to UMF No. 17.** Undisputed.

**Response to UMF No. 18.** Undisputed.

**Response to UMF No. 19.** Undisputed.

**Response to UMF No. 20.** Undisputed that Mr. Crooks answered “yes” when asked whether a selected passage from D.18-09-017 “refresh[ed] his recollection that the PUC approved only the 6.4 plant and not a phased approach starting with 4.8.” However, the passage quoted<sup>26</sup> does not support that conclusion, and California American Water disputes this conclusion. Moreover, Mr. Crooks is an engineer, not an attorney, and was asked during the examination to evaluate the CPUC’s legal conclusions.<sup>27</sup>

**Response to UMF No. 21.** Undisputed.

**Response to UMF No. 22.** Undisputed. However, the CDP sets out the conditions under which California American Water may obtain approval to complete the 6.4 mgd Project.<sup>28</sup>

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<sup>24</sup> D.19-01-051, pp. 60-61 (explaining that the CPUC analyzed a standalone 4.8 mgd plant as an alternative to the 6.4 mgd Project).

<sup>25</sup> *Id.* (explaining that the CPUC analyzed a standalone 4.8 mgd plant as an alternative to the 6.4 mgd Project).

<sup>26</sup> Mot., Ex. 1, 58:19-59:3, quoting D.18-09-017 p. 45 (“We conclude Cal-Am should be granted a CPCN to construct and operate the MPWSP variations with a 6.4 MGD reduced capacity desal plant.”).

<sup>27</sup> *Id.*, 59:7-9.

<sup>28</sup> **Attachment 1**, CDP Final Findings, pp. 12-40.

**Response to UMF No. 23.** Undisputed. California American Water notes that the CDP requires the Company to obtain an amendment to its existing permit, not a new or additional permit of the kind referenced in D.18-09-017, Ordering Paragraph 22, to complete the 6.4 mgd Project.<sup>29</sup>

**Response to UMF No. 24.** Disputed. California American Water and the Coastal Commission did not “emphasize[] the CCC’s statements of uncertainty regarding whether a 4.8 mgd desalination project would ever be expanded to 6.4 mgd.”<sup>30</sup> The parties candidly advised the Court of Appeal that such an expansion was conditional, but also advised the court that the Coastal Commission analyzed the full 6.4 mgd Project pursuant to its responsibilities under the California Environmental Quality Act (“CEQA”), in anticipation of the completion of the full 6.4 mgd Project.<sup>31</sup> The water supply deficit necessitating the full 6.4 mgd Project has since been confirmed.<sup>32</sup>

**Response to UMF No. 25.** Undisputed.

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<sup>29</sup> *Id.*, p. 14; *see also* **Attachment 6**, *City of Marina* Decision, p. 52 (CDP “required that any expansion of the operation to 6.4 mgd be by application to the Commission to modify the CDP, accompanied by all monitoring reports”).

<sup>30</sup> *Mot.*, p. 18.

<sup>31</sup> Ex. 1 to Complainants’ Joint Response to California American Water’s MTD, pp. 32-39 (The Coastal Commission expressed uncertainty about need for the 6.4 mgd Project, given then-pending water supply and demand proceedings before the CPUC, but explained that it had “properly considered and relied upon” the CPUC’s EIR/EIS which “extensively analyzed the full [6.4 mgd] Project’s impacts” and fully evaluated environmental impacts “associated with the full scale of the [6.4 mgd] Project... .”); **Attachment 6**, *City of Marina* Decision, p. 51 (“[T]he Commission actually and necessarily did evaluate the full-scale project effects as part of the process of comparing and evaluating the lessened, mitigated effects of a 4.8 mgd desalination operation.”).

<sup>32</sup> D.25-08-006, p. 50, Conclusions of Law 6, 11; D.25-10-001, p. 4 (correcting typographical errors). The CPUC’s determination of need was far greater than the assumptions used by the Coastal Commission in its findings in approving the CDPs. *See* **Attachment 1**, CDP Final Findings, pp. 151-56.

**Response to UMF No. 26.** Undisputed that the CDP Final Findings contain the quoted text. However, the CPUC has issued multiple Notices to Proceed (“NTPs”) authorizing the Company to begin construction of the Project, including NTP-5a and NTP-5b.<sup>33</sup>

**Response to UMF No. 27.** Undisputed. However, given the time that elapsed between the CDP Final Findings and the beginning of construction, a 20- to 25-year operating life for the wells aligns with the projected timeline for potential dune incursion in 2040-2050; by the time that issue may arise, the wells will be reaching the end of their useful lives.<sup>34</sup>

**Response to UMF No. 28.** Undisputed.

**Response to UMF No. 29.** Undisputed.

**Response to UMF No. 30.** Undisputed. California American Water notes that it will submit a filing to address cost recovery above the cost cap later this month.

**Response to UMF No. 31.** Undisputed.

**Response to UMF No. 32.** Undisputed. California American Water notes that, before issuance of NTP-5b, its representatives discussed the phased build-out required by the Coastal Commission with CPUC staff.<sup>35</sup>

**Response to UMF No. 33.** Undisputed.

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<sup>33</sup> **Attachment 7**, NTP-5a, issued Sept. 14, 2025; **Attachment 8**, NTP-5b, issued May 29, 2026.

<sup>34</sup> **Attachment 1**, CDP Final Findings, p. 8 (“[T]he well heads could be buried due to the inland movement of the adjacent sand dunes by about 2040 to 2050. However, Cal-Am estimates that its wells would operate for only 20 to 25 years before they would need to be relocated due to the decreased water yields they experience as they operate.”).

<sup>35</sup> **Attachment 11**, Declaration of Tyler Potter, ¶¶ 3-6, 9.

**Response to UMF No. 34.** Undisputed. California American Water notes that its statements quoted in UMF Nos. 33 and 34 are not inconsistent, because site preparation is a distinct step from facility construction.<sup>36</sup>

**Response to UMF No. 35.** Undisputed.

**Response to UMF No. 36.** Undisputed.

**Response to UMF No. 37.** Undisputed.

**Response to UMF No. 38.** Undisputed.

**Response to UMF No. 39.** Undisputed. However, California American Water “decided to construct a 4.8 mgd desalination project” to comply with the overlapping jurisdictional approvals of the Coastal Commission and the CPUC.<sup>37</sup> The 4.8 mgd plant is an integral first phase of the 6.4 mgd desalination Project approved by the CPUC.

**Response to UMF No. 40.** Undisputed that the cost analysis in D.18-09-017 reviewed the costs of a 6.4 mgd Project. However, California American Water is not building a standalone 4.8 mgd project; it is constructing the first phase of the 6.4 mgd Project analyzed and approved in D.18-09-017.

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<sup>36</sup> Answer, p. 11 (“[C]onstruction of the desalination plant is scheduled to begin in August 2026, as authorized by NTP-5b.”); *id.*, p. 22 (NTP-5a “allow[ed] for site preparation and grading,” and NTP-5b “allow[s] for full build-out of the 4.8 mgd phase of the project”).

<sup>37</sup> Pub. Res. Code § 30600(a) (“in addition to obtaining any other permit required by law ... any person ... wishing to perform or undertake any development in the coastal zone ... shall obtain a coastal development permit); D.94-06-014, 55 CPUC 2d 87 (1994), 1994 Cal. PUC LEXIS 453, \*70-71, Conclusion of Law 15 ( “The [CPUC] acknowledges the concurrent jurisdiction of the California Coastal Commission in the coastal zone and the need for the utilities to comply with the permit requirements of state agencies having concurrent jurisdiction.”).

**Response to UMF No. 41.** Disputed. The CPUC evaluated potential cost and environmental impacts of deferring one slant well to be drilled at a later time.<sup>38</sup> The Coastal Commission addressed those concerns in the CDP Final Findings by reducing the number of initially constructed well pads and designing those pads to accommodate additional wells in the 6.4 mgd Project completion phase.<sup>39</sup>

**Response to UMF No. 42.** Undisputed. However, as the CPUC noted, the FEIR did consider and discuss a 4.8 mgd standalone plant but determined that this was not a viable alternative because it would not meet the project objectives, so “it was not necessary to address in detail.”<sup>40</sup> As stated throughout this Response, California American Water is not constructing a standalone 4.8 mgd plant. Disputed that the CPUC’s Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”) for the 6.4 mgd Project is not sufficiently detailed to support the phased construction approach conditionally approved by the Coastal Commission. The Coastal Commission and the SLC each relied on the EIR/EIS and found that the phased Project would cause no new significant effects or substantial increase in the severity of previously identified significant effects, and the CPUC has reaffirmed that the EIR/EIS continues to apply.<sup>41</sup>

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<sup>38</sup> D.18-09-017, p. 129 (“Cal-Am convincingly shows that 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.”); *id.*, p. 179, Finding of Fact 97.

<sup>39</sup> **Attachment 1**, CDP Final Findings, p. 42 (“This proposed first phase would require construction of just two well pads, would allow for a shorter access road, and would reduce the initially required pumping volumes by about a third. As part of this ‘phased’ proposal, Cal-Am also modified the design of these first two well pads to initially accommodate two slant wells and could accommodate a third well during the Project’s second phase (i.e., without constructing an additional well pad) ... ”); **Attachment 4**, SLC Environmental Memorandum, p. 7 (“Under this phase only three well pads (including the well pad for the existing test slant well) would be required.”).

<sup>40</sup> D.19-01-051, p. 61.

<sup>41</sup> **Attachment 2**, Five-Year CEQA Compliance Reaffirmation, p. 2 (“The CPUC affirms that the EIR/EIS continues to apply to the MPWSP. The MPWSP has not changed in a manner that affects the

**Response to UMF No. 43.** Disputed. The Coastal Commission appropriately relied on the EIR/EIS prepared by the CPUC, supplemented as necessary to comply with its obligations under the California Coastal Act and as a Responsible Agency under CEQA, to identify the conditions it required to approve construction of a 4.8 mgd phase and a complete 6.4 mgd Project.<sup>42</sup>

**Response to UMF No. 44.** Disputed. The SLC appropriately relied on the EIR/EIS prepared by the CPUC, as supplemented by the Coastal Commission's findings, to evaluate the 4.8 mgd phase as part of the full 6.4 mgd Project.<sup>43</sup>

**Response to UMF No. 45.** Undisputed.

**Response to UMF No. 46.** Undisputed.

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EIR/EIS's validity, or that requires preparation of an addendum, supplemental or subsequent CEQA document."); **Attachment 4**, SLC Environmental Memorandum, p. 2 (No basis to perform additional CEQA analysis because CPUC and Coastal Commission analysis was sufficient); **Attachment 1**, CDP Final Findings, p. 165 ("The Project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed Project is consistent with CEQA.").

<sup>42</sup> **Attachment 1**, CDP Final Findings, p. 53, n. 16 ("The Commission need not create a separate document to carry out its CEQA obligations; rather, the Commission uses its certified regulatory program in lieu of needing to adopt a separate environmental impact report or other CEQA document. ... Thus, the analysis in these Findings satisfies any CEQA obligations the Commission has."); **Attachment 6**, *City of Marina* Decision, p. 51 ("The CPUC, in the FEIR/FEIS, had already extensively studied future environmental impacts based upon the information before it.").

<sup>43</sup> **Attachment 4**, SLC Environmental Memorandum, p. 2 ("This Memorandum ... summarizes and highlights the previously performed analyses by the CPUC and CCC. When acting as a CEQA responsible agency, the Commission may only perform subsequent CEQA analysis under certain conditions specified in State CEQA Guidelines section 15162. This Memorandum documents staff's conclusion that none of these conditions currently exist. ... [A]ll mitigation measures proposed in the Original Project are still applicable to the Phase 1 Project, and no new mitigation measures are necessary.").

**Response to UMF No. 47.** Undisputed that Exhibit 11 to the Motion contains the quoted text. However, as California American Water explained in its Answer, *site preparation* began in July 2026, with construction beginning in August 2026.<sup>44</sup>

**Response to UMF No. 48.** Undisputed.

**Response to UMF No. 49.** Undisputed. However, the CPUC identified numerous other primary Project objectives, most of which concern water supply security unrelated to the Carmel River.<sup>45</sup>

**Response to UMF No. 50.** Undisputed. However, accounting for California American Water’s compliance with limits on its Carmel River water supply, the CPUC predicted that by 2050, water supply available to California American Water will fall short of demand by about 2,500 acre-feet per year (“afy”).<sup>46</sup>

**Response to UMF No. 51.** Undisputed.

**Response to UMF No. 52.** Undisputed.

**Response to UMF No. 53.** Undisputed that the AHO Report contains the quoted text. However, the CPUC concluded that the MPWSP “would not generate significant adverse impacts to the Salinas Valley Groundwater Basin.”<sup>47</sup> The Coastal Commission’s independent

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<sup>44</sup> Answer, p. 11.

<sup>45</sup> D.18-09-017, pp. 14-15.

<sup>46</sup> D.25-08-006, pp. 24, 50, Conclusions of Law 6, 11; D.25-10-001, p. 4 (correcting typographical errors).

<sup>47</sup> D.18-09-017, p. 110 (“[T]he project (which includes the provisions of the Return Water Settlement) would not generate significant adverse impacts to the Salinas Valley Groundwater Basin.”); *see also* **Attachment 12**, March 30, 2026, Testimony of Peter Leffler, 103:4-16; **Attachment 13**, April 1, 2026, Testimony of Peter Leffler, 64:18-66:25 (modeling shows that operation of the Project will overall reduce seawater intrusion into the Salinas Valley Groundwater Basin.).

hydrogeologist found no evidence of such impacts.<sup>48</sup> The AHO Report on which Complainants rely found that the Project is “unlikely to cause significant or unreasonable impacts to the quality of water drawn from MCWD’s Wells.”<sup>49</sup>

**Response to UMF No. 54.** Undisputed that the AHO Report contains the quoted text. However, the same report concluded that the Project would not “materially or unreasonably affect[] the amount of water available to MCWD at its existing wells, either now or over time.”<sup>50</sup>

**Response to UMF No. 55.** Undisputed that Complainants’ experts testified to this opinion. However, California American Water disputes the opinion, which is contrary to the findings of the CPUC, the Coastal Commission’s independent hydrogeologist, and the AHO Report. The CPUC concluded that the MPWSP “would not generate significant adverse impacts to the Salinas Valley Groundwater Basin.”<sup>51</sup> The Coastal Commission’s independent hydrogeologist found no evidence of such impacts.<sup>52</sup> The AHO Report found that the Project is “unlikely to cause significant or unreasonable impacts to the quality of water drawn from

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<sup>48</sup> **Attachment 1**, CDP Final Findings, p. 81 (“Neither the CPUC in certifying the FEIR/FEIS nor the Commission’s independent hydrogeologist (as part of Commission’s review in 2020) found evidence concluding that [adverse] impacts [to the MCWD groundwater wells] would occur ...”).

<sup>49</sup> **Attachment 5**, AHO Report, p. 101 (“Based on the parties’ model results, the proposed draw of Cal-Am’s slant wells is unlikely to cause significant or unreasonable impacts to the quality of water drawn from MCWD’s Wells 29, 30, 31, or 35, and the quality of water drawn from those wells will remain suitable for municipal use.”).

<sup>50</sup> *Id.*, p. 100 (“Based on the evidence presented in this proceeding, the proposed draw would not injure MCWD’s water rights by materially or unreasonably affecting the amount of water available to MCWD at its existing wells, either now or over time, or the cost of extracting and using that water.”).

<sup>51</sup> D.18-09-017, p. 110 (“[T]he project (which includes the provisions of the Return Water Settlement) would not generate significant adverse impacts to the Salinas Valley Groundwater Basin.”); *see also* **Attachment 12**, March 30, 2026, Testimony of Peter Leffler, 103:4-16; **Attachment 13**, April 1, 2026, Testimony of Peter Leffler, 64:18-66:25 (modeling shows that operation of the Project will overall reduce seawater intrusion into the Salinas Valley Groundwater Basin.).

<sup>52</sup> **Attachment 1**, CDP Final Findings, p. 81 (“Neither the CPUC in certifying the FEIR/FEIS nor the Commission’s independent hydrogeologist (as part of Commission’s review in 2020) found evidence concluding that [adverse] impacts [to the MCWD groundwater wells] would occur ...”).

MCWD's Wells.”<sup>53</sup> The AHO Report also concluded that the Project would not “materially or unreasonably affect[] the amount of water available to MCWD at its existing wells, either now or over time.”<sup>54</sup>

**Response to UMF No. 56.** Undisputed.

**Response to UMF No. 57.** Undisputed.

**Response to UMF No. 58.** Undisputed.

**Response to UMF No. 59.** Undisputed.

**Response to UMF No. 60.** Undisputed.

**Response to UMF No. 61.** Disputed. California American Water's right to withdraw water from the Seaside Groundwater Basin is limited to 774 afy irrespective of the amount of ASR water supply, and the CPUC has confirmed that this supply estimate remains unchanged.<sup>55</sup> Further, ASR availability will likely be zero in a multi-year drought as any reserves will be depleted. The CPUC determined that 1,210 afy is a reasonable amount of supply to forecast from the ASR, given significant year-to-year fluctuations due to drought, and included this in its total supply estimate.<sup>56</sup>

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<sup>53</sup> **Attachment 5**, AHO Report, p. 101 (“Based on the parties’ model results, the proposed draw of Cal-Am’s slant wells is unlikely to cause significant or unreasonable impacts to the quality of water drawn from MCWD’s Wells 29, 30, 31, or 35, and the quality of water drawn from those wells will remain suitable for municipal use.”).

<sup>54</sup> *Id.*, p. 100 (“Based on the evidence presented in this proceeding, the proposed draw would not injure MCWD’s water rights by materially or unreasonably affecting the amount of water available to MCWD at its existing wells, either now or over time, or the cost of extracting and using that water.”).

<sup>55</sup> D.18-09-017, p. 7 (“Cal-Am must also repay the Seaside 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 Basin.”); D.25-08-006, p. 42 (estimate of 774 afy from the Seaside Basin remains reasonable).

<sup>56</sup> D.25-08-006, pp. 43-44 (typographical errors corrected by D.25-10-001, p. 3).

**Response to UMF No. 62.** Disputed. California American Water’s right to withdraw water from the Seaside Groundwater Basin is limited to 774 afy irrespective of the amount of PWM water supply, and the CPUC has confirmed that this supply estimate remains unchanged.<sup>57</sup> Further, as during drought years the assumption is the PWM project delivers 3,500 afy but PWM expansion on the low end is zero due to source water availability during a multi-year drought. The CPUC determined that in light of M1W’s contractual obligation to provide 2,250 afy from PWM expansion, a 5,750 afy is a reasonable amount of supply to forecast from PWM (including PWM Expansion) and included this in its total supply estimate.<sup>58</sup> Nevertheless, the CPUC also noted its concern that the identified source water for the PWM Expansion may prove insufficient to meet the Water Availability Guarantee.<sup>59</sup>

**Response to UMF No. 63.** Undisputed. However, California American Water’s right to withdraw water from the Seaside Groundwater Basin is limited to 774 afy irrespective of the amount of ASR water supply, and the CPUC has confirmed that this supply estimate remains unchanged.<sup>60</sup> Further, as noted above, ASR availability will likely be zero in a multi-year drought as any reserves will be depleted.

**Response to UMF No. 64.** Undisputed. However, California American Water’s right to withdraw water from the Seaside Groundwater Basin is limited to 774 afy irrespective of the

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<sup>57</sup> D.18-09-017, p. 7 (“Cal-Am must also repay the Seaside 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 Basin.”); D.25-08-006, p. 42 (estimate of 774 afy from the Seaside Basin remains reasonable).

<sup>58</sup> D.25-08-006, pp. 44-45.

<sup>59</sup> *Id.*, pp. 45-46.

<sup>60</sup> D.18-09-017, p. 7 (“Cal-Am must also repay the Seaside 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 Basin.”); D.25-08-006, p. 42 (estimate of 774 afy from the Seaside Basin remains reasonable).

amount of PWM water supply, and the CPUC has confirmed that this supply estimate remains unchanged.<sup>61</sup> Further, as the CPUC explained in D.18-09-17, 200 afy of PWM drought reserve supply is “such a limited and specific source of water [that it] cannot be relied upon as a permanent source of water.”<sup>62</sup>

**Response to UMF No. 65.** Undisputed. However, the MPWSP is needed to augment supply when it begins operation and for the ensuing decades. As the CPUC has explained, “short-term water usage data does not necessarily impact long-term water demand projections.”<sup>63</sup>

**Response to UMF No. 66.** Undisputed. However, the MPWSP is needed to augment supply when it begins operation and for the ensuing decades. As the CPUC has explained, “short-term water usage data does not necessarily impact long-term water demand projections.”<sup>64</sup>

**Response to UMF No. 67.** Undisputed.

**Response to UMF No. 68.** Undisputed. However, “utilization of stored supplies” is inherently limited by the volume of stored supplies. Their use should not be assumed in determining whether California American Water has adequate supply to meet forecasted demand, because stored supplies are needed to address droughts and other supply shocks.<sup>65</sup>

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<sup>61</sup> D.18-09-017, p. 7 (“Cal-Am must also repay the Seaside 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 Basin.”); D.25-08-006, p. 42 (estimate of 774 afy from the Seaside Basin remains reasonable).

<sup>62</sup> D.18-09-017, p. 36.

<sup>63</sup> D.25-08-006, p. 35 (“[S]hort-term water usage data does not necessarily impact long-term water demand projections, which are created to take into account fluctuations in water usage and policy.”); Answer, p. 13 (project construction timeline envisions December 2029 in-service date).

<sup>64</sup> D.25-08-006, p. 35 (“[S]hort-term water usage data does not necessarily impact long-term water demand projections, which are created to take into account fluctuations in water usage and policy.”); Answer, p. 13 (project construction timeline envisions December 2029 in-service date).

<sup>65</sup> D.25-08-006, p. 43 (“[T]he actual supply from the ASR program can and will vary substantially.”); *see also* A.21-11-024, Phase 2 Opening Brief of California American Water Company, p. 15 (explaining that multi-year droughts are expected to diminish stored supplies).

**Response to UMF No. 69.** Undisputed. However, the CPUC also stated in D.25-08-006 that “[w]e have already considered and rejected the concept that just because the additional water demand will not be needed immediately, that we should reduce the overall projected demand for the system.”<sup>66</sup> Further, water demand is strongly impacted by weather, which is highly variable, making it impossible to predict precise water demand for a particular year in the future.

**Response to UMF No. 70.** Undisputed.

**Response to UMF No. 71.** Undisputed.

#### **IV. ARGUMENT**

##### **A. The Motion Does Not Satisfy the Summary Judgment Standard Because It Relies on Disputed Material Facts.**

##### **1. The CPUC never “expressly rejected” phasing the 6.4 mgd Project.**

Complainants’ central contention that D.18-09-017 “expressly rejected a phased project”<sup>67</sup> misreads the decision. In D.18-09-017, the CPUC rejected a *standalone* 4.8 mgd plant as an *alternative* to the 6.4 mgd plant because a 4.8 mgd plant would not close the supply gap or provide a buffer for contingencies.<sup>68</sup> In Responses to UMF Nos. 2-4, 15, and 16, California American Water explains why the passages Complainants quote relate to a standalone 4.8 mgd plant, not a phased approach to the approved Project. Separately, the CPUC declined to authorize deferral of one slant well, reasoning that the cost savings were small “in comparison to the risks associated with eliminating the well, and the likely environmental impacts associated with

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<sup>66</sup> D.25-08-006, p. 35 (quoting D.18-09-017, p. 63).

<sup>67</sup> Mot., p. 25.

<sup>68</sup> D.18-09-017, pp. 69-70 (“[T]he 4.8 mgd desalination plant would provide no buffer for contingencies. ... Thus, as a 4.8 mgd desalination plant would not alleviate or substantially reduce significant environmental impacts of the project, and would not meet the basic project objectives, we conclude it is inferior to the 6.4 mgd desalination plant.”).

constructing it at a later time if needed.”<sup>69</sup> In Responses to UMF Nos. 5, 10, and 41 California American Water explains that the Coastal Commission’s conditional approval mitigates these environmental impacts; California American Water disputes UMF No. 41 on its face.

D.18-09-017 does not prohibit California American Water’s current course of action. First, the Company is not building a standalone 4.8 mgd plant. The 4.8 mgd phase includes three of the four modular treatment trains of the 6.4 mgd plant the CPUC approved, plus supporting infrastructure for the same.<sup>70</sup> Second, the environmental concern D.18-09-017 identified with drilling additional wells later has been addressed by the Coastal Commission’s reduction of the well pad footprint and its requirement that the well pads constructed for the 4.8 mgd phase accommodate additional wells for the 6.4 mgd completion, and both the Coastal Commission and the SLC found that phasing would not increase environmental impacts.<sup>71</sup> In Response to UMF No. 20, California American Water explains that the proffered testimony of former California American Water employee Mr. Crooks (an engineer who was asked to interpret a legal conclusion of the CPUC) is based on a passage from D.18-09-017 that does not support his conclusion that the CPUC approved only the 6.4 mgd Project and not a phased approach. Contrary to the claims of the Complainants, California American Water’s position is that D.18-09-017 allows phased construction of the 6.4 mgd desalination plant. As such, whether D.18-09-

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<sup>69</sup> *Id.*, p. 179, Finding of Fact 97.

<sup>70</sup> **Attachment 1**, CDP Final Findings, p. 42, n. 3 (“The proposed 4.8 and 6.4 mgd volumes are based on the modular nature of the desalination facility’s ‘treatment trains,’ each of which is designed to produce about 1.6 mgd of potable water.”); D.18-09-017, p. 128 (“The MPWSP is made up of 1.6 mgd modular increments. This means that the facility can only be sized up or down in 1.6 mgd increments ... .”); Answer, pp. 10-12.

<sup>71</sup> **Attachment 1**, CDP Final Findings, p. 68 (“The proposed phased Project would reduce [construction-related disturbance of environmentally sensitive habitat area] somewhat, due to a reduction in the number of initially planned well pads and a shorter access road.”); **Attachment 4**, SLC Environmental Memorandum, p. 2 (“[T]he Phase 1 Project would result in either an equal or reduced magnitude of potential impacts across resource areas.”).

017 prohibits this approach is, at minimum, a genuinely disputed question that cannot be resolved against California American Water on summary judgment.<sup>72</sup>

Complainants also assert that California American Water “may believe the different 4.8 mgd project the Coastal Commission conditionally approved is a more appropriate long-term supply source than the MPWSP.”<sup>73</sup> The Company has never suggested this. As California American Water explained in its Response to UMF No. 24, the Company disputes Complainants’ characterization that it “emphasized the CCC’s statements of uncertainty” regarding completion of the Project. In Response to UMF No. 39, California American Water explained the integrality of the 4.8 mgd phase to the 6.4 mgd Project. The Company has consistently stated, in every quarterly Project update since 2022, that it is building a 6.4 mgd Project that will be constructed initially at 4.8 mgd.<sup>74</sup>

## **2. The concurrent jurisdiction of the Coastal Commission and the CPUC requires compliance with both agencies’ approvals.**

The Coastal Commission has concurrent authority over the Project’s coastal zone components, and it exercised that authority to approve the Project in two phases.<sup>75</sup> The Monterey

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<sup>72</sup> See D.16-03-013 (*Hetherington v. Pacific Gas & Elec. Co.*), p. 51 (“The dispute over the interpretation of these two specific sections of Rule 16, viewed strictly within the bounds of the first MFSA, does not include enough uncontested factual information to support a finding for the Complainant.”).

<sup>73</sup> Mot., p. 25, citing UMF Nos. 21, 39.

<sup>74</sup> Answer, p. 28, n. 89 (citing Attachments 16-20) (Project updates explain “that the reported budget figures are based on a 6.4 mgd project and that ‘[t]he Coastal Commission approved a plant that will be constructed preliminar[il]y at 4.8 MGD, which can be scaled up to accommodate future demand.’ This statement is included in every Quarterly Project Update published since 2022 ...”).

<sup>75</sup> **Attachment 1**, CDP Final Findings, p. 14; **Attachment 6**, *City of Marina* Decision, p. 51 (“Petitioners cite no authority that prohibits the Commission, as a responsible agency, under CEQA from approving a phased version of a project approved by the lead agency – here, the CPUC.”); see Pub. Res. Code § 30600(a) (“in addition to obtaining any other permit required by law ... any person ... wishing to perform or undertake any development in the coastal zone ... shall obtain a coastal development permit); see also D.94-06-014, 55 CPUC 2d 87 (1994), 1994 Cal. PUC LEXIS 453, \*70-71, Conclusion of Law 15 (“The [CPUC] acknowledges the concurrent jurisdiction of the California Coastal Commission in the coastal zone and the need for the utilities to comply with the permit requirements of state agencies having

County Superior Court upheld that approval, rejecting the very argument Complainants now press that a responsible agency may not approve a phased version of a project approved by a lead agency.<sup>76</sup> California American Water explained in Responses to UMF Nos. 4, 22, and 23 that the CDP requires only an amendment, not a new permit, and more broadly defines the conditions required to complete the 6.4 mgd Project. California American Water cannot build the 6.4 mgd Project authorized in D.18-09-017 without also complying with the CDP. This requires beginning with a 4.8 mgd phase.

**3. Every component of the 4.8 mgd phase is a necessary component of the final 6.4 mgd Project.**

Nothing built in the 4.8 mgd phase is extraneous to the 6.4 mgd Project. The desalination plant is modular, and the first phase constructs the same plant footprint, pipelines, and treatment trains that will serve the completed Project, as California American Water explained in Responses to UMF Nos. 7, 39, and 40.<sup>77</sup> The well pads constructed in the 4.8 mgd phase are designed to accommodate additional wells for the 6.4 mgd completion without constructing an

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concurrent jurisdiction.”); 14 Cal. Code Regs., § 15096(g)(1) (Coastal Commission has authority to impose phasing under its role and responsibilities under CEQA and the California Coastal Act).

<sup>76</sup> **Attachment 6**, *City of Marina* Decision, p. 62 (“Acceptance of [Petitioners’] argument would require complete disregard of the CPUC’s repeated statements recognizing the [Coastal] Commission’s authority under the Coastal Act, of the subsequent evidence considered by the [Coastal] Commission, and of the practical realities of obtaining approvals for a project from multiple governmental agencies. It is clear that the CPUC recognized future changes might be required by the Coastal Commission in its role under the Coastal Act to determine consistency.”); *see also id.*, p. 65 (“[T]he [Coastal] Commission’s decision was not a collateral attack on the CPUC’s decision and conclusions reached in the FEIR/FEIS.”); Answer, p. 27 (“On May 29, 2025, the Court entered judgment in favor of the Coastal Commission and California American Water on all causes of action.”).

<sup>77</sup> **Attachment 4**, SLC Environmental Memorandum, p. 14 (“The Phase 1 Project would not result in any increase in construction activity relative to the Original Project’s desalination plant facilities...”).

additional pad.<sup>78</sup> The SLC accordingly described the Coastal Commission’s approval as “a phased version of the fully analyzed 6.4 mgd per year project approved by the CPUC in 2018.”<sup>79</sup>

**4. California American Water has not made any change that requires a petition for modification.**

Complainants contend that D.18-09-017, Ordering Paragraphs 21 and 22, require a PFM both for project changes and for cost increases. California American Water disputes both contentions. Ordering Paragraph 22 requires a petition for modification before the Company can implement project changes that “without mitigation, result in a new significant impact or a substantial increase in the severity of a previously identified significant impact ... or trigger an additional permit requirement.”<sup>80</sup> Phasing implicates none of these triggers:<sup>81</sup> the Coastal Commission and the SLC found no new or more severe significant effects,<sup>82</sup> and completion of the Project requires only an amendment of the existing CDP, not an additional permit.<sup>83</sup> California American Water explained this in Responses to UMF Nos. 12, 23, and 32.

Nor is a PFM currently required for project costs. D.18-09-017 requires a PFM only to recover in rates amounts exceeding the \$279.1 million cost cap.<sup>84</sup> California American Water has not sought to recover any such amount, as explained in Responses to UMF Nos. 11 and 30. The

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<sup>78</sup> **Attachment 1**, CDP Final Findings, p. 42 (“This proposed first phase would require construction of just two well pads, would allow for a shorter access road, and would reduce the initially required pumping volumes by about a third. As part of this ‘phased’ proposal, Cal-Am also modified the design of these first two well pads to initially accommodate two slant wells and could accommodate a third well during the Project’s second phase (i.e., without constructing an additional well pad) ...”).

<sup>79</sup> **Attachment 3**, SLC Staff Report, p. 6.

<sup>80</sup> D.18-09-017, pp. 209-10 (Ordering Paragraph 22).

<sup>81</sup> CPUC staff, when apprised of the phased approach, did not indicate that a PFM or even a minor project refinement was needed. **Attachment 11**, Declaration of Tyler Potter, ¶¶ 3-6, 9.

<sup>82</sup> See Section IV.B, *infra*.

<sup>83</sup> **Attachment 1**, CDP Final Findings, p. 14.

<sup>84</sup> D.18-09-017, p. 210, Ordering Paragraph 21.

Company does not dispute that “[p]re-construction and pre-operation cost adjustments ... are not presently eligible for reasonableness consideration in a general rate case” because Ordering Paragraph 34 defers such review until the MPWSP is operational.<sup>85</sup> That is why the Company is preparing a cost recovery filing addressing pre-construction and pre-operational costs to file later this month. That filing, not a summary judgment motion asking the CPUC to compel California American Water to file a PFM, is the appropriate vehicle for the CPUC’s review.

Complainants argue that building the Project in phases will result in charges that cannot be “just and reasonable” under Public Utilities Code section 451.<sup>86</sup> This is a leap of logic that attempts to preempt the CPUC’s evaluation of costs that have not yet been presented for recovery, and it does not justify an order compelling a PFM or an injunction. Complainants rely on *Pacific Bell Wireless, LLC v. Public Utilities Com.* for the proposition that “[p]roviding transparency for utility charges is a hallmark of the utility’s obligations and the Commission’s duty under Section 451.”<sup>87</sup> That may be so, but this case is inapposite. There, the CPUC and the court found that the carrier engaged in an unjust and unreasonable practice of charging early termination fees to customers on one- and two-year contracts when service was so substandard that it motivated customers to cancel their contracts.<sup>88</sup> Here, California American Water is building a desalination project the CPUC approved in 2018 in the cost environment of 2026, following a historic period of inflation that has been especially acute in the construction industry. The Project’s costs are not a product of substandard service or bad faith contracting, nor are they inherently unreasonable simply because they have increased over eight years. Whether they are

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<sup>85</sup> Mot., p. 39.

<sup>86</sup> *Id.*, pp. 30-32.

<sup>87</sup> *Id.*, p. 32. Complainants cite page 747 of the opinion; the quoted discussion appears at page 745.

<sup>88</sup> *Pacific Bell Wireless, LLC v. Public Utilities Com.* (2006) 140 Cal.App.4th 718, 728, 745.

just and reasonable is a question for the CPUC to determine when it reviews the Company's forthcoming cost filing.

## **5. Complainants' claims of harm rest on disputed facts.**

Complainants' contention that a current water surplus through 2027 eliminates any need for the Project<sup>89</sup> does nothing to rebut California American Water's argument that public interest is harmed by delaying construction of the MPWSP. The CPUC has rejected the notion that short-term usage data should displace long-term demand projections,<sup>90</sup> and has found that the Monterey Peninsula will face a water supply deficit by 2050.<sup>91</sup> As California American Water explains in Responses to UMF Nos. 61-66, 68, and 69, its long term access to the Seaside Basin is capped and stored water should be considered a safeguard against emergencies, not a part of the working annual supply. Construction delays would increase costs, harming both ratepayers and the Company. And the groundwater harms Complainants assert are disputed by the very source on which they rely, the AHO Report.<sup>92</sup>

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<sup>89</sup> Mot., pp. 47-48.

<sup>90</sup> D.25-08-006, p. 35 ("[S]hort-term water usage data does not necessarily impact long-term water demand projections, which are created to take into account fluctuations in water usage and policy.").

<sup>91</sup> *Id.*, p. 50, Conclusions of Law 6, 11; D.25-10-001, p. 4 (correcting typographical errors).

<sup>92</sup> See Responses to UMF Nos. 53-55 (California American Water disputes UMF No. 55 on its face); see also **Attachment 5**, AHO Report, p. 100 ("Based on the evidence presented in this proceeding, the proposed draw would not injure MCWD's water rights by materially or unreasonably affecting the amount of water available to MCWD at its existing wells, either now or over time, or the cost of extracting and using that water."); *id.*, p. 101 ("Based on the parties' model results, the proposed draw of Cal-Am's slant wells is unlikely to cause significant or unreasonable impacts to the quality of water drawn from MCWD's Wells 29, 30, 31, or 35, and the quality of water drawn from those wells will remain suitable for municipal use."); **Attachment 12**, March 30, 2026, Testimony of Peter Leffler, 103:4-16; **Attachment 13**, April 1, 2026, Testimony of Peter Leffler, 64:18-66:25 (modeling shows that operation of the Project will overall reduce seawater intrusion into the Salinas Valley Groundwater Basin.).

Complainants’ assertions that the Project lacks a source of water<sup>93</sup> and “the ability to construct its proposed intake wells” are misplaced.<sup>94</sup> The cited UMFs do not support either assertion, and only two are even arguably relevant. UMF No. 25 states that the Coastal Commission’s approval requires a favorable outcome in Monterey Superior Court Case No. 20CV001387. In that case, the AHO Report found that roughly 90 percent or more of the Project’s source water will come from the ocean, which California American Water “may lawfully draw.”<sup>95</sup> As to the remainder, the AHO Report concluded that the Company may extract groundwater from the Salinas Valley Groundwater Basin so long as it avoids injury or unreasonable harm to other users.<sup>96</sup> UMF No. 26 notes the Coastal Commission’s requirement of “a showing that Cal-Am has authorization from the CPUC to proceed with the Project.”<sup>97</sup> That condition is satisfied by the CPUC’s issuance of the initial CPCN<sup>98</sup> and its subsequent findings anticipating a water supply deficit.<sup>99</sup> Complainants do not, and cannot, identify any technical barrier to constructing these wells.

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<sup>93</sup> Mot., p. 45, n. 86 (Asserting “there is no water source” for the MPWSP, citing UMF Nos. 1, 25, 26, 32, 46, 47, and 71).

<sup>94</sup> *Id.*, p. 26, citing UMF Nos. 1, 12, 25, 26, 32, 46.

<sup>95</sup> **Attachment 5**, AHO Report, p. 102 (“[O]f which approximately 1,389 to 1,736 afy (8 percent to 10 percent) will be water from sources other than the ocean (i.e., water from the SVGB). We conclude that Cal-Am may lawfully extract this ocean water. ... We agree that Cal-Am either needs no water right to draw ocean water or may obtain such a right by diverting and using the water, and that Cal-Am may lawfully draw the proposed amount of ocean water for desalination and service to its customers.”).

<sup>96</sup> *See id.* (“We also conclude that Cal-Am may extract groundwater from the SVGB if the extraction neither (1) injures other legal users of water nor (2) causes unreasonable harm.”).

<sup>97</sup> **Attachment 1**, CDP Final Findings, p. 13.

<sup>98</sup> D.18-09-017, p. 206, Ordering Paragraph 2.

<sup>99</sup> D.25-08-006, p. 50, Conclusions of Law 6, 11; D.25-10-001, p. 4 (correcting typographical errors). The CPUC’s determination of need was far greater than the assumptions used by the Coastal Commission in its findings in approving the CDP. *See Attachment 1*, CDP Final Findings, pp. 151-56.

**B. No Further CEQA Review Is Necessary, and the CPUC Should Decline Complainants’ Request to Revisit Environmental Review.**

Complainants rely on *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* for the proposition that changed circumstances may require “major revisions” to environmental review.<sup>100</sup> But the court presented that authority as limited: “[o]nce a project has been subject to environmental review and received approval, section 21166 and CEQA Guidelines section 15162 limit the circumstances under which a subsequent or supplemental EIR must be prepared.”<sup>101</sup> A subsequent or supplemental EIR is required only if changes are “substantial” and “will require major revisions of the previous EIR ... due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.”<sup>102</sup> This is essentially the same standard articulated in Ordering Paragraph 22 and the Project’s Mitigation, Monitoring, and Reporting Program (“MMRP”),<sup>103</sup> and it is not met here.

Contrary to Complainants’ assertions in UMF Nos. 42-44, every agency to consider the question has found no new or more severe significant effects. California American Water disputes each of these three “undisputed” material facts. The Coastal Commission found that the Project as conditioned would avoid significant environmental effects and is consistent with CEQA.<sup>104</sup> The SLC corroborated that the 4.8 mgd phase would cause no new or more severe

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<sup>100</sup> Mot., pp. 36-37, citing *Friends of College of San Mateo Garden v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 951-952, 958.

<sup>101</sup> *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949.

<sup>102</sup> *Id.*, 950.

<sup>103</sup> D.18-09-017, App. D at pp. D-3 to D-4.

<sup>104</sup> **Attachment 1**, CDP Final Findings, p. 165 (“The Project as conditioned herein incorporates measures necessary to avoid any significant environmental effects under the Coastal Act, and there are no less environmentally damaging feasible alternatives or mitigation measures. Therefore, the proposed Project is

significant impacts and required no new mitigation.<sup>105</sup> The CPUC reaffirmed that the EIR/EIS continues to apply and that the Project has not changed in a manner requiring any subsequent CEQA document.<sup>106</sup> Complainants' assertion that no state body has conducted a detailed review of the phased Project<sup>107</sup> is therefore incorrect and, at a minimum, disputed.

Complainants further assert that if the CPUC "fail[s] to hold CalAm to the requirements of D.18-09-017 and the MMRP," it would "violate CEQA."<sup>108</sup> But the *Friends* court held that "the question whether an initial environmental document requires major revisions due to changed plans or circumstances ... is [] a question for the agency to answer in the first instance, drawing on its particular expertise," and that "[a] court's task on review is then to decide whether the agency's determination is supported by substantial evidence."<sup>109</sup> The CPUC is thus afforded substantial deference in deciding whether to revisit its environmental review, and it should exercise its discretion to deny Complainants' request to do so, just as the Coastal Commission and the SLC have done.

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consistent with CEQA."); *id.*, p. 53, n. 16 ("The Commission need not create a separate document to carry out its CEQA obligations; rather, the Commission uses its certified regulatory program in lieu of needing to adopt a separate environmental impact report or other CEQA document. ... Thus, the analysis in these Findings satisfies any CEQA obligations the Commission has.").

<sup>105</sup> **Attachment 4**, SLC Environmental Memorandum, p. 2 ("Compared to the Original Project, the Phase 1 Project would not cause any new or different significant impacts and would not increase the severity of the previously identified significant impacts. ... Additionally, all mitigation measures proposed in the Original Project are still applicable to the Phase 1 Project, and no new mitigation measures are necessary.").

<sup>106</sup> **Attachment 2**, Five-Year CEQA Compliance Reaffirmation, p. 2 ("The CPUC affirms that the EIR/EIS continues to apply to the MPWSP. The MPWSP has not changed in a manner that affects the EIR/EIS's validity, or that requires preparation of an addendum, supplemental or subsequent CEQA document.").

<sup>107</sup> Mot., p. 45.

<sup>108</sup> *Id.*, p. 38.

<sup>109</sup> *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 953.

Finally, Complainants assert that “the CCC’s conditions require this Commission’s ‘authorization’ – in other words, another necessary discretionary approval – of the change in project size.”<sup>110</sup> Not so. The CDP requires “a showing that Cal-Am has authorization from the CPUC to proceed with the Project.”<sup>111</sup> A *showing* of existing authorization does not require a new discretionary approval on top of D.18-09-017. Moreover, that condition was tied to the outcome of A.21-11-024, in which the CPUC found that a water supply deficit will arise, necessitating the Project.<sup>112</sup>

**C. Injunctive Relief Is Not Appropriate Under the Summary Judgment Standard or Any Other Standard.**

On a motion for summary judgment, Complainants’ burden is heightened. Each element required for injunctive relief: likelihood of success on the merits, irreparable harm, no harm to the public interest, and no substantial harm to other interested parties, must be established by undisputed material facts. Complainants cannot establish any of them.

**1. Complainants are not likely to prevail on the merits.**

Complainants contend they are likely to prevail because California American Water is building the 4.8 mgd phase and exceeding the cost cap without a PFM.<sup>113</sup> As explained above and in the Company’s Answer, Motion to Dismiss (“MTD”), and Reply in support of its Motion to Dismiss (“Reply ISO MTD”), the Company is not violating D.18-09-017 by beginning

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<sup>110</sup> Mot., p. 35.

<sup>111</sup> **Attachment 1**, CDP Final Findings, p. 13.

<sup>112</sup> D.25-08-006, p. 50, Conclusions of Law 6, 11; D.25-10-001, p. 4 (correcting typographical errors).

<sup>113</sup> Mot., pp. 41-42.

construction of the authorized 6.4 mgd plant with a 4.8 mgd phase required by the Coastal Commission. California American Water has not sought recovery above the cost cap.<sup>114</sup>

## **2. Complainants have not shown irreparable harm.**

Complainants argue that phased development of the MPWSP will increase costs for ratepayers.<sup>115</sup> However, halting construction of the MPWSP is an excessive and unnecessary mechanism to protect ratepayers from unreasonable costs, because the CPUC exercises ongoing supervisory power to ensure this harm does not befall ratepayers.

The CPUC requires California American Water to track construction expenses in a memorandum account that will be subject to reporting requirements and submission of a Tier 2 advice letter process when the project is completed, subject to a true-up upon review of reasonableness in the next and subsequent general rate cases.<sup>116</sup> California American Water is also required to make quarterly reports to ensure ongoing operations meet the needs of ratepayers as prudent and reasonable costs.<sup>117</sup> The CPUC's decision not to consider the ratepayer impacts of PWM expansion<sup>118</sup> likewise suggests that the combined impact of the MPWSP and PWM expansion does not present irreparable harm to ratepayers.

Complainants' assertion that the MPWSP lacks a water source<sup>119</sup> is unsupported by the UMFs they cite and contradicted by the AHO Report.<sup>120</sup> Their claim that their constituents will

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<sup>114</sup> See Section IV.A, *supra*; see also Responses to UMF Nos. 24, 41-44, all of which California American Water disputes.

<sup>115</sup> Mot., p. 44.

<sup>116</sup> D.18-09-017, p. 138.

<sup>117</sup> *Id.*, p. 139.

<sup>118</sup> UMF 18, citing D.22-12-001, generally, and D.23-03-048, generally.

<sup>119</sup> Mot., p. 45.

<sup>120</sup> See Section IV.A.5, *supra*.

be “irreparably harmed by the unanalyzed environmental impacts” of the Project<sup>121</sup> is speculative; “unanalyzed” impacts cannot form the basis of irreparable harm.<sup>122</sup> While D.18-09-017 identified a concern with adding a well later, that concern has been mitigated through the Coastal Commission’s conditions, and the Coastal Commission and the SLC found that phasing would not add new or increase existing significant impacts.<sup>123</sup> Complainants also claim that the AHO Report identified greater groundwater impacts than the EIR/EIS,<sup>124</sup> but the same report found those impacts would not be significant or unreasonable.<sup>125</sup>

Moreover, Complainants’ assertion of unanalyzed environmental impacts ignores the extensive, lengthy, and comprehensive environmental review the CPUC has already undertaken, which was thorough enough for peer agencies to rely on when conducting their own, also extensive, environmental review.<sup>126</sup> The entirety of the now-phased Project was analyzed in the

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<sup>121</sup> Mot., p. 45.

<sup>122</sup> D.97-12-085 (*MFS Intelenet of California, Inc. v. Pacific Bell*), pp. 9-10 (“Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction. Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur. Injunctive relief will not be granted against something which is merely feared as liable to occur.”).

<sup>123</sup> See Section IV.B, *supra*.

<sup>124</sup> Mot., p. 46.

<sup>125</sup> **Attachment 5**, AHO Report, p. 100 (“Based on the evidence presented in this proceeding, the proposed draw would not injure MCWD’s water rights by materially or unreasonably affecting the amount of water available to MCWD at its existing wells, either now or over time, or the cost of extracting and using that water.”); *id.*, p. 101 (“Based on the parties’ model results, the proposed draw of Cal-Am’s slant wells is unlikely to cause significant or unreasonable impacts to the quality of water drawn from MCWD’s Wells 29, 30, 31, or 35, and the quality of water drawn from those wells will remain suitable for municipal use.”); see also **Attachment 12**, March 30, 2026, Testimony of Peter Leffler, 103:4-16; **Attachment 13**, April 1, 2026, Testimony of Peter Leffler, 64:18-66:25 (modeling shows that operation of the Project will overall reduce seawater intrusion into the Salinas Valley Groundwater Basin.).

<sup>126</sup> **Attachment 1**, CDP Final Findings, p. 53, n. 16 (“The Commission need not create a separate document to carry out its CEQA obligations; rather, the Commission uses its certified regulatory program in lieu of needing to adopt a separate environmental impact report or other CEQA document. ... Thus, the analysis in these Findings satisfies any CEQA obligations the Commission has.”); **Attachment 6**, *City of*

CPUC’s Final EIR/EIS<sup>127</sup> and the Coastal Commission’s Final Findings,<sup>128</sup> which are the functional equivalent of an EIR under its certified regulatory program.<sup>129</sup> When presented with the Project after the Coastal Commission imposed its development conditions, the SLC determined that no further CEQA review was required.<sup>130</sup> The CPUC affirmed in April 2026 that the EIR/EIS continues to apply to the MPWSP and that “[t]he MPWSP has not changed in a manner that affects the EIR/EIS’s validity, or that requires preparation of an addendum, supplemental or subsequent CEQA document.”<sup>131</sup>

### **3. Complainants have not shown that an injunction would cause no harm to the public interest.**

This element does not ask whether there would be “little harm” or an acceptable amount of harm when compared to the benefits; it requires a showing of no harm to the public interest.<sup>132</sup>

Complainants’ claim that a forecast surplus through 2027 provides “more than sufficient time for the Commission to consider modifying its 2018 decision”<sup>133</sup> does not establish that an

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*Marina* Decision, p. 51 (“The CPUC, in the FEIR/FEIS, had already extensively studied future environmental impacts based upon the information before it.”).

<sup>127</sup> **Attachment 14**, Final EIR/EIS Section 8.2, pp. 8.2-117 to 8.2-118; **Attachment 15**, Final EIR/EIS Appendix L.

<sup>128</sup> **Attachment 1**, CDP Final Findings, pp. 41-48, 127, 134, 145, 156-65.

<sup>129</sup> *Id.*, p. 53, n. 16 (citing Pub. Res. Code § 21080.5 and 14 Cal. Code Regs. § 15251(c)).

<sup>130</sup> **Attachment 4**, SLC Environmental Memorandum, pp. 2, 48; *see also* **Attachment 3**, SLC Staff Report, Ex. B, pp. B-2 to B-3 (“[S]taff concludes that the Commission may rely on the existing certified Final EIR/EIS and CEQA-equivalent CDP to consider the environmental effects of issuing a lease for the [4.8 mgd phase of the] Project.”)

<sup>131</sup> **Attachment 2**, Five-Year CEQA Compliance Reaffirmation, p. 2 (“The CPUC affirms that the EIR/EIS continues to apply to the MPWSP. The MPWSP has not changed in a manner that affects the EIR/EIS’s validity, or that requires preparation of an addendum, supplemental or subsequent CEQA document.”).

<sup>132</sup> *See Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, 243.

<sup>133</sup> *Mot.*, p. 47.

injunction would cause no harm; it highlights a dispute of material fact.<sup>134</sup> Construction must proceed now to bring the desalination plant online by December 2029.<sup>135</sup> The schedule is tightly constrained: slant well drilling can occur only from October through February each year because of the Western snowy plover nesting season, and only one specialized drill rig capable of the required drilling is currently available in the United States.<sup>136</sup> Even a short delay could push the Project back by a year or more, and Complainants offer no evidence, much less undisputed facts, that the surplus will last into the 2030s. Moreover, any surplus can be wiped out by a multi-year drought.

Complainants' reliance on D.09-08-030<sup>137</sup> is misplaced. In that decision, the CPUC enjoined implementation of SDG&E's Power Shut-Off Plan, which it had yet to review, and whose opponents presented evidence that it could deprive residents in a wildfire zone of critical evacuation information (or even the ability to leave their homes due to inoperative garage doors), undermine firefighting by cutting power to water pumps, and knock out equipment critical to life and health, especially for disabled residents.<sup>138</sup> Unlike SDG&E's Power Shut-Off Plan, this Project has already been thoroughly studied and approved by not only the CPUC but also the Coastal Commission and the SLC.<sup>139</sup> Building the MPWSP will not impose any of the life-

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<sup>134</sup> See Responses to UMF Nos. 65, 66, 69.

<sup>135</sup> Answer, p. 11 ("The overall program remains on track toward commissioning in December 2029 ...").

<sup>136</sup> *Id.*, p. 12 ("The snowy plover ... has a breeding and nesting season that occurs from March through September, so slant well construction activities can only occur from October through February each year. ... Slant well drilling is further complicated by the fact that only one specialized drill rig capable of the necessary extended-reach drilling is currently available in the United States.").

<sup>137</sup> Mot., p. 47.

<sup>138</sup> D.09-08-030, pp. 2-4.

<sup>139</sup> *Id.*, pp. 2-4; see **Attachment 3**, SLC Staff Report, p. 6 ("The project approved by the CCC in its Final Adopted Findings is a phased version of the fully analyzed 6.4 mgd per year project approved by the CPUC in 2018."); see also **Attachment 1**, CDP Final Findings, p. 14; Complainants' Joint Response to

threatening risks that SDG&E’s opponents identified, nor will it impose substantial costs on those attempting to mitigate such life-threatening risks.<sup>140</sup> However, halting construction risks allowing the Monterey Peninsula to slide into a water supply deficit and will certainly increase overall Project costs.<sup>141</sup>

#### **4. An injunction would substantially harm interested parties.**

Complainants’ contention that the water supply surplus for 2027 negates harm to ratepayers and the public<sup>142</sup> ignores the significant harm from increased construction costs, which falls on ratepayers, as well as the risk of a water supply shortage. California American Water did not “assume[] the risk of undertaking construction without having secured a water source.”<sup>143</sup> The AHO Report found that ocean water will supply 90 percent or more of the Project’s source water, and that the Company may lawfully draw it.<sup>144</sup> As to the other risks Complainants cite, the Company balanced them against the ever-rising cost of construction and reasonably concluded that its efforts to satisfy the Coastal Commission’s conditions would succeed and that it would prevail here and in the Monterey Superior Court, as it has in every other forum in which Complainants have challenged the Project.<sup>145</sup> The unresolved water rights

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California American Water’s MTD, Ex. 2 (2026 Q1 & Q2 Project Update) (“California American Water obtained approval of a lease from the State Lands Commission in June for the construction of the Slant [Wells].”)

<sup>140</sup> D.09-08-030, pp. 4-5.

<sup>141</sup> As the CPUC has observed, delays from halting project construction, “may ... increase costs to ratepayers...” Resolution E-4550, p. 7.

<sup>142</sup> Mot., p. 48.

<sup>143</sup> *Id.*; see Response to UMF No. 26 (the CPUC has issued multiple Notices to Proceed, authorizing it to begin construction of the Project); see also **Attachment 7**, NTP-5a, issued Sept. 14, 2025; **Attachment 8**, NTP-5b, issued May 29, 2026.

<sup>144</sup> See Section IV.A.5, *supra*.

<sup>145</sup> Answer, pp. 26-27 (“Each time, the claims of Complainants (or their allies) failed, including in a published Court of Appeal decision and, in another case, before the California Supreme Court.”) (describing *Marina Coast Water Dist. v. Cal. Public Utilities Com.*, Cal. Supreme Ct. Case No. S253585;

questions concerning the Salinas Valley Groundwater Basin do not bar the Company from constructing its intake wells, and the wells must be constructed on time in order for the MPWSP to remain on track to enter service in 2029.

An order halting construction could significantly disrupt construction timelines given the interplay of slant well drilling equipment availability, the snowy plover nesting season, and other time-sensitive elements of the construction plan.<sup>146</sup> Given recent inflation and construction cost trends, such disruptions would impose substantial financial burdens on ratepayers.<sup>147</sup> A construction delay could also prevent the Project from entering service in time to close the gap between supply and demand, especially in the event of a multi-year drought in the coming years.

**5. Absent a violation of D.18-09-017 or another CPUC decision, there is no violation of the Public Utilities Code.**

Each statutory violation Complainants assert under Public Utilities Code sections 451, 702, 1001, and 1002(a) is premised on an alleged violation of D.18-09-017, which California American Water disputes. Complainants therefore are neither likely to prevail on the merits nor entitled to judgment as a matter of law on those claims.

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*Marina Coast Water Dist. v. County of Monterey* (2023) 96 Cal.App.5th 46; *Water Ratepayers Assn. of the Monterey Peninsula v. Geoscience*, Monterey Super. Ct. Case No. 16CV001561; and *City of Marina v. Cal. Coastal Com.*, Monterey Super. Ct. Case No. 22CV004063).

<sup>146</sup> *Id.*, p. 12 (“Any interruption in the availability of the drilling equipment or inability to perform work during the permitted drilling season could significantly affect the overall project schedule.”).

<sup>147</sup> As the CPUC has observed, delays from halting project construction, “may ... increase costs to ratepayers...” Resolution E-4550, p. 7.

## **V. COMPLAINANTS' ATTACKS ON CALIFORNIA AMERICAN WATER'S AFFIRMATIVE DEFENSES FAIL**

### **A. First Affirmative Defense**

California American Water explained throughout its Answer why Complainants' allegations are inaccurate or do not justify the relief they seek. In the interest of completeness, and to support the ensuing Affirmative defenses,<sup>148</sup> it incorporated the factual and legal arguments set forth in the answer.<sup>149</sup>

### **B. Second Affirmative Defense**

California American Water disputes the core of Complainants' allegations: that its actions violate D.18-09-017, any other CPUC decision, or Public Utilities Code sections 451, 702, 1001, or 1002. Because the facts alleged do not demonstrate a violation of any CPUC decision or governing statute, Complainants fail to set forth "any act or thing done or omitted to be done" in violation of law or of any CPUC order or rule.<sup>150</sup> California American Water acknowledges that Complainants *claim* its actions are violations, but Complainants' legal conclusions are in error.<sup>151</sup>

### **C. Third Affirmative Defense**

Complainants misread this defense. California American Water asserted that Complainants seek a procedurally inappropriate *remedy*<sup>152</sup> because their requested orders

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<sup>148</sup> *Contra* Mot., p. 52.

<sup>149</sup> Answer, p. 51 ("As a first and separate affirmative defense, California American Water re-alleges and incorporates herein each and every one of its affirmative allegations set forth above.").

<sup>150</sup> *Id.* (citing Pub. Util. Code § 1702).

<sup>151</sup> *See* Section IV, *supra*.

<sup>152</sup> Answer, p. 51 ("As a further affirmative defense, California American Water avers that the Complaint seeks a procedurally inappropriate remedy.").

directing the Company to (1) submit a PFM, (2) stop construction, and (3) show cause why it should not be sanctioned<sup>153</sup> are unsupported by their allegations.

#### **D. Fourth Affirmative Defense**

California American Water has never claimed any “privilege to violate [] Commission orders or decisions.”<sup>154</sup> Its conduct is justified and authorized by the CPUC’s approval in D.18-09-017 of the Project; by ensuing CPUC actions, including D.25-08-006, D.26-04-046, NTP-5a, and NTP-5b; and by its obligation to comply with the conditions imposed by the Coastal Commission pursuant to its concurrent jurisdiction over the Project. Nor has the Company claimed that the CPUC delegated its decision-making authority to staff.<sup>155</sup> It pointed to CPUC staff’s issuance of NTPs in full knowledge of its approach as further indication that its actions are consistent with D.18-09-017 and do not require a PFM.<sup>156</sup>

#### **E. Fifth Affirmative Defense**

Complainants cite *Pacific Legal Foundation v. California Coastal Com.* for the rule that “a controversy is ‘ripe’ when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.”<sup>157</sup> In that case, the court held the controversy unripe because it was “an attempt to obtain review of the propriety

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<sup>153</sup> See MTD, p. 2 (summarizing the relief Complainants seek).

<sup>154</sup> Mot., p. 55.

<sup>155</sup> *Contra* Mot., pp. 54-55; see Reply ISO MTD, p. 9; see also Response to UMF No. 32 (explaining that CPUC Staff were aware of California American Water’s phased development plans when they issued Notices to Proceed).

<sup>156</sup> Reply ISO MTD, p. 11 (“California American Water raised this for three reasons. First, to demonstrate that it has been candid with the CPUC about its intended approach, as required by D.18-09-017, applicable law, and good faith. 43 Second, to explain that, though the Notices to Proceed (“NTPs”) do not mention this intent, it has been communicated with CPUC staff. And third, to note that, when apprised of these plans, CPUC staff did not indicate that so much as a minor project refinement memo was needed to reflect project phasing”).

<sup>157</sup> Mot., p. 55 (citing *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171).

of administrative regulations prior to their application to the party challenging them,” applying a two-part test: (1) whether the issues are fit for judicial decision, and (2) what hardship will befall the parties if the court withholds consideration.<sup>158</sup> Here, California American Water has not taken any action that triggers Ordering Paragraph 22 and it has not sought recovery of funds exceeding the cost cap under Ordering Paragraph 21. The issues therefore are not fit for decision, and no hardship will befall the parties if the CPUC addresses cost issues when they become ripe in the Company’s forthcoming filing while allowing the Company to proceed with construction that complies with both Coastal Commission and CPUC decisions.

This defense is not inconsistent with California American Water’s seventh affirmative defense of unclean hands because, while these claims are not ripe for adjudication, the facts underlying Complainants’ allegation that the Company has violated Ordering Paragraph 22 have existed since 2022 when the Coastal Commission conditionally approved the phased development of the Project.

#### **F. Sixth Affirmative Defense**

As discussed in Section IV.C, *supra*, the equitable relief Complainants seek is not appropriate under the facts alleged and the evidence produced. An order halting construction would harm ratepayers, the public interest, and the Company, while denying relief will not cause Complainants irreparable harm.

#### **G. Seventh Affirmative Defense**

Complainants’ challenge to this defense is not appropriate for resolution on summary judgment. “Whether the doctrine of unclean hands applies is a question of fact.”<sup>159</sup> The defense

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<sup>158</sup> *Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 171.

<sup>159</sup> *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.

is properly evaluated based on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries.<sup>160</sup> In *People ex rel. Sneddon v. Torch Energy Services, Inc.*, the court barred a project operator from arguing it was not bound by permit conditions where, on taking over the project, it had “reiterated its agreement to comply with all conditions of the permits and waived any objections to the conditions,” holding that allowing it to repudiate that commitment “would reward inequitable conduct and ‘cynical gamesmanship.’”<sup>161</sup>

Although Complainants’ earlier advocacy for a smaller desalination plant in A.12-04-019<sup>162</sup> did not persuade the CPUC and is not a binding commitment like Torch Energy’s, it is still gamesmanship for them to now repudiate this stated preference for a 4.8 mgd project. Complainants claim to oppose a standalone 4.8 mgd plant (which is not what the Company is building); this reversal directly connects to their alleged injuries and demonstrates that they simply oppose the MPWSP in whatever form it takes.<sup>163</sup>

#### **H. Eighth Affirmative Defense**

Complainants’ reliance on D.26-04-046 is misplaced: the CPUC did not “clarif[y] in D.26-04-046 that any change in project size is a ‘non-minor’ refinement that requires CalAm to file a petition to modify D.18-09-017.”<sup>164</sup> It simply stated that, as a general matter, D.18-09-017

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<sup>160</sup> *Id.*, 979.

<sup>161</sup> *People ex rel. Sneddon v. Torch Energy Services, Inc.* (2002) 102 Cal.App.4th 181, 185, 190.

<sup>162</sup> D.18-09-017, App’x C, p. C-72 (“Some parties have urged the CPUC to consider a further reduced capacity desalination alternative ... the next reduced desalination plant size would be 4.8 mgd.”); D.19-01-051, p. 60 (“Marina asserts that a 4.8 mgd desalination plant should have been reviewed as an alternative.”).

<sup>163</sup> See Answer, pp. 26-28 (Cataloguing failed challenges to the MPWSP by Complainants following D.18-09-017).

<sup>164</sup> Mot., pp. 58-59.

provides for petitions for modification as the mechanism for non-minor adjustments “if needed.”<sup>165</sup> And like unclean hands, laches is a fact-based defense not appropriate for resolution on summary judgment where the relevant facts are disputed.

Moreover, the Coastal Commission approved the CDP in November 2022, putting Complainants and all other interested parties on notice that the MPWSP would be constructed in phases, beginning with a 4.8 mgd phase.<sup>166</sup> California American Water publicized the phased approach in every quarterly Project update.<sup>167</sup> Complainants nevertheless waited until after the CPUC had issued NTPs for construction to file this Complaint, attempting to hamstring construction as it commenced despite knowing for years that this was the Company’s intended approach. Complainants also assert that the Company’s “earlier filings in this proceeding had disclosed only the commencement of ‘site preparation authorized in NTP-5a.’”<sup>168</sup> In fact, the Company’s first filing, its Answer, stated that “construction of the desalination plant is scheduled to begin in August 2026, as authorized by NTP-5b,” and explained that NTP-5b “allow[s] for full build-out of the 4.8 mgd phase of the project.”<sup>169</sup>

The defenses of laches and unripeness are not in contradiction. While Complainants’ claims are unripe because no violation of D.18-09-017 has yet taken place, their claims that California American Water’s efforts to comply with both the CDP and D.18-09-017 violate the latter are based on facts that have not changed in four years. Hence, while their claims would

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<sup>165</sup> D.26-04-046, p. 5.

<sup>166</sup> **Attachment 1**, CDP Final Findings, p. 14; *see also Attachment 6*, *City of Marina* Decision, p. 52 (explaining the Coastal Commission-approved phased construction).

<sup>167</sup> Answer, p. 28, n. 89.

<sup>168</sup> Mot., p. 7, n. 2.

<sup>169</sup> Answer, pp. 11, 22; *see also* MTD, p. 3 (“CPUC staff have been apprised of the Company’s plans to begin with a 4.8 mgd phase pursuant to the Coastal Commission’s conditional approval and have issued Notices to Proceed with construction ...”). NTP-5b was attached to the Answer as Attachment 14.

have been unripe then as they are now, they have also unreasonably delayed in raising them for adjudication.

### **I. Ninth Affirmative Defense**

Complainants attack only the Company's defense of res judicata; they do not address issue preclusion, also called collateral estoppel.<sup>170</sup> Complainants attempt to re-litigate *City of Marina, et al. v. California Coastal Commission* (Monterey County Super. Ct. Case No. 22CV004063), in which they alleged that the Coastal Commission's November 2022 approval of CDPs for the MPWSP violated procedural and substantive requirements of CEQA and the California Coastal Act. On May 29, 2025, the Court entered judgment in favor of the Coastal Commission and California American Water on all causes of action. The *City of Marina* Court specifically held that Petitioners failed to cite any authority that prohibited the Coastal Commission, as a responsible agency under CEQA, from approving a phased version of a project approved by the CPUC as lead agency.<sup>171</sup> It further held that the FEIR/EIS certified by the CPUC extensively studied the relevant environmental impacts.<sup>172</sup>

This case is currently pending appeal (Sixth District Court of Appeal No. H053560) and California American Water acknowledges that the Superior Court determination lacks preclusive effect while an appeal is pending.

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<sup>170</sup> Mot., p. 59; see Responses to UMF Nos. 3, 15, 16, 24, 39-41.

<sup>171</sup> **Attachment 6**, *City of Marina* Decision, p. 51; see also **Attachment 3**, SLC Staff Report, p. 6 ("The project approved by the CCC in its Final Adopted Findings is a phased version of the fully analyzed 6.4 mgd per year project approved by the CPUC in 2018.").

<sup>172</sup> **Attachment 6**, *City of Marina* Decision, p. 51.

## **J. Tenth Affirmative Defense**

As explained throughout this response, the CPUC did not “expressly reject[] ... a phased project,” and California American Water is not building a standalone 4.8 mgd plant.<sup>173</sup> The Company is complying with D.18-09-017 while also complying with the conditions imposed by the Coastal Commission pursuant to its concurrent and overlapping jurisdiction. This is possible because the 4.8 mgd phase conditionally approved by the Coastal Commission is integral to the 6.4 mgd Project approved by the CPUC, and every component of that phase, and every dollar spent on it, contributes to completion of the 6.4 mgd Project approved in D.18-09-017.<sup>174</sup>

## **VI. ATTACHMENTS**

California American Water has included the following attachments in support of its Response.

1. California Coastal Commission, Final Adopted Findings, De Novo Appeal Hearing and Consolidated Coastal Development Permit Appeal No. A-3-MRA-19-0034, Application No. 9-20-0603, November 17, 2022 (“CDP Final Findings”)
2. Five-Year Reaffirmation of CEQA Compliance for State Revolving Fund Financing Application, issued April 2, 2026 (“Five-Year CEQA Compliance Reaffirmation”)
3. State Lands Commission Staff Report 60, Meeting Date June 23, 2026, Application Number 4181 (“SLC Staff Report”)

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<sup>173</sup> *Contra* Mot., pp. 59-60.

<sup>174</sup> Answer, p. 52 (“California American Water intends to construct the remaining capacity and complete a 6.4 mgd project.”); **Attachment 3**, SLC Staff Report, p. 6 (“The project approved by the CCC in its Final Adopted Findings is a phased version of the fully analyzed 6.4 mgd per year project approved by the CPUC in 2018.”).

4. State Lands Commission Evaluation of Prior CEQA Sufficiency and Documentation that No Additional CEQA Review is Needed for the Monterey Peninsula Water Supply Project, May 2026 (“SLC Environmental Memorandum”)
5. State Water Resources Control Board Final Report of the Board as Referee, submitted in Monterey Superior Court, Case No. 20CV001387 (*City of Marina v. RMC Lonestar*) on June 25, 2025 (“AHO Report”)
6. *City of Marina v. Cal. Coastal Com.*, Final Decision, Case No. 22cv004063 (May 12, 2025)
7. NTP-5a, issued September 14, 2025
8. NTP-5b, issued May 29, 2026
9. MPWSP Q4 2025 Project Update
10. American Company, Inc. press release dated Oct. 5, 2022
11. Declaration of Tyler Potter
12. March 30, 2026, Testimony of Peter Leffler
13. April 1, 2026, Testimony of Peter Leffler
14. Final EIR/EIS Section 8.2
15. Final EIR/EIS Appendix L

## **VII. CONCLUSION**

For the foregoing reasons, California American Water respectfully requests that the CPUC deny Complainants’ Emergency Motion for Summary Judgment/Adjudication in its entirety.

Dated: October 14, 2026

Respectfully submitted,

**NOSSAMAN LLP**

By: /s/ Lori Anne Dolqueist

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Attorney for California-American Water  
Company