Decision 18-09-017 September 13, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.	Application 12-04-019

DECISION APPROVING A MODIFIED MONTEREY PENINSULA WATER SUPPLY PROJECT, ADOPTING SETTLEMENT AGREEMENTS, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND CERTIFYING COMBINED ENVIRONMENTAL REPORT

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DECISION APPROVING A MODIFIED MONTEREY PENINSULA WATER SUPPLY PROJECT, ADOPTING SETTLEMENT AGREEMENTS, ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND CERTIFYING COMBINED ENVIRONMENTAL REPORT

Summary

This decision certifies and applies the combined Final Environmental Impact Report /Environmental Impact Statement, adopts a Statement of Overriding Considerations, and authorizes a Certificate of Public Convenience and Necessity for California-American Water Company's (Cal-Am) Modified Monterey Peninsula Water Supply Project at a size of 6.4 million gallons per day. It also addresses four proposed settlement agreements. The Commission adopts two of these settlement agreements (Brine Discharge Settlement and Return Water Settlement). This decision declines to adopt the Comprehensive Settlement but does adopt the framework set forth in that agreement based on the proceeding record independent of the proposed settlement. The fourth settlement agreement is rejected (Sizing Settlement).

This decision finds that water rate relief bonds issued by the Monterey Peninsula Water Management District will provide savings to customers on the Monterey Peninsula. It directs Cal-Am to prepare progress reports during construction of the Monterey Peninsula Water Supply Project, and publish them on its website. It discusses the need for water supplies in Cal-Am's Monterey District, reviewing demand and supply estimates and selecting estimates supported by the best evidence. The decision takes into account and apportions between ratepayers and Cal-Am the risks associated with various water supplies. Compliance conditions are imposed in the decision. The settlement agreements submitted, and other relevant documents are attached as appendices. To the

extent they are not otherwise discussed here, any and all outstanding motions are deemed denied. The proceeding is closed.

1. Background and Project Description

1.1. Monterey District and Long-Standing Water Constraints

California-American Water Company's (Cal-Am) is a Class A investor-owned water utility, regulated by this Commission. Cal-Am's Monterey District, with 40,000 connections, serves most of the Monterey Peninsula, including Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside, as well as the unincorporated areas of Carmel Highlands, Carmel Valley, Pebble Beach, and the Del Monte Forest. This service territory is known as the Monterey Main System. This service area comprised approximately 33,950 acres and a population of 94,081 in 2010. Cal-Am also serves a number of small satellite systems along the Highway 68 corridor east of the City of Monterey, including the unincorporated communities of Bishop, Hidden Hills, Ryan Ranch, Ambler, Chualar, Garrapata, and Toro.[1] These satellite systems include over 7,000 acres and a population of approximately 5,313 in 2010.[2] Cal-Am plans to serve the Monterey Main System, Bishop, Hidden Hills, and Ryan Ranch with the proposed Monterey Peninsula Water Supply Project (MPWSP). Currently, Cal-Am supplies its main district with surface water and groundwater from the Carmel River System and the coastal subarea of the Seaside Groundwater Basin (also known as the Seaside Basin). The Ambler and Toro satellite systems draw water from the Laguna Seca subarea

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[1] *See, e.g.*, D.13-01-033.

[2] Final 2010 Urban Water Management Plan, Central Division – Monterey County District, Cal-Am Water, dated September 7, 2012 at 2-1.

of the Seaside Basin and would continue to do so in the future, therefore these communities will not be served by the MPWSP. Similarly, the Chualar and Garrapata systems would not be served by the MPWSP. As the the Ambler, Toro, Garrapata, or Chualar systems will not be served by the MPWSP, Cal-Am shall not include any costs associated with the MPWSP in rates for customers served by those systems. Costs for the MPWSP shall only be included in rates for the Monterey Main System, Bishop, Hidden Hills, and Ryan Ranch that will be served by the MPWSP.

Water supply on the Monterey Peninsula is available largely from rainfall and has long been constrained due to frequent drought conditions on the semi-arid Peninsula.[3] Water supply constraints have been extensively documented and have existed for decades on the Monterey Peninsula.[4]

Cal-Am owned and operated the San Clemente Dam until its removal in 2015. As described in the environmental impact report/environmental impact statement (EIR/EIS), the San Clemente Dam was constructed on the Carmel River in 1921 and was, before its removal, the major point of surface water

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[3] The Peninsula is not unique in California with respect to water supply constraints; much of the supplemental water for cities in California has been supplied by transfers from agriculture rather than desalination or groundwater replenishment with recycled water. *See*, Gerald Johns, Chief, Water Transfers Office, Cal. Dept. of Water Resources, *Where is California Taking Water Transfers?* (Jan. 2003) Editorial: American Society of Civil Engineers, Journal of Water Resources Planning and Management, Vol. 129, Issue 1 (January 2003), available at the California Department of Water website.

[4] *See, e.g.*, Stats. 1977, ch. 527, § 2, Deering's Wat.-Uncod. Acts (2008 Supp.) Act 5065, p. 98-9, Assembly Bill No. 1182 (1997-1998 Reg. Sess.)(Ch. 797, Stats. 1998), D.10-12-016 at 9, 18-34. Supply constraints have also impacted the entire region, with seawater intrusion first documented in 1946. *See,* Cal-Am Monterey Peninsula Water Supply Project Final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) (*Hereafter* FEIR/EIS) at 4.4-31. *citing*, California Department of Water Resources, Salinas Basin Investigations, Bulletin 52 (1946).

diversion from the river. The Los Padres Dam was constructed in 1949 and owned and operated by Cal-Am since 1965. Sedimentation reduced the usable storage at both reservoirs over the years, such that by 1995, the primary source of water supply for Cal-Am was multiple wells located along the lower Carmel River.[5] These wells supplied approximately 70 percent of Cal-Am's demand, with the balance of supply provided by storage at the Los Padres Reservoir, diversions from the San Clemente reservoir until its dam removal, and water pumped from the Seaside Basin. Cal-Am's main distribution system also includes eight wells in the Coastal subarea of the Seaside Basin. In addition, Cal-Am owns nine wells in the Laguna Seca subarea, which serve the three independent water systems along Highway 68 described above (Bishop, Hidden Hills, and Ryan Ranch).

Several legal actions occurred that have significantly reduced Cal-Am's ability to draw water from the Carmel River and from the Seaside Basin. First, in 1995, the State Water Resources Control Board (SWRCB) issued its Order No. WR 95-10 (Order 95-10).[6] The SWRCB concluded that although Cal-Am had been diverting an average of 14,106 acre-feet per year (afy) from the Carmel River, it had a legal right to only 3,376 afy from the Carmel River system, including surface water and water flowing in the subterranean stream pumped from the Carmel Valley wells. Thus, SWRCB ordered Cal-Am to replace what

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[5] In D.12-06-040, the Commission authorized Cal-Am to commence removal of the San Clemente Dam in partnership with two public agencies, the California State Coastal Conservancy and the National Marine Fisheries Services. Dam removal began in June 2013 and was completed in 2015. San Clemente Dam Seismic Safety Project EIR/EIS at 2-6.

[6] Order on Four Complaints Filed Against The California-American Water Company, SWRCB Order No. WR 95-10 (July 6, 1995) (*Hereafter* Order 95-10).

SWRCB determined to be unlawful diversions of about 10,730 afy from the Carmel River through obtaining additional rights to the Carmel River or other sources of water and through other actions, such as conservation to offset 20 percent of demand. The order directed Cal-Am to maximize use of the Seaside Groundwater Basin for the purpose of serving existing connections, honoring existing commitments (allocations), and to reduce diversions from the Carmel River to the greatest practicable extent.

In addition to supplying water to local consumers, the Carmel River provides a habitat for the California red-legged frog and the South Central California Coast steelhead trout (Steelhead). The California red-legged frog was listed as threatened under the Federal Endangered Species Act in 1996 and Cal-Am is subject to prosecution for a "take" of the frog.[7] In 1997, Cal-Am entered into an agreement with the U.S. Fish and Wildlife Service (USFWS) to regulate its well production to avoid or mitigate impacts on the California red-legged frog. These agreements have been renewed several times.

In 1997, the Steelhead was listed as threatened under the Endangered Species Act, and Cal-Am is subject to prosecution by the National Marine Fisheries Service (NMFS) for a "take of the Steelhead. Both the USFWS and NMFS contend that any entity that pumps water from the Carmel Valley Aquifer may be liable for a "take" because such pumping may alter the riparian habitat, affect the steelhead's ability to migrate, and affect the California red-legged frog's ability to mature. Cal-Am has entered into a Conservation Agreement with NMFS, with the long-term goal of procuring an alternative water supply

[7] Endangered Species Act of 1973 (ESA; codified as amended at 16 U.S.C. § 1531 et seq.). Section 9 of the Endangered Species Act defines a "take" as harm to a listed species of wildlife.

source to reduce withdrawals from the Carmel Valley Aquifer. According to the Final Environmental Impact Report /Environmental Impact Statement (FEIR/EIS), should the federal agencies prosecute Cal-Am for "takes," enforcement actions could include further reduction of the water supply and heavy fines.[8]

Second, in 2006, the Monterey County Superior Court issued a final decision regarding adjudication of water rights of various parties who use groundwater from the Seaside Basin. (*Cal-Am v. City of Seaside et al.*, Super. Ct. Monterey County, 2006, No. M66343). The court's decision established physical limitations to various users' water allocations to reduce the drawdown of the aquifer and prevent additional seawater intrusion. It also set up a Watermaster to administer and enforce the Court's decision. Cal-Am is currently allocated 3,504 afy from the Coastal subarea of the Seaside Basin and 345 afy from the Laguna Seca subareas. These allocations will be reduced over time until they eventually reach 1,474 afy from the overall Seaside Basin. Prior to the Seaside Basin adjudication, Cal-Am's pumping from the Coastal subarea was 4,000 afy. 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.

Finally, the timing associated with water supply constraints became particularly critical with the issuance of the SWRCB's Cease and Desist Order (CDO).[9] On July 27, 2009, the SWRCB issued a Draft CDO that orders Cal-Am to

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[8] FEIR/EIS at 2-7.

[9] SWRCB Order No. WR 2009-0060 (Oct. 20, 2009) (*Hereafter* SWRCB's Cease and Desist Order or CDO).

undertake additional measures to cease its unauthorized diversions from the Carmel River and to terminate all such diversions no later than December 31, 2016.[10]

The CDO was adopted by the SWRCB on October 20, 2009, and was distributed to the service list on October 27, 2009. The adopted CDO maintained the December 31, 2016 compliance deadline from its earlier drafts, and states in no uncertain terms that Cal-Am can and must reduce its unlawful diversions from the Carmel River without further delay. The SWRCB ordered Cal-Am to begin complying immediately with the CDO, including reducing its diversions from the Carmel River by five (5) percent or 549 afy starting in October 2009; further reducing diversion from the Carmel River in subsequent years through additional water savings from demand management programs implemented in conjunction with Monterey Peninsula Water Management District (WD); and prohibiting new service connections or certain increased uses of water at existing service connections.[11] On July 19, 2016, the SWRCB adopted Order WR 2016-0016,[12] which partially supersedes Orders 95-10 and 2009-0060.[13] Order 2016-0016 extends the date by which Cal-Am must terminate all unlawful diversions from the Carmel River from December 31, 2016, to December 31, 2021. Order WR 2016-0016 set an initial diversion limit from the Carmel River of 8,310 afy for Water Year 2015-2016 (October 1, 2015-September 30, 2016) and orders Cal-Am to

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[10] SWRCB Draft Order No. WR 2009-00xx (July 27, 2009).

[11] *See,* D.11-03-048, issued in A.10-05-020 (authorizes Cal-Am to implement moratorium on new connections mandated in the 2009 CDO).

[12] SWRCB Order No. WR 2016-0016 (July 19, 2016) (*Hereafter* Order 2016-0016).

[13] SWRCB's Cease and Desist Order.

terminate all unlawful diversions from the Carmel River no later than December 31, 2021.[14] Order WR 2016-0016 acknowledges that Cal-Am may, under certain circumstances, divert additional volumes of water from the Carmel River under water rights permits or under water transfers from other rights holders.[15]

Framed by the various orders from the SWRCB and Superior Court, various applications were filed at this Commission. In 1995, Cal-Am's access to the Carmel River was reduced significantly. After Order 95-10 was issued by the SWRCB, Cal-Am anticipated that it would be able to obtain additional water from a proposed new dam to be funded by bonds issued by the WD (the New Los Padres Dam). However, in an election held in November 1995, WD was unable to secure a vote for public financing for this effort. Cal-Am then filed Application (A.) 97-03-052, requesting authority to build the Carmel River Dam.

At that point, the State Legislature enacted Assembly Bill (AB) 1182 that required the Commission to identify a long-term water supply contingency plan to replace 10,730 afy from the Carmel River.[16] The Commission issued its report in August 2002 regarding the development of a new water supply source, known as "Plan B," recommending a desalination plant to address the water supply problem.

Accordingly, Cal-Am filed a request to modify A.97-03-052 to request authorization for a Certificate of Public Convenience and Necessity (CPCN) to construct a desalination project with an Aquifer Storage and Recovery (ASR)

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[14] SWRCB Order 2016-0016 at 19.

[15] SWRCB Order 2016-0016 at 10.

[16] Assembly Bill No. 1182 (1997-1998 Reg. Sess.)(Ch. 797, Stats. 1998).

component. The Commission then issued D.03-09-022, dismissing the application for the Carmel River Project, and instructing Cal-Am to file a new application. D.03-09-022 designated the Commission as lead agency for environmental review of a proposed desalination project with an ASR component, and addressed various ratemaking issues, including approval of the Coastal Water Project memorandum account to track all costs related to the development of a long-term water supply solution for the Monterey District.

In 2004, Cal-Am filed A.04-09-019, seeking the requisite authority. The Commission issued D.06-12-040 approving Surcharge 1 to collect approved costs tracked in the Coastal Water Project memorandum account and Surcharge 2 to fund the construction of a water supply project, to be initiated after approval of such a project and to be funded on a pay-as-you-go basis.

In D.09-12-017, the Commission certified the Final Environmental Impact Report (FEIR) for that project. Finally, in D.10-12-016, the Commission approved Cal-Am's participation in the Regional Desalination Project, issued a CPCN for the "Cal-Am Only" facilities, and approved a settlement agreement in which the Marina Coast Water District would own the desalination plant, Cal-Am would own the associated transportation and system facilities, and the Monterey County Water Resources Agency would own the wells to pump seawater from the Salinas Valley Groundwater Basin. D.10-12-016 also approved a complex Water Purchase Agreement (WPA) among the three entities (Cal-Am, Marina Coast Water District, and Monterey County Water Resources Agency).

Unfortunately, as discussed in D.12-07-008, various issues arose during the implementation of the Regional Desalination Project and Cal-Am withdrew its support for that project on January 17, 2012. The Commission closed A.04-09-019

in D.12-07-008 and accepted Cal-Am's filing of A.12-04-019 as a replacement for the previous project proposed in A.04-09-019.[17]

In 2014, the Legislature enacted Senate Bill (SB) 936, Chapter 482, which among other things, authorizes the CPUC to issue financing orders to facilitate the recovery, financing, or refinancing of water supply costs, defined to mean reasonable and necessary costs incurred or expected to be incurred by a qualifying water utility.[18] This bill authorizes the Monterey Peninsula Water Management District to issue water rate relief bonds if the CPUC finds that the bonds will provide savings to water customers on the Monterey Peninsula. Savings from these bonds would result from the lower interest rates that would apply to this financing compared to market-rate financing.

Contrary to the position of some of the Parties, there is a need for a new water supply project, which has only become more critical over time.

As we previously observed, permitting and building an approved desalination plant and associated infrastructure will take a significant amount of time.[19] We find that the project is needed and it is therefore reasonable to approve Cal-Am's request to move forward with this project. As we discuss below, however, we must determine whether the 9.6 million gallons per day (mgd) or the smaller plant is reasonable at this time, analyze the environmentally preferred alternative, and determine whether the proposed Settlement Agreements are reasonable.

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[17] D.12-07-008, Findings of Fact 3, 4, and 5 at 23.

[18] Senate Bill No. 936 (2013-2014 Reg. Sess.)(Ch. 482 Stats. 2014).

[19] D.10-12-016, *mimeo* at 31.

1.2. Role of Other Agencies in Water Regulation on the Monterey Peninsula

In addition to this Commission, many federal, state, and local agencies are involved in the regulation of water, water rights, and water supply on the Monterey Peninsula. These agencies include, but are not limited to, the State Water Resources Control Board, Monterey Peninsula Water Management District (WD), Monterey County Water Resources Agency (MCWRA), Monterey Regional Water Pollution Control Agency (PCA), and the Seaside Groundwater Basin Watermaster. A number of agencies (Marina Coast Water District (MCD), MCWRA, PCA, and WD) in the area have actively participated as parties in this proceeding. In D.10-12-016, we provided a brief background on the MCD, the MCWRA, the PCA, and the WD, which actively participated in that proceeding, and continue to participate here. In addition, the Monterey Peninsula Regional Water Authority (RWA) has actively participated in this proceeding. As set forth in Exhibit RWA-1, the RWA is a Joint Powers Authority, formed in February 2012 under Government Code, §§ 6500 *et seq.* The RWA consists of the Mayors representing the cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside. The purpose of the RWA is to work to "ensure the timely development, financing, construction, operation, repair, and maintenance of one or more water projects and . . . ensure that the governance of such water projects includes representation that is directly accountable to the members' water users.[20]

[20] Exhibit RWA-1 at 3.

1.3. Project Description and Objectives

The following text, as modified by our updates in brackets, appears in Appendix H of the March 14, 2016 Amended Application:

> PROJECT DESCRIPTION OVERVIEW
>
> The Monterey Peninsula Water Supply Project (MPWSP) will produce desalinated water and convey it to the existing California-American Water Company (Cal-Am) distribution system. The MPWSP supplements portions of Cal-Am's existing water sources on the Carmel River and Seaside Basin so their use may be reduced to stay within legal limits. The MPWSP consists of the construction of up to 10 subsurface slant wells and a desalination plant to produce on average approximately 10,627 afy of desalinated water to meet service area demand and return water requirements to the Salinas Valley Groundwater Basin. The production capacity of the proposed MPWSP desalination plant is 9.6 million gallons per day (mgd). The proposed MPWSP consists of several components: a source water intake system; a desalination plant; a brine discharge system; product water conveyance pipelines; water storage facilities; and an Aquifer Storage and Recovery (ASR) system. …
>
> The MPWSP also includes a variation of the proposed action that combines a reduced-capacity desalination plant with a water purchase agreement for 3,500 afy product water from the Monterey Regional Water Pollution Control Agency's ([]PCA) proposed Pure Water Monterey Groundwater Replenishment (GWR) Project.[21] The MPWSP variant consists of the construction of up to seven subsurface slant wells and a

[21] The Monterey Regional Water Pollution Control Agency has been renamed Monterey One Water. This decision and associated documents use these terms interchangeably and uses the acronym PCA, consistent with its designation for evidentiary exhibits. In addition, the GWR Project was the original name of the project but is now commonly referred to as the Pure Water Monterey (PWM) Project. Again, this decision and associated documents may refer to either name to refer to the same project.

desalination plant to produce on average approximately 6,752 afy per year (afy) of desalinated water to meet service area demand and return water requirements to the Salinas Valley Groundwater Basin. The MPWSP variant would change the desalination facility to a 6.4 mgd plant.

Construction of the MPWSP is anticipated to commence in second half of 2019 and be completed by late-2021 (approximately twenty-four months). Additional Project Description information and technical studies are available on the MPWSP's website [and the CPUC Energy Division website].

PROJECT OBJECTIVES

The Commission refined the general project objectives in Cal-Am's application to provide a sound basis for comparing alternatives such that the primary objectives of the proposed MPWSP are:[22]

1. Develop water supplies for the CalAm Monterey District service area to replace existing Carmel River diversions in excess of CalAm's legal entitlement of 3,376 afy, in accordance with SWRCB Orders 95-10 and 2016-0016;

2. Develop water supplies to enable CalAm to reduce pumping from the Seaside Groundwater Basin from approximately 4,000 to 1,474 afy, consistent with the adjudication of the groundwater basin, with natural yield, and with the improvement of groundwater quality;

3. Provide water supplies to allow CalAm to meet its obligation to pay back the Seaside Groundwater Basin by approximately 700 afy over 25 years as established by the Seaside Groundwater Basin Watermaster;

[22] FEIR/EIS, Vol. I, Section 1.3.1 at 1-5, 1-6.

4. Develop a reliable water supply for the CalAm Monterey District service area, accounting for the peak month demand of existing customers;

5. Develop a reliable water supply that meets fire flow requirements for public safety;

6. Provide sufficient water supplies to serve existing vacant legal lots of record;

7. Accommodate tourism demand under recovered economic conditions;

8. Minimize energy requirements and greenhouse gas emissions per unit of water delivered; and

9. Minimize project costs and associated water rate increases.

The secondary objectives of the MPWSP are to:

1. Locate key project facilities in areas that are protected against predicted future sea-level rise in a manner that maximizes efficiency for construction and operation and minimizes environmental impacts;

2. Provide sufficient conveyance capacity to accommodate supplemental water supplies that may be developed at some point in the future to meet build out demand in accordance with adopted General Plans; and

3. Improve the ability to convey water to the Monterey Peninsula cities by improving the existing interconnections at satellite water systems and by providing additional pressure to move water over the Segunda Grade.

1.4. Procedural History

In light of the voluminous procedural history and the two prior decisions issued by the Commission concerning the ongoing constraints on water supply in the Monterey Peninsula, the complete Procedural History for this proceeding is attached as Appendix A.

2. Scoping memo Rulings

2.1. Prior Scoping

2.1.1. The Beginning, June 28, 2012

President Peevey confirmed the tentative categorization as ratesetting, in need of hearings and set the issue as:

> Is the proposed Monterey Peninsula Water Supply Project a reasonable and prudent means of securing replacement water for the Monterey District of Cal-Am, and would the granting of the application be in the public interest?

He added that, "[f]easible alternatives to the [MPWSP] will be considered in the [CEQA] track of the proceeding and by the Commission." He also provided that the assigned Administrative Law Judge (ALJ) could make revisions. He noted that a December 2016 CDO deadline was approaching. The schedule set out targeted a proposed decision mailing date of February 2013. The ruling also indicated that a July 26-27, 2012 technical workshop was planned.

2.1.2. September 25, 2013 Amended Scoping Memo

President Peevey confirmed the following change in the stated scope as advised in the May 30, 2013 ALJ Ruling:

Is the proposed MPWSP:

- required for public convenience and necessity;
- a reasonable and prudent means of securing an adequate, reliable and cost-effective water supply that meets Cal-Am's legal requirements for the Monterey District; and
- would the granting of the application be in the public interest?

A motion on July 13, 2013 supporting a comprehensive settlement agreement (Comprehensive Settlement) by 16 parties and a sizing settlement (Sizing Settlement) by nine parties was noted. The opposition by Marina Coast Water District, Water Plus and Public Trust Alliance to the Comprehensive Settlement and by Surfrider and Landwatch Monterey County to the Sizing Settlement were also noted.

2.1.3. August 19, 2015 Second Amended Scoping Memo

In this second amended memo and ruling by successor assigned Commissioner Catherine J.K. Sandoval the statutory deadline was extended from September 28, 2015 to December 31, 2016. She noted an "apparent conflict of interest within the California Environmental Quality Act (CEQA) process" (an oblique reference to dual contracting with the Geosciences firm),[23] the possibility of coordinating the state CEQA process with the analogous federal process under the National Environmental Policy Act, as well as accommodations made in relation to the "entry of local public agencies" and Draft Environmental Impact Report (DEIR) "data needs" concerning bore holes, test wells, review of the groundwater replenishment feature, bifurcation, and the Governor's drought actions.

2.1.4. November 21,2016 Third Amended Scoping Memo

Commissioner Sandoval issued a third amended scoping memo and ruling on the above date that extended the statutory deadline to June 30, 2018.

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[23] *See*, Appendix A, Procedural History, Section 3. CEQA and EIR for explanation of how this issue was resolved.

2.1.5. March 14, 2018 Fourth Amended Scoping Memo

Successor assigned Commissioner Randolph issued a fourth amended scoping memo and ruling on the above date that extended the statutory deadline to December 31, 2018. Pursuant to that ruling, and as a ratesetting proceeding that went to hearing, the submission date is the date of the oral argument in this proceeding, August 22, 2018.[24]

3. Need for Water Supplies

Water supply has been a concern on the Monterey Peninsula for decades. As discussed in D.10-12-016 (issued in A.04-09-019):

> Monterey Peninsula residents and businesses have been struggling with water constraints since the 1940s. . . [P]ublic and private interests have a long and contentious history of trying to find a viable solution to this problem. Conflicting community values have rendered other proposals unworkable and unachievable. We have been addressing these concerns at this Commission alone since 1997 – well over a decade. It is evident and timely that we must arrive at a supply-based solution and approve a project.[25]

As summarized in D.12-07-008:

> In D.10-12-016 (also issued in A.04-09-019), we approved a Settlement Agreement that set forth a public-private partnership among Cal-Am, MCWD, and MCWRA known as the Regional Desalination Project. As part of the Settlement Agreement, we granted a CPCN to Cal-Am for its participation in the Project, and approved without modification the Water Purchase Agreement associated with the Regional Desalination Project.

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[24] Commission Rules of Practice and Procedure, Rule 13.14(a).

[25] D.10-12-016 at 9.

> In sum, we approved Cal-Am's participation in the Regional Desalination Project in recognition that time was of the essence to ensure that the ratepayers on the Monterey Peninsula would be supplied with adequate sources of potable water well before the onset of the provisions of the [2009] CDO. We recognized that permitting, testing, and project development and construction would be time-consuming and difficult. In December 2010, the Regional Desalination Project appeared to be a feasible project that could be constructed in time to meet the requirements of [that] CDO.[26]

To implement a SWRCB moratorium on new connections, the Commission issued D.11-03-048 in A.10-05-020 on March 24, 2011.

In the most recent iteration of the search for solutions to this challenging water supply problem, on April 23, 2012, Cal-Am applied for a CPCN, the basis for this proceeding, in order to provide a solution to the long-standing constraints on water supply on the Monterey Peninsula. This effort is known as the Monterey Peninsula Water Supply Project or MPWSP.[27]

4. Demand and Supply Estimates Discussion and Analysis

4.1. Reasonableness of the Projection of Demand and Proposed Plant Size

As noted above, the instant proceeding is categorized as ratesetting. The Commission is charged with the responsibility of ensuring that all rates

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[26] D.12-07-008 at 7.

[27] Cal-Am applied for the Coastal Water Project and the Regional Desalination Project was the alternative selected and approved. The current proposal is known as the Monterey Peninsula Water Supply Project.

demanded or received by a public utility are just and reasonable.[28] In ratemaking applications, the burden of proof is on the applicant utility.[29] "[T]he burden rests heavily upon a utility to prove it is entitled to rate relief and not upon the Commission, its Staff, or any interested party or protestant … to prove the contrary."[30]

As the Applicant, Cal-Am must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. Cal-Am has the burden of affirmatively establishing the reasonableness of its projections of supply and demand.[31] Cal-Am must show that it has identified all available sources of water supply, its projection of demand is reasonable, and its proposed solution to provide supply to ensure that water demand will reliably be met is reasonable.

The appropriate standard in a ratesetting matter is preponderance of the evidence.[32] As the Applicant, Cal-Am bears the burden of proof. Preponderance of the evidence usually is defined "in terms of probability of truth, *e.g.,* 'such evidence, when weighed with that opposed to it, has more convincing force and

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[28] Pub. Util. Code § 451. Application of Pacific Gas and Electric Company (2000) D. 00-02-046, at 36, 2000 Cal. PUC LEXIS 239 ("no public utility shall change any rate ... except upon a showing before the Commission, and a finding by the Commission that the new rate is justified").

[29] *See, e.g.*, Re Energy Cost Adjustment Clauses (1980) 4 CPUC 2d 693, 701; D.92496, Re Southern California Edison Company (1983) 11 CPUC 2d 474, 475; D.83-05-036 ("Of course the burden of proof is on the utility applicant to establish the reasonableness …. We expect a substantial affirmative showing by each utility with percipient witnesses in support of all elements of its application").

[30] Application of Pacific Gas and Electric Company (2000) D. 00-02-046, at 36, 2000 Cal. PUC LEXIS 239, *citing,* Re Pacific Bell (1987) 27 CPUC 2d 1, 21, D.87-12-067.

[31] *See, e.g.,* In the Matter of the Application of California Water Company (2003) D.03-09-021, at 17.

[32] *See*, D16-12-063 at 9, *citing* D.12-12-030 at 44.

the greater probability of truth'."[33] In short, Cal-Am must present more evidence that supports the requested result than there exists in the record that would support an alternative outcome.

Intervenors do not have the burden of proving the unreasonableness of Cal-Am's showing but may challenge Cal-Am's evidence and conclusions through the presentation of additional evidence and alternative conclusions. Once the parties have completed their presentations of evidence and made their arguments, our role is to weigh the evidence presented and approve, modify, or deny the application in whole or in part.

In this case Cal-Am has more than met its burden to prove that the long-term water supply available to Cal-Am in Monterey is not sufficient to meet the system's projected demand absent new supply. Intervenors have convinced us that a demand figure slightly lower than that presented by Cal-Am is the most reasonable figure to adopt in this proceeding. Intervenors did not identify alternative supply sources sufficient to meet any of their demand figures. Thus, without the additional supply proposed in this application, the available supply is insufficient to meet the required demand for the system.

4.2. Monterey District Water Demand

The Commission's General Order (GO) 103-A[34] requires that a potable water system's facilities shall have the capacity to meet the source capacity

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[33] D.12-12-030 at 42, *aff'd* D.15-07-044 at 28-30.

[34] California Public Utilities Commission General Order (GO) 103-A, Section II.2.B.3 states:

> (a) A system's facilities shall have the capacity to meet the source capacity requirements as defined in the Waterworks Standards, [California Code of Regulations] CCR Title 22, Section 64554, or its successor. If, at any time, the system does not have this capacity, the utility shall request a service connection

Footnote continued on next page

requirements as defined in the Waterworks Standards, CCR Title 22, Section 64554, or its successor, and that the system's maximum day demand (MDD) shall be determined in accordance with that regulation. CCR Title 22, Section 64554(a) requires that "a public water system's water source(s) shall have the capacity to meet the system's maximum day demand." CCR Title 22, Section 64554(b) sets forth how that maximum day demand is determined depending on the usage data available for the most recent 10 years of operation. For our purposes, Section 64554(b)(2)(A) requires us to examine "the month with the highest water usage (maximum month) during at least the most recent 10 years of operation" to determine the MDD.[35]

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moratorium until such time as it can demonstrate the source capacity has been increased to meet system requirements.

(b) If a system provides potable water for fire protection service, new portions of the system shall have supply and storage facilities that are designed to meet [maximum day demand] MDD plus the required fire flow at the time of design. (See, Section VI of this General Order for fire flow guidelines.)

(c) The system's MDD and [Peak Hour Demand] PHD shall be determined in accordance with Waterworks Standards, CCR Title 22, Section 64554, or its successor.

[35] *C.f.*, CCR Title 22 Section 64554(b)(1), which would examine "the day with the highest usage during the past 10 years, …determine the average hourly flow" during that day, and "multiply by a peaking factor of at least 1.5 to obtain the PHD [peak hourly demand]." Parties did not present their conclusions using this method, *see*, *e.g.,* Exhibit CA-52 at 7-9, Exhibit WD-15 at 5, and Exhibit MNA-2 at 12, but did present their demand projections in monthly and annual figures. This is consistent with Cal-Am's assertion that peak month demand is a more critical consideration for its operations than peak day demand. This appears undisputed, as all of the parties presented their demand projections in a similar method (*see, e.g.*, Exhibit SF-12 Attachment A) and we use monthly and annual figures throughout in our consideration of the standard.

CCR, Title 22, Section 64554 addresses requirements for a public water system's water capacity and sets forth with specificity how the water system must meet the MDD and how to calculate the maximum month demand during at least the most recent ten years of operation. In order to calculate the demand to be served, Cal-Am must consider and balance the requirements of the CDO, this Commission's requirements, and the State Water Resources Control Board's requirements.[36]

In addition, other sections of the Waterworks Standards provide guidance to our analysis. CCR Title 22, Section 64558(a)(2) directs that when planning and permitting a water system capacity expansion, the Commission should also look at the MDD going forward over a "10-year growth period." In evaluating the projected 10-year growth period, 22 CCR Title 22 Section 10635 provides guidance as to evaluating projected water supply and use "for a normal water year, a single dry water year, and multiple dry water years." While our rules do not bind our analysis to these requirements, the Commission does find them useful and instructive in determining the projected demand for Cal-Am in its Monterey District. For example, if the Commission strictly follows the methodologies set forth in Section 64544, the result would be a projected demand that is significantly higher than is needed given the changes in water use in this system on a month by month basis. There is no requirement in Section 64554 that the Commission only looks at the MDD, PHD, or maximum month in the historical period for water systems such as Cal-Am's. Our goal, and the goal of Section 64554, is to ensure a public water system can meet the MDD and for a

[36] *See,* Cal. Health & Saf. Code § 116271 (The State Water Board assumed the drinking water regulatory functions of the Department of Public Health as of July 1, 2014.).

system of Cal-Am's size can meet PHD for 4 hours in a day with source capacity, storage capacity, and/or emergency connections.[37]

Nothing in recent legislation signed by the Governor on May 31, 2018 changes our analysis as the new mandates are well within our estimates for residential water use and demand growth,[38] and in fact reinforce our consideration of using the driest years in forecasting available supply and demand.

4.2.1. Forecasts of Demand for the Monterey District

The Commission has a considerable record in this case of the parties' projections of demand for the Cal-Am system in Monterey. The assigned Commissioner and Administrative Law Judges recognized in 2017 that given the passage of time, positions of parties on issues of material fact may have changed during the course of this proceeding, and in 2017 asked parties to identify issues for further hearing.[39] When seeking input on the issues to consider within the scope of the most recent phase of this proceeding, the first issue identified was an update to estimates and analysis of demand.[40] Parties' initial demand projection

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[37] *See*, WD-15 at 4-5.

[38] SB 606 (Stats. 2018; ch. 14); AB 1668 (Stats. 2018; ch. 15). *See also*, Exhibit MNA-2, at 6, 8-9, and Attachments 1 and 2. The legislation establishes guidelines for statewide water efficiency standards to be in place by 2022. The guidelines include indoor water use goals, incentives for water suppliers to recycle water, and requiring water suppliers to set water budgets and prepare for drought. The Monterey District is already a leader in using water efficiently, minimizing both indoor and outdoor water use, using recycled water, setting water budgets, and preparing for drought. *See,* Exhibit CA-55 at 8-13.

[39] Administrative Law Judge's Ruling Requesting Parties to Identify Issues for Further Evidentiary Hearings, June 9, 2017.

[40] *See*, August 7, 2017 Assigned Commissioner and Administrative Law Judge's Ruling Setting Prehearing Conference and Identifying Issues for Further Hearings, August 7, 2017.

positions were widely divergent, and while their demand projection positions did narrow over the four years between hearings, they remain significantly apart.[41] The estimates of demand as of December 2017 range from 9,675 to 15,000 afy. No party estimated demand at a level that was equal to or less than the available supply (9,044 afy).[42]

Cal-Am averages the results of two methods to forecast annual system water demand in 2021 when the desalination plant is expected to be operational. First, Cal-Am uses an averaging process to arrive at a historical figure of 11,745 afy. Second, Cal-Am forecasts the system water demand based on population growth and a return to 2010-2013 per customer usage amounts attributing the per customer declines to conservation measures implemented during the drought from 2011-2015. That second method results in a forecasted demand figure of 12,971 afy in 2021. Cal-Am then averages the results of these two methods to arrive at its recommended 12,350 afy (rounded up) as normalized system demand. Finally, Cal-Am adds additional demand to account for new connections (lots of record) (1,180 afy), Pebble Beach (325 afy), and tourism bounce back (500 afy) to arrive at a total forecasted demand of 14,355 afy.[43]

City of Marina argues that the high prices paid by Cal-Am customers along with continuation of water conservation efforts will result in a total

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[41] *See, e.g.*, Exhibits CA-6, CA-51, MCD-1A, MCD-36A, PCL-1, SF-12, WD-5, WD-15. For other parties we could not identify recent, comprehensive projected demand figures, though some did provide comment on other parties' projections. *See, e.g.*, Opening Brief of the Office of Ratepayer Advocates, Dec. 15, 2017, at 3-7, Opening Brief of Monterey Regional Water Pollution Control Agency at 3, PTA-2A at 3-4, Opening Brief of Public Water Now, Dec. 15, 2017, at 2.

[42] Appendix B contains a chart summarizing the parties' position on available supply and projected demand.

[43] Exhibit CA-51 at 10-14.

forecasted demand of 10,599 afy.[44] City of Marina bases its projection on the most recent 10 year usage statistics, noting its downward trend, and arguing that the California Waterworks standards are not applicable as Cal-am already has sufficient capacity to meet other standards.[45] City of Marina uses the California Waterworks standards to calculate that Cal-Am is required to have sufficient capacity to meet an MDD of 60.48 acre-feet[46] and four hours of PHD totaling 15.12 acre-feet.[47] City of Marina further asserts that Cal-Am has sufficient supplies to meet this standard. City of Marina also argues that no additional demand should be included for tourism rebound,[48] and reduces the projected demand for legal lots of record by seventeen percent based on its belief that the estimate for legal lots of record water demand is outdated.[49] City of Marina asserts that the annual demand has dropped to around 9,300 afy and that an addition of 974 afy for legal lots of record and 325 afy for Pebble Beach result in a total forecasted demand of 10,599 afy.[50]

Marina Coast Water District argues that Cal-Am's demand projection is not reasonable as the system demand has declined over the past decade and that the Commission should use an average annual demand for providing service to

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[44] Exhibit MNA-2 at 3-13.

[45] Exhibit MNA-2 at 12-13.

[46] 22 C.C.R. § 64554(a).

[47] *Id.* at § 64554(a)(1).

[48] Exhibit MNA-2 at 10.

[49] Exhibit MNA-2 at 10. As noted above, one of the objectives of the MPWSP is to provide sufficient water supplies to serve existing vacant legal lots of record. *See*, D.11-03-048 authorizing Cal-Am to implement moratorium on new connections mandated in the 2009 CDO.

[50] Exhibit MNA-2 at 12, Table 2.

existing customers of 9,375 afy.[51] Marina Coast Water District cites D.09-07-021 at 22 to justify its methodology, stating "the consequences of overestimating" demand in a system with "stable or declining customer demand" can be "overbuilding resources that may never be used." Marina Coast Water District then argues the demand for future growth, including growth in lots of record and Pebble Beach development, should be estimated at no more than 925 afy altogether,[52] and that a reasonable conservative future growth estimate would be 300 afy.[53] Taken together, Marina Coast Water District argues that adding these low and high "bookends" of additional future demand to the current average demand of 9,375 afy results in a range of reasonable future demand between 9,675 and 10,300 afy.[54]

Monterey Peninsula Regional Water Authority argues that a round number estimate of 12,000 afy for existing demand should be used and that additional demand from legal lots of record, Pebble Beach, and future rebound of the hospitality sector should be about 2,000 afy for a combined total planning demand estimate of 14,000 afy.[55] Monterey Peninsula Regional Water Authority states that "reasonable water supply planning should anticipate that existing system demand is likely to rise to some extent during normal years," and that a projection of approximately 12,000 afy is "appropriately conservative and

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[51] Exhibit MCD-59 (based on Oct. 2014 to Sept. 2017 figures).

[52] Exhibit MCD-36A at 4-5, 10.

[53] Exhibit SF-12 at 6, 8-9.

[54] Marina Coast Water District's Opening Brief and Request for Oral Argument, Dec. 15, 2017, at 12.

[55] Exhibit RWA-27 at 6-8.

reasonable."[56] Monterey Peninsula Regional Water Authority argues that the MPWSP must be sized to meet maximum monthly demands and that its projection provides a 20% "contingency buffer" above recent drought year existing system demand. Monterey Peninsula Regional Water Authority states such a contingency is necessary "to accommodate potential fluctuations in demand, drought periods when other elements of Cal-Am's water supply portfolio may be diminished, or other unanticipated limitations on one or more facets of the Cal-Am supply."[57] Monterey Peninsula Regional Water Authority points out that the average demand for the eight year period between 2007 and 2014 was 12,454 afy, and that recent drought years with low demand should not drive the projection of future demand unreasonably low.[58] Monterey Peninsula Regional Water Authority argues that the Commission need not be precise in forecasting future demand, as

> [I]t would be an extreme disservice to the public interest if the project were undersized to meet future demands, requiring a new project to be permitted and constructed. Because the Monterey Peninsula is already one of the most efficient water use communities in the state, it is "drought hardened," and therefore, meaningful additional conservation will not be a reasonable option to accommodate an inaccurately low projection of future water demands within the system.[59]

Monterey Peninsula Regional Water Authority argues that even the most meager demand estimates require the additional water the MPWSP would

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[56] Exhibit RWA-27 at 6-7.

[57] Exhibit RWA-27 at 7.

[58] Exhibit RWA-27 at 6.

[59] Exhibit RWA-27 at 7.

provide and that reducing the project size because a lower demand was used would not result in a large savings to customers. "In other words, small adjustments in project sizing are likely neither feasible nor economically merited."[60] Thus, projecting demand at any amount less than approximately 14,000 afy "presents unreasonable risk without commensurate public benefit."[61]

Monterey Peninsula Water Management District calls 10,400 afy "a reasonable estimate" of use by existing customers based on the most recent 5-year average demand for those customers.[62] Monterey Peninsula Water Management District states that while the near-term market absorption of housing stock will not be immediate, over the long term it believes the 1,181 afy estimate for legal lots of record is reasonable.[63] Monterey Peninsula Water Management District also states that the 325 afy for Pebble Beach remains a reasonable estimate and that it is a legal entitlement to the Pebble Beach Company.[64] Monterey Peninsula Water Management District argues to reduce the hospitality industry economic recovery addition to 250 afy as the conservation efforts have led to permanent demand reductions.[65] Monterey Peninsula Water Management District then adds an additional 303 afy to account for non-revenue water that is the result of system loss. It uses a 2.5% loss factor, excluding return flows, which is a factor lower than national averages.[66]

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[60] Exhibit RWA-27 at 7-8.

[61] Exhibit RWA-27 at 8.

[62] Exhibit WD-15 at 10-11.

[63] Exhibit WD-15 at 11-13.

[64] Exhibit WD-15 at 13-14.

[65] Exhibit WD-15 at 14.

[66] Exhibit WD-15 at 15.

Monterey Peninsula Water Management District also adds an additional 683 afy for "Salinas Valley Return Flows" calculated as 7% of source water.[67] Taken together, Monterey Peninsula Water Management District argues that 13,142 afy should be the district's updated demand estimate.[68]

The Planning and Conservation League Foundation, jointly with Sierra Club and LandWatch Monterey County, argues that demand is only 9,698 afy.[69] They argue that a good demand supply balance is comprised of 9,398 afy of use by existing customers based on the most recent 3-year average demand for existing customers,[70] and 300 afy of projected future growth.[71]

Surfrider argues that 10,635 afy is "a much more accurate, yet still conservative, estimate of future demand in Cal-Am's service territory."[72] Surfrider states its estimate is comprised of 10,085 afy for existing customers, 200 afy for Pebble Beach, and an additional 325 afy for growth and long term development in the remainder of Cal-Am's service territory.[73] Surfrider states that while it recommended using a three-year demand average to represent existing customer demand in its testimony,[74] a five-year average is more conservative as it does not over-emphasize the recent downward trend.

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[67] Exhibit WD-15 at 15.

[68] Exhibit WD-15 at 15.

[69] Opening Brief of Planning and Conservation League Foundation, Sierra Club and LandWatch Monterey County at 3-5.

[70] SF-12 at 5.

[71] SF-12 at 6, 8.

[72] Surfrider Foundation's Phase 1 Opening Brief, Dec. 15, 2017, at 4.

[73] Surfrider Foundation's Phase 1 Opening Brief at 6, 10.

[74] SF-12 at 5.

Surfrider asserts that the estimate of demand from existing customers in Cal-Am's service territory should be 10,085 afy.[75] Surfrider recommends reducing the additional demand allocated to Pebble Beach to 200 afy based on its interpretation of the testimony of Monterey Peninsula Water Management District witness David Stoldt that Pebble Beach build out would occur on existing lots of record and that Pebble Beach's 2012 environmental review envisioned only 147 afy of water needs.[76] Surfrider based its recommendation of 350 afy for growth and long term development on the Marina Coast Water District 2017 analysis of historical use of water allotments on the peninsula[77] along with an "additional buffer" to accommodate demand from future growth in Cal-Am's service territory.[78]

Coalition of Peninsula Businesses recommends using 15,000 afy as the estimated demand,[79] comprised of 13,000 afy for current peak demand, and 2,000 afy for growth attributable to the development of legal lots of record, Pebble Beach, and economic recovery of the tourism industry.[80] Coalition of Peninsula Businesses bases part of its additional need on its assertion that the "tourism industry intends to increase hotel occupancy by approximately 12 to 15 percent over the next two decades to re-attain the occupancy levels of decade ago."[81] The

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[75] Surfrider Foundation's Phase 1 Opening Brief at 6.

[76] Surfrider Foundation's Phase 1 Opening Brief at 18-19, *citing* RT Vol. 24 at 4191:21-23, 4206:11-20, WD-15 at 13.

[77] Exhibit SF-12 at Attachment A.

[78] Surfrider Foundation's Phase 1 Opening Brief at 21.

[79] Exhibit CPB-1A at 4.

[80] Exhibit CPB-1A at 5.

[81] Exhibit CPB-1A at 5. RT Vol. 23 at 3888, 3896, 3900.

remainder comes from Coalition of Peninsula Businesses' belief that it is simply a matter of fulfilling a legal obligation to the owners of the legal lots of record and Pebble Beach as the basis for its estimate for those figures.[82]

Water Plus "agrees with the long-term estimation" of 14,355 afy put forth by Cal-Am,[83] but disagrees with Cal-Am's 12,350 "short-term" demand estimate.[84] Water Plus argues that the short-term demand estimate fails to recognize the "marked[]" increase in costs that ratepayers have seen over the past decade and the impact that cost has had on demand.[85] Water Plus criticizes using the California Waterworks Standards found in 22 C.C.R. as "it applies to a steady state of water usage" when the Monterey District is in an environment of declining usage.[86] Water Plus attempts to chart the supply and demand of water with its analysis of cost "to determine the cost where supply and demand are equal."[87] Water Plus presents a range of figures based on its interpretation of potential costs to argue that the demand for water will be between 8,000 afy[88] and 11,000 afy.[89] Water Plus argues that if Cal-Am is required to pay for some of the hypothetical Pure Water Monterey (PWM) project expansion at its estimated cost, and purchase some water from Marina Coast Water District, the cost would

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[82] Exhibit CPB-1A at 5-6.

[83] Opening Brief of Water Plus, Dec. 15, 2017, at 3, 5 ("Water Plus has no quarrel with long-terms estimates of around 14,000 [afy]").

[84] Opening Brief of Water Plus at 3.

[85] Opening Brief of Water Plus at 3.

[86] Opening Brief of Water Plus at 3.

[87] Opening Brief of Water Plus at 4.

[88] Opening Brief of Water Plus at 4, Reply Brief of Water Plus at 6.

[89] Opening Brief of Water Plus at 6.

be $5,348 per acre-foot, which would correspond to a demand of 9,800 afy "at the point where the curves cross."[90]

4.3. Supply Available to the Monterey District

There is general agreement among the parties as to the basic elements of supply available to Cal-Am. Cal-Am's existing water supply consists of 3,376 afy from the Carmel River, 774 afy from the Seaside Groundwater Basin,[91] an average of 1,300 afy from the Aquifer Storage and Recovery, 94 afy from the Sand City Coastal Desalination Project, and 3,500 afy that will be provided from the PWM project.[92] This provides a total water supply of 9,044 afy.[93]

To reach a supply level higher than 9,044 afy, some parties have asserted that Cal-Am has rights to water that it has not accounted for in its supply calculations. These include offers of new sources of water, and the potential expansion of the PWM project.[94] The Commission has considered these claims, as discussed more below, and is not persuaded that Cal-Am has rights to additional sources of supply. The Commission encourages Cal-Am and all the

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[90] Opening Brief of Water Plus at 4-7 and Appendix 1.

[91] Cal-Am's has an adjudicated right to 1,474 afy from the Seaside Groundwater Basin. *See, Cal-Am v. City of Seaside et al.*, Super. Ct. Monterey County, 2006, No. M66343. However, 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 Groundwater Basin.

[92] While we include 3,500 afy from the PWM project in our supply projection, that project is currently under construction and water supply delivery has not yet begun; the promised reliability of the supply remains to be seen. *See*, Opening Comments of Monterey Regional Water Pollution Control Agency at 1-2; *see also,* D.16-09-021.

[93] *See, e.g.*, Exhibit CA-51 at 14, Exhibit MNA-2 at 14, Exhibit MCD-36A at 9-10, Exhibit RWA-27 at 6-7, Exhibit WD-15 at 16, Opening Brief of Planning and Conservation League Foundation, Sierra Club and LandWatch Monterey County at 6, Exhibit SF-12 at 6, Exhibit WP-9 at 18.

[94] *E.g.*, Exhibit MNA-2 at 14, Exhibit MCD-36A at 9-10,

parties to continue to explore new potential sources of water supply, but the Commission does not find it reasonable to include any of these potential sources of water supply in our analysis of the water supply available to Cal-Am today. Unless and until such potential sources of water supply can be found with an acceptable degree of confidence to be reasonably likely to be specific, concrete, reliable, affordable, and permanent sources, the Commission cannot include them as available supply for Cal-Am.

We look in turn at four suggested sources of water. First, Marina Coast Water District's September 2017 direct testimony included proposals to "sell to the Seaside Basin Watermaster 700 [afy] of [Marina Coast Water District]'s potable water supply as Replenishment Water under the Seaside Basin allocation decision, for an initial term of six calendar years, 2018-2023, which could then be extended by agreement."[95] Second, Marina Coast Water District has offered to sell Cal-Am a portion of its PWM project allocation for an initial term of ten years. Marina Coast Water District offered 500-1,000 afy of its allocation from Phase 1 (500 afy) and Phase 2 (500 afy) of the PWM project, although the precise amount is unclear.[96] The Commission is encouraged by Marina Coast Water District's willingness to open negotiations with the Watermaster and Cal-Am. However, as these two proposals were recent offers, were not accepted by the

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[95] Exhibit MCD-36A at 13.

[96] Exhibit MCD-43 at 2-4, *see also*, Exhibit MCD-36A at 11-13. While presented as cumulative in its testimony, MCD included only 500 afy in its briefs indicating that the offer may be for 500 afy from its Phase 1 PWM project allocation to be replaced with 500 afy from its Phase 2 PWM project allocation when phase 2 is completed. *See*, Marina Coast Water District's Opening Brief, December 15, 2017, at 12-13, Marina Coast Water District's Reply Brief, January 9, 2018, at 9. This lack of clarity in what MCD is offering is an example of why we do not find it reliable as a source of permanent source water for Cal-Am.

Watermaster or Cal-Am before our record closed, and the initial durations were limited to six and ten calendar years, the Commission cannot rely with adequate certainty that Marina Coast Water District's proposals are adequately specific, concrete, reliable, affordable, and permanent sources of water supply for Cal-Am.[97] Further negotiations may allow us to consider these allocations from Marina Coast Water District as available supply sources, but Marina Coast Water District did not provide the Commission and parties enough time to, among other things, consider and resolve outstanding questions as to physical transfer of water, renewability of the agreements, and accept the terms such that we could include them in this proceeding. With so many outstanding questions pending about the offers, the Commission cannot rely upon them as an available source of water to Cal-Am.

Third, Marina Coast Water District argues the Commission should include an additional 200 afy of supply from the PWM project, an additional 106 afy from the Sand City Desalination plant, and 620 afy from ASR withdrawals.[98] However, all three potential new supply cases put forth by Marina Coast Water District are supply sources that are not available to be allocated to Cal-Am. Cal-Am has rights to 3,500 afy from the PWM project. The 200 afy from the PWM project that Marina Coast Water District wishes to allocate to Cal-Am is clearly characterized as a potential drought reserve and is limited to no more than 1,000

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[97] Concurrent Reply Brief of County of Monterey and Monterey County Water Resources Agency, Jan. 9, 2018, at 2-3 ("[T]he County and MCWRA are not aware that this proposal has actually become a final agreement among the parties who would need to be part of such an agreement").

[98] Exhibit MCD-36A at 9-10.

acre-feet in total.[99] Such a limited and specific source of water cannot be relied upon as a permanent source of water. The additional Sand City allocation confuses the total expected production of the plant, 200 afy, with the amount allocated to Cal-Am, 94 afy.[100] The claim that Cal-Am can rely on more than 94 afy from the Sand City plant is not supported with credible evidence. Marina Coast Water District has not presented any evidence that persuades us otherwise. Finally, Marina Coast Water District presents two Watermaster agenda items that list the "conceptual" expansion of the Seaside Basin ASR on an average annualized basis. Marina Coast Water District presented no evidence that Cal-Am would receive any of the additional withdrawals. The Commission cannot rely on the concept of ASR expansion being listed on an agenda for the Watermaster to find that additional supply is available to Cal-Am. Accordingly, the Commission is not persuaded to make any additions to a total water supply of 9,044 afy identified above, and we find the 9,044 afy water supply figure to be the best and most reasonable figure to use in this proceeding.

Finally, the August 28, 2017, Ruling sought additional testimony from parties on any plans to expand the PWM project. While many parties referenced the potential expansion of the PWM project,[101] Monterey Regional Water Pollution Control Agency put forward the most detailed response.[102] Monterey Regional Water Pollution Control Agency stated it was considering and

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[99] *See*, D.16-09-021, Appendix C at 2.

[100] *See*, Exhibit CA-51 at 7, Exhibit MCD-42. *See also*, Opening Brief of City of Marina on Certificate of Public Convenience and Necessity Issues at 22.

[101] *See, e.g.*, Exhibit CA-51 at 8, Exhibit CPB-1A at 8-9, Exhibit RWA-27 at 9-10, Exhibit PTA-2A at 5, Exhibit SF-12 at 12-15, Exhibit WP-9 at 13.

[102] Exhibit PCA-7.

evaluating the environmental impacts of expanding the peak output from 4 mgd to 5 mgd which would enable the delivery of 600 afy of purified recycled water to Marina Coast Water District to use for urban landscape irrigation. Monterey Regional Water Pollution Control Agency states that this expansion would not result in any additional water for Cal-Am, and that if it is approved, it would be built in parallel with the construction of the approved PWM project.[103]

Monterey Regional Water Pollution Control Agency also discusses three, of potentially many, "hypothetical concepts and assumptions for a broad and varied set of potential expanded plant sizes for the PWM Project."[104] Many parties have supported the idea of expanding the PWM project,[105] but none have presented any additional details for how such an expansion could be accomplished that go further than the initial "concept" presented by Monterey Regional Water Pollution Control Agency last September.[106] Cal-Am has stated that it is open to using water from an expanded PWM project, but it has reservations about whether PWM can be a reliable water source at levels above 3,500 afy in the long term.[107]

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[103] *Id.* at 3.

[104] *Id.* at 3-12, Appendix 2, and Figures 1-5.

[105] *See, e.g.*, Motion of Monterey Regional Water Pollution Control Agency, California Unions for Reliable Energy, Citizens for Just Water, City of Marina, Landwatch Monterey County, Marina Coast Water District, Monterey Peninsula Water Management District, Planning and Conservation League, Public Trust Alliance, Public Water Now, Sierra Club, and Surfrider Foundation asking the Commission to Open a Phase 3 in This Proceeding, May 11, 2018 (Phase 3 Motion).

[106] Exhibit PCA-7 at 3. *See also*, Phase 3 Motion, Attachment A ("Progress Report on Pure Water Monterey Expansion" prepared by Monterey One Water (May 10, 2018).

[107] Opening Brief of California-American Water Company, December 15, 2017, at 21.

The first hypothetical expansion, "Scenario A," Monterey Regional Water Pollution Control Agency put forth would add 650 afy of supply. The second hypothetical expansion, "Scenario B," would add approximately 2,250 afy of supply, and the third hypothetical expansion, "Scenario C," would add 3,570 afy of supply.[108] With each hypothetical scenario Monterey Regional Water Pollution Control Agency developed a list of "pre-operational requirements" that would need to be accomplished, and Scenario B came with the caveat that "the specifics of this scenario have not been sufficiently delineated to define these requirements with certainty."[109] In presenting the "concept-level critical path schedule" for each of the three hypothetical scenarios, Monterey Regional Water Pollution Control Agency noted that "several items require third-party actions and are not within [Monterey Regional Water Pollution Control Agency]'s control."[110]

Given the hypothetical nature of Monterey Regional Water Pollution Control Agency's presentation, the Commission cannot rely upon it to find that additional supply is available to Cal-Am. At this point all we have are ideas. The Commission has significant questions about the source water, timing, and projected costs that cannot be explored given the lack of specifics in the hypothetical scenarios.[111]

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[108] Exhibit PCA-7 at 4, 6, and 9.

[109] *Id.* at 7.

[110] *Id.* at 6, 8, and 11.

[111] *See, e.g.*, RT 4712:20-26 ("bids we received on the advanced water purification facility [initial PWM project] were higher than the cost estimates originally developed"). *See also*, SWRCB Order WR 2016-0016, at 21.

In furtherance of having the Commission consider PWM expansion in this case, on May 11, 2018, several parties submitted a motion asking the Commission to Open a Phase 3 in This Proceeding (Phase 3 Motion).[112] In the Phase 3 Motion, the parties request that the Commission open a third phase in this proceeding before it issues a decision on Cal-Am's request for a CPCN for the MPWSP. The Phase 3 Motion proposed consideration of an additional incremental supply from the PWM project of between 650 afy and 2,250 afy within the timeframe required by the State Water Resources Control Board's 2016 amended Cease and Desist Order (WR 2016-0016).[113]

The Commission supports the parties' efforts to explore expanding the PWM project.[114] There are, however, many fundamental and threshold details[115] that would need to be presented before the Commission could consider if PWM expansion could provide an affordable, specific, concrete, reliable, and permanent source of water for Cal-Am ratepayers. Further consideration of such efforts, if any, is not appropriate in this proceeding. This proceeding has been pending for over six years and it is timely to reach a decision on the instant application now. The CDO deadline is fast approaching.[116] There is difficulty in

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[112] Phase 3 Motion.

[113] The Phase 3 Motion does not include the third hypothetical "Scenario C" that was discussed in Exhibit PCA-7 and provides no explanation as to why that conceptual expansion is omitted from the motion.

[114] D.16-09-021.

[115] *E.g.*, Details might include sources of supply, development costs, prices for sales of the developed water, contractual details, environmental effects, potential to obtain necessary permits, water quality, sources of funding, and possible related facilities (*e.g.*, additional pipelines or pump stations). *See*, D.16-09-021 for consideration of several such details.

[116] The SWRCB has already extended the CDO deadline for Cal-Am to reduce pumping from the Carmel River, and the effective diversion limit would be immediately reduced without

Footnote continued on next page

developing any new supplies for the Monterey District given the wide range of often competing interests represented by the many parties, and various local, state, and federal agencies involved. The environmental effects and alternatives to the MPWSP have been thoroughly examined. While PWM expansion may appear promising, upon further review there may be other options that require examination. Cal-Am, its customers, and the Monterey region deserve a decision on the specific proposal in this application without additional delay.

Further, even if we were to include an amount between 650 afy and 2,250 afy from PWM expansion as part of the supply available to Cal-Am, it is insufficient to satisfy an estimated demand of 14,000 afy, as it would still result in a supply deficit of between 2,706 and 4,306 afy. The proposed PWM expansion would not satisfy the estimated water supply required by Cal-Am customers, provide water supply reliability, provide supply to allow for replenishment of water that Cal-Am previously pumped from the Seaside Basin in excess of Cal-Am's adjudicated right, would not contribute to diversity in the portfolio of projects that produce water supply, nor provide supply for future development or economic expansion.

Even if PWM expansion could provide the maximum under Scenario C of an additional 3,570 afy of water to Cal-Am,[117] it would be insufficient to satisfy an estimated demand of 14,000 afy. No alternative presented would replenish the water that Cal-Am previously pumped from the Seaside Basin in excess of

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Commission action by September 30, 2018. *See,* SWRCB Order WR 2016-0016 at 21. The extensive and exhaustive record in this proceeding provides a basis for a decision on the MPWSP today. We are not convinced that extending this proceeding further would benefit Cal-Am ratepayers or the region as a whole.

[117] PCA-7 at 12.

Cal-Am's adjudicated right, none would establish water supply reliability and enable the development of vacant legal lots of record or provide supply to meet demand resulting from economic recovery and rebound of the hospitality industry. The alternatives would not provide the same diversity in the sources of supply as would the desalination plant. The alternatives would not contribute to providing a portfolio of supply options in the same way as would the desalination plant. The alternatives would not provide the same drought-resistant or drought-proof supply source as would the desalination plant.

Moreover, construction has not been completed on the initial PWM project of 3,500 afy (see D.16-09-021), and thus operation has not begun. There may be additional construction, operation, cost, and other issues with the initial expansion that must be considered before adequate and reasonable consideration may be given to expansion.[118] Thus, we are disinclined to count additional PWM expansion as a concrete, specific, reliable supply resource that can be a viable alternative to the MPWSP until the first expansion has been constructed and operated successfully. As discussed below, we may give additional consideration to further expansion of PWM, but not in this decision as an alternative to the MPWSP.

Consistent with our previous findings, PWM expansion alone fails to provide sufficient supply to meet the average demands assumed in MPWSP planning, and would not provide sufficient supply flexibility to meet most peak demands. In addition, PWM expansion alone increases the risk that sufficient supply would not be available to meet peak hour, day, and month demands,

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[118] *See,* RT 4712:20-26.

particularly during drought years. The originally approved PWM project is not yet finished, and it is untested as to its reliability to provide the 3,500 afy approved in D.16-09-021. Parties did not address, in any of the many ways they have provided input on the application, and in particular with record evidence the risk associated with the reliability of the supply mix if we were to adopt a PWM expansion alone solution.[119] As many fundamental and threshold details have not been addressed,[120] the Commission is not persuaded by parties' arguments that PWM expansion will provide an affordable, specific, concrete, reliable, and permanent source of water for Cal-Am ratepayers. The evidence in the record in this proceeding is not sufficient to convince us that PWM expansion is a viable alternative at this point.[121] Accordingly there is no reason to consider further PWM expansion in this proceeding.[122]

However, we would like to determine if, in conjunction with the MPWSP approved in this decision, PWM expansion could provide an affordable, specific, concrete, safe, and reliable additional or supplemental source water supply for

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[119] Comments on Proposed Decision for Monterey Peninsula Water Supply Project of Monterey County Farm Bureau at 8 (reliance on a single water source for the majority of the Monterey Peninsula's water supply is a short-sighted approach to solving a long-term water supply challenge).

[120] Phase 3 Motion, Attachment A at 2 ("Importantly, this report does not suggest that the PWM Expansion currently meets the nine criteria [used by the Commission to evaluate the initial PWM project].").

[121] *Cf.*, Comments of Planning and Conservation League Foundation on Proposed Decision at 2-3.

[122] This proceeding began over six year ago. Last year we added an additional set of hearings expressly scoped to address additional alternatives, including PWM expansion. Parties failed to provide convincing evidence during hearings, despite knowing that there is an imminent CDO deadline that will reduce water supply available to Monterey District customers.

Cal-Am ratepayers in the Monterey District.[123] Accordingly, Cal-Am should enter into negotiations with PWM as to the potential cost, schedule, and amount of water that could be supplied by PWM if cost effective to ratepayers.

Within 180 days of the date of this decision Cal-Am shall file a Tier 2 advice letter providing specific additional information and its assessment as to whether it intends to file an application with the Commission to pursue a Water Purchase Agreement (WPA) for additional water supply to be provided by a PWM expansion. Cal-Am shall serve the Tier 2 advice letter on the service list for this proceeding. Any resulting WPA for water from a possible expansion of the PWM Project to be sold by Monterey One (previously known as the Regional Water Pollution Control Agency) will be for an amount no greater than 2,250 afy (above the 3,500 afy already approved).[124] To the extent Cal-Am files (or the Commission directs Cal-Am to file) an application seeking approval of a PWM expansion WPA, the application shall include sources of supply water, development costs, prices for sales of the developed water, contractual details, environmental effects, potential to obtain necessary permits, water quality, sources of funding, possible related facilities (e.g., additional pipelines or pump stations), and any other information relevant and necessary for the Commission to make an informed, just and reasonable decision including details as to supply and production including not only during average rainfall years but also during

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[123] *See, e.g.,* Opening Comments of Monterey Regional Water Pollution Control Agency, Comments of Planning and Conservation League Foundation on Proposed Decision at 2-3, Surfrider Foundation and LandWatch Monterey County's Comments on Proposed Decision at 15, Reply Comments of Monterey Peninsula Water Management District on the Proposed Decision Approving a Modified Monterey Peninsula Water Supply Project at 2-3.

[124] Cal-Am may seek additional supply from PWM in the future.

a multi-year drought and the timing of expanded production. The application will be considered only to the extent the desalination plant authorized in this decision (i.e., 6.4 million gallons per day) is delayed to the point that sufficient source water capacity is more likely than not to be unavailable after the December 31, 2021, deadline set by the State Water Resources Control Board in its amended CDO.

If, as a result of this process, Cal-Am seeks approval of a WPA for water from an expanded PWM project to serve customers in Cal-Am's Monterey service territory, the Commission will consider, and would likely, impose as enforceable conditions additional operational restrictions on the desalination project approved by this decision. These restrictions, if adopted, would avoid excessive costs being charged to Cal-Am ratepayers by ensuring that the total water supply available to Cal-Am customers from the desalination plant plus the PWM expansion WPA would not exceed the water that would be available by virtue of operating the desalination project alone, absent further Commission discretionary action. In any application for a PWM expansion WPA, Cal-Am shall include information concerning such water amounts and potential operational restrictions to meet this operational parameter.

A chart summarizing the parties' position on available supply and projected demand along with a copy of MCD-59 showing system delivery from 2013 to September 2017 are included in Appendix B.

4.4. Sizing of the Monterey Peninsula Water Supply Project in Light of Water Supply Shortfall.

Cal-Am in its initial application requested that the Commission authorize either a 9.0 or 5.4 mgd desalination plant and related facilities.[125] Pursuant to a February 22, 2016 ruling of the assigned Commissioner,[126] Cal-Am filed an amended application on March 14, 2016 that included an updated project description with new proposed production capacity volumes for the desalination plant. The updated "production capacity of the proposed MPWSP desalination plant is 9.6 million gallons per day (mgd)." This same document also describes the MPWSP as including "a variation of the proposed action that combines a reduced capacity desalination plant [6.4 mgd] with water purchase agreement for 3,500 afy product water from the Monterey Regional Water Pollution Control Agency."[127] D.16-09-021 authorized Cal-Am to enter into the water purchase agreement for 3,500 afy product water from Monterey One Water.[128]

For the reasons stated below, we conclude Cal-Am should be granted a CPCN to construct and operate the MPWSP variation with the 6.4 mgd reduced capacity desalination plant[129] to meet reasonable demand (e.g., existing

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[125] Application of Cal-Am for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates, filed April 23, 2012, at 7.

[126] Assigned Commissioner's Ruling Directing Cal-Am Water Company to Amend Application with New Project Description issued February 22, 2016.

[127] Appendix H attached to Amended Application of Cal-Am Water Company, filed March 14, 2016, at 1.

[128] *See*, Section 1.3 above, The Monterey Regional Water Pollution Control Agency has been renamed Monterey One Water.

[129] All references to the MPWSP in this decision refer to the 6.4 reduced capacity desalination plant unless otherwise stated. This decision adopts the 6.4 reduced capacity desalination plant and rejects the 9.6 production capacity desalination plant.

customers, lots of record, Pebble Beach, tourism rebound), provide a reliable and secure supply, include a reasonable "buffer" against uncertainties, satisfy all other reasonable needs, and ensure that Cal-Am remains within its legal water rights as to its diversions from the Carmel River in response to the CDO issued by the State Water Resources Control Board as well as other constrained water supply sources such as the Seaside Basin. The Commission evaluated all of the evidence presented along with the arguments of the parties and determines that Cal-Am's water supply portfolio will not provide sufficient water to its customers after December 31, 2021, absent a new source of supply,[130] and the MPWSP is the most reasonable solution to provide that supply. Based on the evidence presented in support of the project, when weighed with that opposed to it, the supporting evidence has more convincing force and the greater probability of truth.

None of the intervenors present demand forecasts that are equal to or less than the supply (9,044 afy) that will be available to Cal-Am at the end of 2021. Marina Coast Water District, City of Marina, and Surfrider all present demand projections around 10,300-10-700 afy, and Planning and Conservation League Foundation provides the lowest projection of 9,698 afy (Marina Coast Water District's lower bound uses Planning and Conservation League Foundation's growth forecast to arrive at a similar figure).[131] Water Plus's proposed range between 8,000 and 11,000 afy is both overly broad and lacks analysis of the

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[130] RT Vol. 22 at 3794 ("Cal-Am has an explicit legal right to 3,376 acre-feet per year. They are currently drawing about 8,500 acre-feet per year. And it means we need to get about 5,000 acre-feet from another source to get off the Carmel River. It's just that simple.")

[131] *See,* Appendix B; Marina Coast Water District's Opening Brief and Request for Oral Argument at 11.

standards and requirements needed for the system to be considered reliable for our purposes. Water Plus's selection of 9,800 afy as the intersection of supply and demand relies on assumptions of supply and costs that fail to reasonably include all necessary elements (e.g., variations in population growth or economic growth, and the need for a reasonable "buffer" or reserve margin against unknowns). Monterey Peninsula Water Management District's projection of 13,142 afy and Monterey Peninsula Regional Water Authority's projection of 14,000 afy are persuasive in their analysis (as discussed more below). What they all share is to show that additional water source(s) are needed to allow Cal-Am to continue to provide service to customers after Cal-Am reduces its draw from the Carmel River to allowable levels.

In January 2013, Cal-Am forecast a system demand of 15,296 afy.[132] Cal-Am revised that figure to 14,355 afy in 2017. In revising its forecast Cal-Am took into consideration how water demand has declined over the last ten years, and considered the many factors contributing to the decline, including economic factors, multi-year drought conditions, aggressive conservation efforts, and a moratorium on new service connections that began in 2010.[133] While the averaging of the two methods used by Cal-Am to project demand for existing customers is somewhat complicated, the Commission finds that both methods provide reasonable results and that the average is a reasonable figure to use for forecasting demand for existing customers. Cal-Am has met its burden of proof in that its forecast of demand, when weighed with those opposed to it, has more

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[132] Exhibit CA-12.

[133] Exhibit CA-51 at 8-9. *See also*, D.07-05-062, Attachment A, page A-23 (forecasts for class-A water utility general rate cases should remove historical data when drought related rationing or authorized drought memorandum accounts are in place).

convincing force and the greater probability of truth. Cal-Am appropriately considers the maximum demand year, 2012, within ten years of the anticipated in-service date, 2021. It also considered the Urban Water Management Plan projection methods to forecast water use reduction targets. Both methods have merit given how water use fluctuates over the course of a day, month, season, and year.[134] Both methods used by Cal-Am are designed to reasonably project demand amounts that are compliant with the California Waterworks Standards, 22 C.C.R. § 64554, requirements that the system's water sources have capacity to meet maximum day demand and peak hour demand. Cal-Am presented the last ten years of demand by month that shows the demand in July 2011 of 1,250 acre-feet, that July and August have the highest demand for each of the last ten years and that high demand months begin in May and end in October.[135] The Commission agrees with Cal-Am that the system must provide enough water to be used in those high demand months. In 2016, what is characterized as a low demand year,[136] the six high demand months used over 5,000 acre-feet of water.[137] Given that annual water demand characterizes the overall system demand expected to occur within a service area, actual water use fluctuates over the course of a day, month, season and year. For example, people use less water at night, more during warmer and drier months, and less in wet years. The fluctuations in Cal-Am's Monterey District over the past decade make it easy for us to understand the temptation to understate annual forecasts of demand. But

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[134] *See*, Exhibit MCD-59.

[135] Exhibits CA-51 at 9, 15, MCD-59.

[136] *See e.g.*, Exhibits CA-51 at 10, RWA-27 at 6, MNA-2 at 2.

[137] Exhibits CA-51 at 9, MCD-59.

we are convinced that 12,350 afy represents an appropriate estimate of annual demand to use in assessing the adequacy of Cal-Am's water supply to meet peak demands and regulatory supply capacity requirements. While the methodologies put forward by Cal-Am may not be perfect, that is not the standard they are required to meet. The methodologies are persuasive in providing a reasonable estimate of annual demand in the district going forward.

As noted above, a strict application of the maximum day demand guidelines would justify total system sources exceeding 22,000 afy (based on 60.48 acre-feet maximum day demand).[138] However, we are persuaded that Cal-Am's projection of demand is reasonable based on the evidence it has provided regarding the seasonal nature of demand and the ten-year historic period in the record.

Conservation has been extraordinary but may not continue when the tourism industry in the area returns to pre-2008 levels and with the expected growth in the region. All parties that made projections included a figure representing growth from the demand they projected for existing customers.[139] While some parties projected minimal growth,[140] over half projected more than

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[138] Exhibit MNA-2 at 12-13. In addition, a reasonable ten percent buffer for contingencies could justify a system source requirement exceeding 24,000 afy. We discuss below that based on seasonality and the maximum demand year within ten years of the anticipated MPWSP in-service date, that a lower demand figure is more appropriate in this case.

[139] *See e.g.*, Exhibit CA-12, Exhibit CA-51 at 10-14, Exhibit MNA-2 at 11-12, Marina Coast Water District's Opening Brief and Request for Oral Argument, Dec. 15, 2017, at 12, Exhibit RWA-27 at 6-8, Exhibit WD-15 at 15, Opening Brief of Planning and Conservation League Foundation, Sierra Club & LandWatch Monterey County at 3-5, Surfrider Foundation's Phase 1 Opening Brief at 21, Exhibit CPB-1A at 4-6, Opening Brief of Water Plus at 4-7 and Appendix 1.

[140] *See e.g.*, Marina Coast Water District's Opening Brief and Request for Oral Argument, Dec. 15, 2017, at 12, Opening Brief of Planning and Conservation League Foundation,

Footnote continued on next page

1,299 afy in total.[141] With all of the fluctuations in demand, where only five years ago 11,356 afy was delivered,[142] we are convinced that a larger growth figure provides the best solution to ensure Cal-Am ratepayers continue to have adequate supplies of water.

Over the course of this proceeding Cal-Am maintained its projections for legal lots of record (1,180 afy), Pebble Beach entitlements (325 afy), and economic recovery of the tourism industry (500 afy).[143] After considering all of the testimony in the record,[144] the Commission is persuaded by Cal-Am that these projections of future demand are reasonable based on growth of population, development, and tourism. In projecting water demand for the next 10-20 years, the assumptions Cal-Am has made for development of the lots of record and for Pebble Beach are reasonable because growth will occur, development is halted pending adequate water, and Pebble Beach has a reasonable claim on more water.[145] We are convinced that system expansion will occur and the projections put forth by Cal-Am are persuasive in quantifying that growth, when weighed

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Sierra Club & LandWatch Monterey County at 3-5, Surfrider Foundation's Phase 1 Opening Brief at 21, Opening Brief of Water Plus at 4-7 and Appendix 1.

[141] *See e.g.*, Exhibit CA-51 at 10-14, Exhibit MNA-2 at 11-12, Exhibit RWA-27 at 6-8, Exhibit WD-15 at 15, Exhibit CPB-1A at 4-6.

[142] Exhibit MCD-59.

[143] Exhibits CA-12, CA-51 at 13-14.

[144] *E.g.*, Exhibit CA-12, Exhibit CA-51 at 10-14, Exhibit MNA-2 at 11-12, Marina Coast Water District's Opening Brief and Request for Oral Argument, Dec. 15, 2017, at 12, Exhibit RWA-27 at 6-8, Exhibit WD-15 at 15, Opening Brief of Planning and Conservation League Foundation, Sierra Club & LandWatch Monterey County at 3-5, Surfrider Foundation's Phase 1 Opening Brief at 21, Exhibit CPB-1A at 4-6, Opening Brief of Water Plus at 4-7 and Appendix 1.

[145] Exhibit CA-12. These projections prove a reasonable forecast given the puts and takes of development and the non-revenue water and Salinas Valley Return Flows projected by WD. Exhibit WD-15 at 15.

against all of the other evidence presented.[146] The Commission recognizes that growth due to new demand will not occur immediately, but will take time to develop. In planning for the future, Cal-Am has shown that the growth it is projecting is reasonable under the California Waterworks standards, and we are persuaded that it represents the best projection of demand from future customers outside Pebble Beach. The tourism industry recovery projection of 500 afy is also reasonable under the California Waterworks standards. The evidence in this case persuasively shows that the tourism industry on the Monterey Peninsula has not fully recovered from the economic downturn that started in 2008, and to the extent it has recovered, it has taken steps to conserve water in ways it would not do if there were no constraints on the water supply in the area.[147] A figure of 500 afy is a reasonable figure to represent the additional demand Cal-Am will have to meet in the future. Cal-Am has shown that it does not have sufficient supply to meet the projected water demand in 2021 and beyond. Accordingly, Cal-Am has met its burden to prove that 14,355 afy is a reasonable projection for the system's projected demand.

The parties that presented lower demand projections argue that a much smaller source or set of water sources is needed.[148] City of Marina also argues that Cal-Am itself will be jeopardized by building a high cost solution to the

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[146] California-American Water Company Comments on Proposed Decision at 16-17.

[147] *See*, Exhibit CPB-1A at 5-6, RT Vol. 23 at 3905, 3906.

[148] *E.g.*, Exhibit MNA-2 at 14, Marina Coast Water District's Opening Brief and Request for Oral Argument, Dec. 15, 2017, at 12, Opening Brief of Planning and Conservation League Foundation, Sierra Club & LandWatch Monterey County at 3-5, Surfrider Foundation's Phase 1 Opening Brief at 21, Opening Brief of Water Plus at 4-7 and Appendix 1.

problem.[149] The parties that presented higher demand projections argue the MPWSP is needed to meet that demand.[150]

While City of Marina asserts that Cal-Am has sufficient supplies to meet the California Waterworks standards, it failed to show how Cal-Am would accomplish this requirement. 22 C.C.R. §64544(a) is clear that the system's water source shall have the capacity to meet the system's MDD "[a]t all times." City of Marina did not explain how Cal-Am's current system can provide 60.48 acre-feet to meet its maximum day demand, or how it could provide 15.12 acre-feet to meet its peak hourly demand.[151] City of Marina's analysis begins in the correct place with the maximum day demand and how that translates to the four or five months of high demand.[152] However, City of Marina then argues the most recent annual demand figure demonstrates that Cal-Am has sufficient supply.[153] The Commission is not persuaded by the City of Marina that sufficient reason exists to deviate from the requirements set forth in statute and our general order and that its method is better than any other. The Commission is not convinced that the downward trend in water use in the District will continue and that only minimal growth will occur in demand after 2021. Such an assertion fails to consider that water use is not likely to go any lower (maximum month usage increased in 2017 compared to 2016) as conservation funding is projected to go down, and the "extreme conservation and moratorium measures implemented

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[149] Exhibit MNA-2 at 14.

[150] *E.g.*, Exhibit CA-51 at 10-14, Exhibit MNA-2 at 11-12, Exhibit RWA-27 at 6-8, Exhibit WD-15 at 15, Exhibit CPB-1A at 4-6.

[151] MNA-2 at 12-13.

[152] MNA-2 at 13.

[153] MNA-2 at 13.

during the drought" will end.[154] City of Marina fails to persuade us that the reasonable demand projections set forth by Cal-Am should be rejected. City of Marina fails to include an adequate "buffer" for unknowns. Accordingly, we were not persuaded by the City of Marina to reduce the demand projections to its recommended 10,599 afy.

Marina Coast Water District asserts that Cal-Am's current daily and annual water use will continue at current levels and that additional use will be between 300 to 925 afy, at most.[155] However, Marina Coast Water District fails to persuade the Commission to deviate from the statutory and general order methods for determining existing demand.[156] We see no reason why the three-year average is a better predictor of the future compared to any other period of time or methodology. In fact, we find that most recent three years of demand data is insufficient to predict the next ten plus years of demand the Commission is examining in this proceeding. After reviewing all of the evidence presented, the Commission determines that a reasonable evaluation of source capacity requirements should consider the MDD and PHD for the past ten years. Marina Coast Water District's approach does not do this. Marina Coast Water District also recommends projecting demand growth between 300 and 925 afy. Marina Coast Water District cites evidence presented by Surfrider to support the 300 afy

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[154] MCD-59, CA-48 at 14, CA-52 at 5.

[155] Marina Coast Water District's Opening Brief and Request for Oral Argument at 9, 11-12.

[156] Marina Coast Water District does not use the methods it advocates we apply to Cal-Am for its own planning purposes. CA-53 at 13. If we were to use the design criteria Marina Coast Water District uses for its own projects it would result in a demand forecast of approximately 14,000 afy, and changes it was considering could justify a much higher figure. RT Vol. 26 at 4729-4743.

portion of its recommendation.[157] As explained below, the Commission is not persuaded that the low growth projections set forth by Surfrider are reasonable. Marina Coast Water District's recommendation of a 925 afy growth projection is also not persuasive. Marina Coast Water District estimates no more than 600 afy will be needed for development of the lots of record,[158] and that the 325 afy for Pebble Beach may be reasonable,[159] but that no additional projection should be made for the economic recovery of the tourism industry.[160] While the Commission agrees with Marina Coast Water District that development will occur gradually,[161] that does not mean that development will not occur. Cal-Am's projection reasonably assumes that the lots of record will be developed and will require water when they are developed. Marina Coast Water District asserts that "many" of the lots of record may not be developed, but presents no facts in support.[162] Thus, the Commission is not persuaded by Marina Coast Water District's reduction in the projected demand for the development of the lots of record from 1,180 afy to 600 afy. Marina Coast Water District argues that no additional projection for the economic recovery of the tourism industry is needed as any decline in water demand due to the economic downturn that started in 2008 has been recouped by now.[163] However, Marina Coast Water District has

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[157] Marina Coast Water District's Opening Brief and Request for Oral Argument at 11-12, *citing,* SF-12 at 1-3.

[158] Exhibit MCD-36A at 4-5.

[159] Exhibit MCD-36A at 5.

[160] Exhibit MCD-36A at 5.

[161] Exhibit MCD-36A at 4.

[162] Exhibit MCD-36A at 4.

[163] Exhibit MCD-36A at 5.

not shown us that such a recovery has occurred, and the Commission is convinced by other evidence that the industry has not fully recovered yet.[164] Thus, the Commission is not convinced by Marina Coast Water District to adopt no additional demand for tourism industry recovery. Marina Coast Water District fails to persuade us that the reasonable demand projections set forth by Cal-Am should be rejected. Accordingly, the Commission is not persuaded by Marina Coast Water District to reduce the demand projections to Marina Coast Water District's recommended range between 9,675 and 10,300 afy.

Monterey Peninsula Regional Water Authority "urges that the Commission adopt a long-term demand estimate of 14,000 afy …, with a projection of 12,000 afy for existing customers and 2,000 afy for future customer demand expansion."[165] The Commission agrees that Monterey Peninsula Regional Water Authority's projection of demand for existing customer of approximately 12,000 afy is appropriately conservative and reasonable.[166] Monterey Peninsula Regional Water Authority balances the low system demand experienced during recent drought years with the longer term history through 2014 in making its recommendation of 12,000 afy for existing customers. It recognizes the imprecisions in forecasting future demand and reasonably allows for potential fluctuations in demand, drought periods or other unanticipated limitations that may impact other elements of Cal-Am's water supply portfolio. The same reasoning supports its recommendation of 2,000 afy to meet future demands, *e.g.*, lots of record, Pebble Beach, and tourism rebound. With all of the

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[164] Exhibit CPB-1A at 5-6, RT Vol. 23 at 3905, 3906.

[165] Opening Brief of the Monterey Peninsula Regional Water Authority at 2.

[166] Exhibit RWA-27 at 7.

fluctuations in water consumption over the past decade, the constraints on demand, and considering non-revenue water and Salinas Valley Return Flows,[167] we agree that a projection of demand for future customer needs of approximately 2,000 afy is appropriately conservative and reasonable. In addition, the Commission agrees that a significant criterion regarding plant size is to ensure the MPWSP is sized to meet maximum monthly demands rather than annual total demand. The Commission also agrees with Monterey Peninsula Regional Water Authority's assessment that "projecting any amount less than approximately 14,000 [afy]" presents "unreasonable risk without commensurate public benefit."[168] Accordingly, the public interest considerations weigh heavily in favor of the balanced demand projection of 14,000 afy put forward by Monterey Peninsula Regional Water Authority. It would be a disservice to the public interest if the project were undersized to meet future demands, requiring yet another project to be permitted and constructed:

> [I]t is imperative that the MPWSP be sized sufficiently to serve these demands. The Monterey Peninsula has faced water supply shortages for decades, which has frustrated land use planning and impaired economic, social, and environmental interests. Of course, in recent years, the community has been unable to prudently plan and evolve land uses because of the current moratorium on new service connections. We now have the opportunity to correct these water supply challenges. But it is in practical effect a "one-shot" opportunity. Indeed, the length and delay of this proceeding illustrates the immense difficulty of permitting and developing new water supplies in this region. For this reason, [we] view[] the MPWSP as a rare opportunity to obtain the water supply we

[167] Exhibit WD-15 at 11-15.

[168] Exhibit RWA-27 at 8.

> need. We urge the Commission to not unduly restrict the size of the MPWSP such that the community is at risk of again facing water supply shortages in the future.[169]

Monterey Peninsula Regional Water Authority is also correct that the desalination project can only be sized up or down by the size of each desalination train (each desalination train is approximately 1.6 million gallons per day).[170] As such, a downsizing would cut supply by almost 1,800 afy, and as explained below, there is little to no ratepayer savings if the Commission were to limit the size of the desalination project to 4.8 million gallons per day.

Monterey Peninsula Water Management District argues that the second method used by Cal-Am overstates demand as conservation programs coupled with permanent statewide conservation requirements, increased rates, and other legislative action impose constraints on customer demand.[171] Monterey Peninsula Water Management District argues that 10,400 afy is a reasonable estimate for existing customer demand as that is approximately the most recent 5-year average demand for existing customers.[172] Monterey Peninsula Water Management District states that even if this recommendation is low, it allows some leeway for increased water use in its analysis of potential growth in the

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[169] Exhibit RWA-27 at 8.

[170] Exhibit RWA-27 at 7. The desalination process usually goes through a set of sub-processes or a "desalination train." A desalination train typically comprises three stages: pre-treatment; main treatment, and post-treatment. The 6.4 mgd MPWSP proposal consists of four 1.6 mgd desalination trains, and thus can be sized up or down by the size of each desalination train. A 1.6 mgd per train is roughly 1,792 afy if the train were to run constantly. *See*, Exhibit CA-51 at 17.

[171] Exhibit WD-15 at 8-9.

[172] Exhibit WD-15 at 10-11.

system.[173] Monterey Peninsula Water Management District would add 2,742 afy for future demand for lots of record, Pebble Beach, tourism rebound, system loss, and Salinas Valley Return Flow.[174] In normal circumstances, using the most recent 5-year average to forecast future existing customer demand could be justified. However, in this case, limiting the selection to the most recent five years without justifying the selection of that period of time is not persuasive, especially given the reasons for the fluctuations in monthly and annual demand levels over the past decade.[175] Absent persuasive evidence to the contrary, Monterey Peninsula Water Management District's showing justifying its existing customer demand figure is not compelling.[176] Monterey Peninsula Water Management District does provide reasons why it thinks additional demand due to tourism rebound will be 250 afy instead of the 500 afy projected by Cal-Am. Monterey Peninsula Water Management District claims that some permanent demand reductions have occurred in that sector due to targeted rebates, mandated conservation standards, and non-residential inspections and enforcement by Monterey Peninsula Water Management District, but it is not convincing to explain why the 250 afy tourism rebound figure should be adopted. Monterey Peninsula Water Management District may be correct that some of the reductions that have occurred will lower the future tourism rebound, and when taken as a whole with its additions for non-revenue water and Salinas Valley Return Flows, the Commission agrees that a total growth figure of 2,742

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[173] Opening Brief of the Monterey Peninsula Water Management District at 4.

[174] Exhibit WD-15 at 11-15.

[175] *See,* CCR Title 22 Section 64554(b)(1).

[176] Exhibit WD-15 at 6-9.

afy is compelling support for adopting an overall demand figure of at least 14,000 afy.

The Commission is not persuaded by the arguments of Planning and Conservation League Foundation, jointly with Sierra Club and LandWatch Monterey County that the most recent 3-year average demand for existing customers of 9,398 afy is reasonable. For similar reasons as Monterey Peninsula Water Management District, Planning and Conservation League Foundation fails to convince us that the most recent three years should be used to model existing customer demand for the next ten plus years. If the Commission were only forecasting the next few years, then the conservation measures cited by Planning and Conservation League Foundation might make the most recent three year average a more reasonable alternative, though even in that case there are other factors to consider (e.g., ending of extreme conservation and moratorium measures). Planning and Conservation League Foundation, and others, fail to quantify how much of the recent reductions in demand are due to permanent conservation measures compared to other explanations offered for why demand has gone down. We are not persuaded by Planning and Conservation League Foundation's premise that none of the almost 3,000 afy reduction in existing customer demand over the past eight years will return after 2021.[177] Given the speed and timing of the reductions, it is not clear if Planning and Conservation League Foundation is correct and the system has a new normal, whether other factors are at play, or if we have reached the limits of conservation and demand will rebound. Planning and Conservation League Foundation has not put

[177] Exhibit CA-51 at 9, MCD-59.

persuasive evidence in the record that shows us it is correct and demand has stabilized at the average of the most recent three years.[178] Planning and Conservation League Foundation does not show how much of the recent demand reductions are related to the constraints Cal-Am has placed on the system, and Planning and Conservation League Foundation has not argued we should continue those constraints. Thus, Planning and Conservation League Foundation did not present evidence that convinces us that it is more likely that demand will continue as it projected for the future of the system. Further, Planning and Conservation League Foundation's projection does not account for peak demand obligations nor does it account for the seasonal availability of supply sources, or how those supply sources will be constrained in a multi-year drought. It is not reasonable to plan the future of the system needed to serve the customers of the Monterey District based on the snapshot of data used by the Planning and Conservation League Foundation.[179] Further, Planning and Conservation League Foundation's demand estimate does not account for the MDD and thus fails to account for the month-to-month fluctuations experienced by the system.

Without that context the Commission cannot find that the recent averages are more compelling than the longer-term averages the Commission has found persuasive. In evaluating the system demand for at least the next 10 years we are not convinced that a short-term snapshot fairly balances the system fluctuations and long-term demand.

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[178] *Cf.*, Exhibit CBP-1A at 5-6, WD-15 at 11, 13-15, RWA-27at 7.

[179] *Cf.*, Comments of Planning and Conservation League Foundation on Proposed Decision at 1-2.

Planning and Conservation League Foundation also advocates the smallest amount be allocated for future growth, 300 afy. Planning and Conservation League Foundation justifies this low number based on its professional opinion.[180] However, despite the expertise of the witness, there is no presentation as to any facts supporting this opinion.[181] Planning and Conservation League Foundation may or may not be correct in its criticism that the lots of record figure proposed by Cal-Am is inflated and that any tourism rebound has already occurred. It did not prove either of those allegations through facts or testimony, and absent evidence, we decline to adopt the Planning and Conservation League Foundation's estimate based solely on its professional opinion. Rather, we find the professional opinion (along with evidence) presented by other experts as more persuasive. Further, even Planning and Conservation League Foundation's own estimate of demand, 9,698 afy, is more than the supply it projects Cal-Am has available, 9,044 afy, and it does not propose a viable alternative to the MPWSP to close that gap.[182]

Surfrider states its estimate of 10,085 afy for existing customers is based on the five-year average demand methodology originally proposed by Cal-Am.[183] Surfrider argues that Cal-Am switched methods to calculate demand to use longer periods and more complicated methodologies after customers cut their water use. Surfrider's reason to use a five-year average does not convince us that its five-year average provides a more reasonable approach to forecasting demand

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[180] Exhibit SF-12 at 8.

[181] *See*, Exhibit SF-12 at 8.

[182] Exhibit SF-12 at 6-7, 12-15.

[183] Surfrider Foundation's Phase 1 Opening Brief at 4, *citing,* CA-12 at 5, Attachment 1 at 3-4.

for the next ten plus years. For example, as stated earlier in response to Monterey Peninsula Water Management District's use of a five-year average,[184] in normal circumstances, using the most recent five-year average to forecast future existing customer demand would provide a reasonable approach. However, in this case, limiting the selection to the most recent five years without justifying the selection of that period of time is not persuasive, especially given the reasons for the fluctuations in monthly and annual demand levels over the past decade. Surfrider does argue that the conservation measures that Cal-Am and Monterey Peninsula Water Management District have undertaken will result in permanent reductions in use and that the most recent periods thus reflect a better projection of the future. [185] However, it is unable to quantify how much of this reduction is due to conservation, and how much is attributable to other factors.[186] Surfrider also projects additional demand of 200 afy for Pebble Beach and 350 afy for growth and long term development in the remainder of Cal-Am's service territory.[187] The Commission does not find merit in Surfrider's characterization of Monterey Peninsula Water Management District testimony that only 217 afy is needed before 2035.[188] Monterey Peninsula Water Management District indicated that it supported a 1,181 afy figure,[189] though less

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[184] WD-15 at 11 uses full calendar years 2011-2016 for its five-year average calculation.

[185] SF-12 at 5.

[186] SF-12 at 5 ("This dramatic reduction in water use is the result of a variety of factors.")

[187] Surfrider Foundation's Phase 1 Opening Brief at 6, 10.

[188] Surfrider Foundation's Phase 1 Opening Brief at 18. However, parties have not presented credible, reliable, and persuasive evidence that double counting between the lots of records and Pebble Beach allocations has occurred.

[189] WD-15 at 13 ("long-term water supply planning should incorporate the full 1,181 [afy]. Failure to provide water for legal lots of record infringes on property rights and would

Footnote continued on next page

than half of that would likely be needed in the next 10-15 years.[190] Further, even if correct, we 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. In looking at the long-term water supply planning, Surfrider fails to persuade the Commission to use a lower projected demand figure. Surfrider does agree that it would be prudent to provide an additional buffer to accommodate demand from future growth.[191] However, the Commission disagrees with its argument that growth will be slow.[192] The Commission has been given no basis to believe the current framework that limits growth will permanently continue in the same way after 2021. Rather, growth is just as likely to return to pre-2008 levels or be something different. We do have evidence that the Monterey District and its customers are already "drought-hardened" and the cost of additional conservation measures would be high,[193] and the Monterey District customers are already highly efficient water users.[194] Our adopted demand estimate considers all of these factors to reasonably account for growth limits while accommodating growth.

The Commission is persuaded by Coalition of Peninsula Businesses' testimony that there is additional water demand that the hospitality industry will

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perpetuate a state of "water poverty" in our communities, hence should be avoided by planning for sufficient water.").

[190] WD-15 at 13.

[191] Surfrider Foundation's Phase 1 Opening Brief at 21.

[192] Surfrider Foundation's Phase 1 Opening Brief at 19-20.

[193] RT Vol. 21 at 3576-3578, Vol. 22 at 3699, Vol. 23 at 3907; Exhibit RWA-27 at 7.

[194] CA-55 at 8-13 (Monterey District already has near the lowest average per person and per household usage in the state.), RT Vol. 25 at 4377.

require when mandatory conservation measures are removed.[195] Coalition of Peninsula Businesses provided testimony that the hospitality industry had reduced its water use by more than 40 percent over the past decade and needs to grow by 12-15% to re-attain occupancy levels of a decade ago.[196] While some of the reductions in water use may not be temporary,[197] others such as "shipping the actual linen and terrys out of the area to be serviced elsewhere," are temporary.[198] Further, hotel occupancy is not back to pre-2008 levels, and additional water will be needed to provide service for that 12-15% growth. In addition, if the industry is to grow beyond 2008 levels, additional water will be needed over the next 20 years.[199] Coalition of Peninsula Businesses has shown that there is a need to include additional water to account for the tourism rebound category and the Commission supports the addition of 500 afy in the projection of demand offered by Cal-Am.

Water Plus fails to show how its economic analysis complies with our General Order and statutory requirements that the capacity of the system will meet the system's maximum demand. Water Plus assumes water demand fits within the traditional basic economic analysis of rational consumer decision making.[200] Water Plus's theory assumes that at least some of the decline in demand over the past few years is due to higher prices, but Water Plus failed to

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[195] Exhibit CPB-1A at 5-6, RT Vol. 23 at 3905, 3906.

[196] Exhibit CPB-1A at 5-6.

[197] Exhibit WD-15 at 14.

[198] RT Vol. 23 at 3606.

[199] CPB-1A at 5.

[200] WP Reply Brief at 5 (cost to customers drives demand).

explain how its supply and demand curves fit with the past decade of water use in the district. Water is not a traditional consumable that fits neatly into the economic theories of supply and demand. There is no easy or perfect substitutable product for water. Water Plus's analysis is based on the assumption that water consumption rises and falls based solely on cost, but Water Plus's analysis does not take into account many other costs, influences, or externalities such as population change, costs of water conservation activities, public campaigns to conserve water, declarations of states of water emergency, or environmental changes. In addition, Water Plus's analysis is flawed by the assumptions it makes in costs of potential new water supplies. Many of the potential costs used by Water Plus were put forth by the sponsoring witnesses as hypothetical costs, and others are based on offers that have not been accepted by the buyers, and thus the Commission does not know what the final costs might be. The Commission is not persuaded that those costs can be relied upon. Moreover, if the costs are higher, or lower, Water Plus's projection of future cost-driven demand will change. Accordingly, the Commission is not persuaded that Water Plus's approach provides a reasonable solution in this case.

4.4.1 Authorizing a 6.4 mgd Desalination Plant Is Most Reasonable.

Cal-Am has proposed the MPWSP as either a 9.6 mgd production capacity desalination plant or a reduced capacity, 6.4 mgd production capacity desalination plant combined with a water purchase agreement for 3,500 afy product water from Monterey One Water Groundwater Replenishment (GWR) Project. The authorization for the 3,500 afy GWR WPA was approved in D.16-09-021, making the 6.4 mgd reduced capacity desalination plant the most reasonable option, which is also supported by the CEQA findings set out at Appendix C.

Even the most conservative demand estimate, 9,698 afy, is more than the supply the Commission has found to be reasonably available, 9,044 afy. The proponent of the lowest demand figure, Planning and Conservation League Foundation, would have Cal-Am eliminate the gap between available supply and expected demand with additional storage and "other available supplies."[201] The problem with all of the ideas to close the gap between available supply and future demand is that they are at the concept stage. The particular ideas raised fail to persuade us that they would be sufficient to provide a reliable water supply for the Monterey District for the peak day and month demand as they lack specifics, fail to be concrete, do not include credible cost estimates, and do not give enough detail to weigh the costs and benefits. Absent credible evidence of feasibility, cost reliability of supply, timeframes for development, potential for opposition, and more, we are not persuaded that these ideas can close the gap between supply and demand. Monterey District customers have faced shortages for decades and while some approaches have worked, others have not.[202] Intervenors have not persuaded the Commission that these particular ideas are viable alternatives to the MPWSP. Other than the MPWSP and the alternatives presented within the FEIR/EIS, the Commission does not have viable alternative proposals before us today.[203] Cal-Am must have additional water supply to serve its customers. The MPWSP is the most reasonable approach to solving the long-term problem of water supply in the Monterey District.

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[201] SF-12 at 7-8.

[202] *E.g.,* A.04-09-019 and D.16-09-021 in this proceeding.

[203] *See,* Appendix C, CEQA Findings, Section X; FEIR/EIS at Vol. IV, Section 5.

As the supply available is insufficient to satisfy an estimated demand of 14,000 afy, failure to approve the project would have significant impacts on the region's economy. The project's local and regional economic benefits by way of project construction and operation would be lost. There would not be temporary and permanent new local employment opportunities nor increased spending on construction and operating materials, equipment and/or services. Regarding long-term impacts, the lack of water supply would adversely affect the region's economic vitality, including the County's "four pillars" – agriculture, tourism, education, and research – by substantially reducing the reliability of water resources and water infrastructure. As persuasively stated by Mayor Kampe:

> Because the future is very uncertain. It's hard to tell exactly what's going to happen. There are a number of elements that I think are going to surprise us when we get beyond the current water poverty situation. And we're looking at a 50-year project. Why in the world are we trying to look at the -- the tiny microscopic level details of today's demand as the exclusive basis for projecting 50 years in the future? To me, and I don't have water demand experience, but I do have significant experience in forecasting in business environment, you just can't know the future that well. And to handicap ourselves over that period of time strikes me as – as just it doesn't make any sense.[204]

Finally, the approval of the MPWSP provides additional resource diversity and further ensures that Cal-Am has a portfolio of reliable water supply to meet fire flow requirements for public safety and overall water demand.

The Commission evaluated all of the evidence presented along with the arguments of the parties and determines that Cal-Am's water supply portfolio

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[204] RT Vol. 22 at 3795.

will not exceed 9,044 afy. The Commission similarly evaluated all of the evidence presented along with the arguments of the parties and determines that Cal-Am's future water demand will be approximately 14,000 afy. The resulting supply deficit of at least[205] 4,956 afy needs to be addressed in this proceeding to comply with the State Water Resources Control Board's 2016 amended Cease and Desist Order (WR 2016-0016).

In addition, we have considered the seasonal supply and demand variations and how Cal-Am uses its sources of water to meet peak demands over the course of the year.[206] While Cal-Am can use the Seaside Groundwater Basin aquifer to hold excess winter supplies, we are not convinced that the aquifer reserves or other current sources of supply will allow Cal-Am to meet peak day or maximum month demands, particularly in drought years.

Cal-Am's Monterey District will not have sufficient source water to meet the anticipated demand of its customers after December 31, 2021, absent a new source of supply. The MPWSP is the most reasonable solution to provide that supply, and therefore, we find that the 6.4 mgd size MPWSP is the best option to ensure Cal-Am customers have a sufficient water source going forward. We conclude that a CPCN is needed to authorize Cal-Am to construct and operate the MPWSP so that it may replace water supplies for Cal-Am's Monterey District in response to the CDO issued by the State Water Resources Control Board to

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[205] The gap between projected supply and projected demand reflects not only considerations of average year supplies, but also the need to plan for dry years. *See e.g.,* SB 606 (Stats. 2018; ch. 14); AB 1668 (Stats. 2018; ch. 15). *See also*, Exhibit MNA-2, at 6, 8-9, and Attachments 1 and 2.

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

cease excess diversions from the Carmel River by December 31, 2021, meet reasonable demand (e.g., existing customers, lots of record, Pebble Beach, tourism rebound), provide a reliable and secure supply, include a reasonable "buffer" against uncertainties, and satisfy all other reasonable needs.

We find the 6.4 mgd desalination plant to be superior to a 4.8 mgd desalination plant based on the little to no cost differential, and that the 4.8 mgd sized desalination plant would produce approximately 4,700 afy in non-drought years. This amount of water is not sufficient to close the 4,956 afy gap between existing supply and projected demand. Further, the 4.8 mgd desalination plant would provide no buffer for contingencies. Given the gap between existing supply and projected demand there is a potential that additional capacity would need to be added to the MPWSP in the future. If so there is a higher likelihood that any expansion that includes permitting, drilling, and construction of an additional well to increase capacity will increase environmental impacts, face additional scrutiny in the permitting review process, and increase costs to ratepayers. In addition, a 4.8 mgd desalination plant would not avoid or substantially lessen any significant impacts of the project: the significant impacts that would result from construction would be the same as the plant would have the same footprint, and require the same pipelines, and while one fewer well would be drilled, it would still require five well pads at the CEMEX site. As all greenhouse gas emissions will be mitigated no matter the size of the plant, a 4.8 mgd desalination plant would not alleviate or substantially reduce the greenhouse gas emission impacts of the project.

Moreover, a 4.8 mgd desalination plant would fail to provide sufficient supply to reliably meet, and be able to satisfy, peak month and peak day demands. Though a 4.8 mgd desalination plant, compared to no plant or any

plant less than 4.8 mgd, would provide some additional supply under drought circumstances when less water or even no water is available from other water sources, there would not be sufficient supply to reliably meet, and be able to satisfy peak month and peak day demands. Seasonal variability and potential drought conditions would exacerbate the water deficit of a 4.8 mgd desalination plant when other sources would be restricted. 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.

We determine that a 6.4 mgd desalination plant that will produce approximately 6,250 afy of desalinated water in non-drought years (and approximately 7,167 afy in drought years) that would be delivered to Cal-Am customers is the best option to ensure Cal-Am is able to meet its maximum day demand and peak hour demand requirements.[207]

5. Environmental Review and Findings

The California Environmental Quality Act (CEQA) requires the Commission to consider the environmental consequences of its discretionary decisions. In this proceeding, the Commission is the CEQA lead agency and is responsible for conducting the environmental review of the MPWSP, and preparation of the EIR.[208] Accordingly, we employed environmental consultants to prepare the FEIR/EIS evaluating the MPWSP. The purpose of the FEIR/EIS is

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[207] *See,* Exhibit CA-51 at 14, 17.

[208] The Commission is the lead agency for CEQA purposes. A portion of the MPWSP is proposed within the Monterey Bay National Marine Sanctuary (MBNMS), and therefore, the National Oceanic and Atmospheric Administration (NOAA) is the federal lead agency under the National Environmental Policy Act (NEPA) for the MPWSP. The Commission and NOAA are the lead agencies for purposes of preparing the EIR/EIS.

to identify potentially significant environmental effects associated with the MPWSP, and to identify mitigation measures and alternatives that would minimize environmental consequences.

CEQA provides that agency approval of a project or an alternative may require modifications or mitigation measures to avoid significant effects on the environment. If significant impacts will remain after incorporation of feasible mitigation measures and alternatives, the agency must explain how project benefits outweigh significant effects on the environment.

5.1. Adequacy and Certification of the Combined FEIR/EIS

The Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the MPWSP was issued on October 10, 2012 and the comment period remained open for thirty days, through November 9, 2012.

Three California Environmental Quality Act (CEQA) scoping meetings were held: 1) one in Carmel on October 24, 2012; and 2) two in Seaside on October 25, 2012. The Draft Environmental Impact Report (DEIR) for the MPWSP was released for public review on April 30, 2015. The DEIR comment period extended through September 30, 2015. A technical workshop on the DEIR groundwater modeling occurred on May 19, 2015. The Commission held a groundwater modeling workshop and public participation hearing in Carmel on September 1, 2016. One public meeting was conducted on the April 2015 DEIR in Marina on May 26, 2015; two were conducted in Seaside on May 27, 2015 and one was conducted in Carmel on May 28, 2015. The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries published a Notice of Intent to prepare an Environment Impact Statement (EIS) on August 26, 2015 in accordance with the National Environmental Policy Act (NEPA).

The Commission announced its decision to revise and recirculate the DEIR as a joint DEIR/EIS in cooperation with Monterey Bay National Marine Sanctuary on September 8, 2015. NOAA conducted a NEPA scoping meeting in Pacific Grove on September 10, 2015. Cal-Am's amended application[209] to the Commission contained two capacity options or build-out scenarios for the MPWSP: 1) a 9.6 mgd desalination plant and related facilities; and 2) a reduced capacity desalination plant (6.4 mgd) with a water purchase agreement for 3,500 afy of advanced treated water from another source, the Monterey One Water Groundwater Replenishment (GWR) project.[210] For purposes of analysis the EIR/EIS defined the full-capacity, 9.6 mgd desalination plant as the "Proposed Project" analyzed in Chapter 4 and addresses the reduced capacity option (the 6.4 mgd desalination plant and water purchase agreement) as Alternative 5a in Chapter 5 of the FEIR/EIS. The proposed project assumes that GWR would not be operational. The Commission authorized GWR water purchase agreements and related facilities in D.16-09-021.

During the course of the CEQA review, we provided various opportunities for public involvement, as required by CEQA, and considered the public input received.[211] Many state and local agencies were consulted and coordinated with

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[209] Assigned Commissioner's Ruling Directing Cal-Am Water Company to Amend Application with New Project Description issued February 22, 2016.

[210] Appendix H attached to Amended Application of Cal-Am Water Company, filed March 14, 2016 at 1.

[211] *E.g.*, Opening Briefs on Final Environmental Impact Report and Environmental Impact Statement filed by 11 different parties, including the applicant: California-American Water Company, California Unions for Reliable Energy, Citizens for Just Water, The City of Marina, Coalition of Peninsula Businesses, Marina Coast Water District, Monterey Peninsula Water Management District, Public Trust Alliance, Public Water Now, Surfrider Foundation, and Water Plus on April 19, 2018,

in developing the DEIR/EIS and FEIR/EIS, including the City of Marina.[212] We issued a NOP of an EIR on October 10, 2012 with the 30-day comment period from October 10, 2012 through November 9, 2012, and distributed it to the State Clearinghouse and other federal, State, and local agencies that may be affected by the MPWSP.

The NOP was also mailed to approximately 600 interested or affected individuals, including nearby residents, public agencies, private organizations, and interest groups. Postcards with information about the project, scoping period, and opportunities for submitting comments were mailed to approximately 3,000 property owners and occupants of parcels located within 300 feet of proposed project. The NOP was also made available at 13 local libraries and was published in local newspapers and legal advertisements. Interested parties had 30 days to submit comments regarding the scope of the EIR. In addition, we held three scoping meetings prior to the final selection of alternatives and the preparation of the analysis presented in the DEIR. The scoping meetings were attended by representatives of organizations, interest groups, and government agencies. These meetings provided us with public input on the proper scope and content of the EIR.

The Commission staff subsequently issued a scoping report summarizing the issues and concerns identified during the scoping process. The scoping report was made available for public review on the Internet. The staff hired an environmental consultant and supervised its work on the DEIR, as well as the DEIR/EIS. On January 13, 2017, the Commission and NOAA published the

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[212] *See,* Appendix J, Memorandum regarding Responses to Comments Received After Publication of MPWSP Final EIR/EIS, September 12, 2018.

DEIR/EIS which was circulated to local, state, and federal agencies as well as interested organizations and individuals. The DEIR/EIS was initially issued for a 45-day public review period. We then held public meetings and one public participation hearing to describe the MPWSP, the findings of the DEIR/EIS, and how to participate in the Commission's decision-making process. Specifically, a presentation was made on the DEIR/EIS to the Marina City Council on February 7, 2017. Public meetings were conducted on the DEIR/EIS in Marina and Seaside on February 15, 2017. A public hearing was held in Carmel to receive oral and written comments on the environmental document on February 16, 2017. The public review and comment period for the DEIR/EIS was extended to 75-days, ending on March 29, 2017. Responses to comments received on the DEIR/EIS are provided in the FEIR/EIS, which was published and distributed on March 28, 2018. An Errata to the FEIR/EIS is included with this document as Appendix E, making it part of the FEIR/EIS addressed here. A memorandum that contains responses to comments submitted directly on the FEIR/EIS, after publication, including briefing or comment on this decision was submitted on September 12, 2018, and is addressed as part of our decision.

The Commission, as the CEQA lead agency, must certify the FEIR/EIS before the MPWSP may be approved. Certification consists of three components. First, the Commission must conclude that the FEIR/EIS has been completed in compliance with CEQA (and NEPA). Second, the Commission must have reviewed and considered the FEIR/EIS prior to approving the MPWSP. Third, the Commission must find that the FEIR/EIS reflects its independent judgment.

The FEIR/EIS includes the DEIR/EIS, along with the comments received on the DEIR/EIS, individual responses to the comments, revisions to the EIR/EIS as necessary in response to those comments and other information received, and

the Errata to the FEIR/EIS. It utilizes an interdisciplinary approach that ensures the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors.

The FEIR/EIS analyzes project impacts on 19 resource areas[213] and evaluates alternatives to the project. The EIR/EIS is organized and written so that it is meaningful and useful to decision-makers and the public. The FEIR/EIS analyzes the environmental impacts of the MPWSP and alternatives. Therefore, the FEIR/EIS is competent, comprehensive, and complies with CEQA (and NEPA).

The FEIR/EIS identified potential environmental impacts of the MPWSP that can be reduced to a less than significant level in the areas of: geology, soils and seismicity; surface water hydrology and water quality; groundwater resources; marine biological resources; hazards and hazardous materials; land use, land use planning and recreation; traffic and transportation; public service and utilities; aesthetic resources; cultural and paleontological resources; greenhouse gas emissions; agricultural resources; energy conservation; and socioeconomic and environmental justice.

The FEIR/EIS also identified impacts of the MPWSP that are significant and unavoidable. The impacts in the areas of terrestrial biological resources, traffic and transportation, air quality, noise and vibration, and growth

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[213] These resource areas include: geology, soils and seismicity; surface water hydrology and water quality; groundwater resources; marine biological resources; terrestrial biological resources; hazards and hazardous materials; land use, land use planning and recreation; traffic and transportation; air quality; greenhouse gas emissions; noise and vibration; public services and utilities; aesthetic resources; cultural and paleontological resources; agriculture and forestry resources; mineral resources; energy conservation; population and housing; and socioeconomics and environmental justice.

inducement were judged significant and unavoidable. The FEIR/EIS evaluates the environmental impacts of the MPWSP against an environmental baseline. In this case, the baseline reflects the pre-project environmental conditions that existed in the area where the MPWSP is proposed at the time the NOP was issued. Since the Commission issued its NOP in 2012, the Lead Agencies have developed or received new data on some of the resource areas, so we have updated the baseline data as appropriate. The FEIR/EIS notes those updates in its discussions of the Setting/Affected Environment for the various resource areas and applies them in the pertinent analyses.

The EIR/EIS analyzed a no-project alternative, and three types of action alternatives at an equal project-level detail: 1) alternatives to the 9.6 mgd project; 2) desalination projects proposed by other entities; and 3) reduced capacity alternatives.[214]

The FEIR/EIS identifies environmental effects of the MPWSP that may be mitigated to less than significant levels or avoided or minimized. The adoption and implementation of these mitigation measures was assumed in this determination. With these mitigation measures, the FEIR/EIS concludes that a majority of the potential environmental effects can be mitigated to less than significant levels. The mitigation measures identified in the FEIR/EIS are reasonable and feasible. Therefore, we will adopt them and make implementation of them a condition of our approval of the MPWSP.

A Mitigation Monitoring and Reporting Program (MMRP), attached as Appendix D, has been prepared. The purpose of the MMRP is to ensure that the

[214] *See,* Appendix C, CEQA Findings, Section X .

mitigation measures identified in the FEIR/EIS that are imposed by the Commission as conditions of approval are implemented. We have reviewed the MMRP and find that it conforms to the recommendations in the FEIR/EIS for measures required to mitigate or avoid environmental effects of the MPWSP. We also find that the MMRP comports with CEQA's requirements concerning mitigation monitoring.

Therefore, we will adopt the MMRP as set out in Appendix D.

As discussed above, we have reviewed and considered the FEIR/EIS as part of our consideration of whether to approve the MPWSP. Based on that review, we find that the FEIR/EIS was prepared in compliance with CEQA (and NEPA), represents our independent judgment regarding the environmental impacts of the MPWSP and was presented to and considered by the Commission. For the above reasons, we certify the FEIR/EIS for the MPWSP in compliance with CEQA.

Nothing in the FEIR/EIS precludes the MPWSP (6.4 mgd reduced capacity plant option) from going forward. In addition, as we are imposing a cap/risk assessment as to MPWSP costs, any increases in MPWSP costs incurred to comply with the requirements of the FEIR/EIS fall within the cap/risk assessment. Therefore, nothing in the FEIR/EIS alters the cost-effectiveness of the MPWSP (6.4 mgd reduced capacity plant option).

In addition, nothing in the FEIR/EIS precludes the ratemaking treatment specified in this decision, because the ratemaking treatment of MPWSP costs is beyond the scope of the FEIR/EIS. For the reasons discussed in this decision, we approve the MPWSP and adopt the findings as set out herein. Our approval is contingent upon Cal-Am performance of the MPWSP utilizing the environmentally superior alternative, and in compliance with the mitigation

measures identified in the FEIR/EIS and the MMRP. Cal-Am's compliance will be overseen by the Commission's Executive Director.

5.2. Analysis of Alternatives Considered

Pursuant to CEQA and NEPA, the FEIR/EIS also evaluated several alternatives to the project: the "No-project/No-action" alternative and three types of action alternatives at an equal project-level of detail: 1) alternatives to the 9.6 mgd project; 2) desalination projects proposed by other entities; and 3) reduced capacity alternatives. Each of these alternatives is described in further detail in the CEQA Findings in Appendix C.[215]

First, alternatives to the 9.6 mgd desalination plant in Cal-Am's application were crafted by analyzing individual components of a desalination plant – the water intake facility, brine discharge outfalls, and desalination sites – and identifying the least environmentally damaging and most viable alternatives of these components. The components that were considered the least environmentally damaging and were also feasible were then crafted into "whole" alternatives. These are Alternatives 1 and 2 studied in the FEIR/EIS.

Second, the action alternatives analyzed two reduced capacity alternative scenarios based on the 6.4 mgd desalination plant capacity option included in Cal-Am's application and taking into account the process described above of evaluating intake, outfall and desalination plant elements and combining them into "whole" reduced capacity alternatives.[216] The reduced capacity options

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[215] *See also,* Appendix J, Memorandum regarding Responses to Comments Received After Publication of MPWSP Final EIR/EIS, September 12, 2018.

[216] The MPWSP included two capacity options for build-out: the 9.6 mgd project and the 6.4 mgd desalination plant with a water purchase agreement for 3,500 afy of advanced treated water from the Pure Water Monterey project.

were thus presented in the FEIR/EIS alternatives analysis with alternative locations for the slant well intakes. These are identified as Alternatives 5a (slant wells at CEMEX) and 5b (slant wells at Potrero Road) in the FEIR/EIS.

Third, the FEIR/EIS examined two other desalination projects proposed by project proponents in the Moss Landing area that could supplement water service in Cal-Am's Monterey District: the Monterey Bay Regional Water Project, also known as DeepWater Desal (Alternative 3), and the People's Moss Landing Desalination Project (Alternative 4).

5.3. The FEIR/EIS and Determination of the Environmentally Superior Alternative

The FEIR/EIS analyzed the direct, indirect and cumulative effects of the 9.6 mgd desalination plant and seven alternatives to the project (six action alternatives and the No-Project/No-Action Alternative), discussed above and in the CEQA Findings, Appendix C, to determine the environmentally superior alternative. The Commission concludes, based on the analysis contained in the FEIR/EIS, that the No-Project/No-Action Alternative is the environmentally superior alternative taking into account environmental impacts only. However, the No-Project/No-Action Alternative fails to meet the basic project objectives and therefore is not feasible. CEQA directs that if the No-Project/No-Action Alternative is environmentally superior to the other studied options, the environmentally superior alternative among the action alternatives should be identified. Alternative 5a, discussed above and in the CEQA Findings, is that environmentally superior alternative, and no other alternatives are feasible, are capable of meeting project objectives, or would reduce significant impacts of the

project.[217] Upon full review of the FEIR/EIS and all proposed alternatives, the Commission finds Alternative 5a: Reduced Project 6.4 mgd Desalination Plant – Intake Wells at CEMEX is the project approved by this decision.

5.4. Water Rights

The FEIR/EIS explores in considerable detail whether Cal-Am would likely possess legal rights to the source water for the project. This issue is considered as a project feasibility matter. The source water for the project would be via underground slant wells that draw water from the aquifers that extend underneath the ocean and would be recharged primarily by seawater. These wells would be located at the western edge of the Salinas Valley Groundwater Basin, a large basin that extends approximately 100 miles from the Monterey Bay to the Salinas River headwaters.

In the State Water Resources Control Board's Final Review of California-American Water Company's Monterey Peninsula Water Supply Project (SWRCB Report) issued on July 31, 2013, the State Water Resources Control Board advised that extracting seawater from the ocean does not require water rights. The State Water Resources Control Board also stated that the aquifers into which Cal-Am proposes to construct slant wells and extract water have a landward gradient of groundwater flow that would likely result in the proposed wells primarily extracting seawater. However, as acknowledged in the State Water Resources Control Board Report and evaluated in detail in the FEIR/EIS, a portion of the project source water is expected to be brackish water, a combination of ocean water and fresh water originating from the inland aquifers of the Salinas Valley Groundwater Basin. In order for Cal-Am to possess appropriative rights to the

[217] *See,* Appendix C, CEQA Findings, Sections V.a and X.

brackish water under a "developed water" legal basis, whereby the project essentially creates a new water source, Cal-Am would need to be able to demonstrate that its extraction and beneficial use of the water source would not injure or harm other legal users of water. There is no permit for appropriative groundwater rights; the project would have to be implemented by Cal-Am in a manner that meets the requirements for an appropriative groundwater right, including establishing that the project water source is surplus to the needs of groundwater users in the Salinas Valley Groundwater Basin and that operating the project will not injure other lawful users of water.

Based upon the analysis in the FEIR/EIS, the project would draw primarily seawater as source water. The "capture zone" within which the project would draw source water could also include some brackish water that contains fresh water, but is not expected to intersect with or draw fresh water on its own. Such brackish water is not useful and usable in its current state. Thus, the withdrawal of the fresh water component of the source water is not expected to cause harm or injury to existing legal water users. Furthermore, Cal-Am proposes to return desalinated product water into the Salinas Valley Groundwater Basin in the amount of the fresh water molecules that originated in the Salinas Valley Groundwater Basin that are included in the withdrawn brackish water, further ensuring that Salinas Valley Groundwater Basin groundwater could be extracted without harm to existing lawful water uses.[218] Such return of Salinas Valley Groundwater Basin fresh water would be

[218] *See,* California Department of Water Resources, Salinas Basin Investigations, Bulletin 52 (1946) (Seawater has been migrating gradually into the Salinas Valley Groundwater Basin for decades which has been documented by numerous state agencies, including by the Department of Water Resources in 1946.).

accomplished by supplying return water to the Castroville Community Services District for municipal water supply (in lieu of groundwater pumping from the Salinas Valley Groundwater Basin) and also to the Castroville Seawater Intrusion Project. The return water component of the project would ensure that the Salinas Valley Groundwater Basin is made whole with regards to any fresh water withdrawn by the project supply wells and that the project satisfies the Agency Act.

In addition, Cal-Am has proposed an Applicant Proposed Measure to address and alleviate any actual harm or injury that the project creates for existing Salinas Valley Groundwater Basin water users. Such measure, while voluntarily proposed by Cal-Am, is included with the MMRP such that the Commission would monitor and ensure its implementation. In light of the evidence in the FEIR/EIS and otherwise in the administrative record, the Commission concludes that Cal-Am's extraction will not harm the quality of the Salinas Valley Groundwater Basin water, and over the years, by returning supply water to the Salinas Valley Groundwater Basin, the project will ultimately benefit Salinas Valley Groundwater Basin groundwater users. Therefore, the Commission concludes that there is every reason to believe that Cal-Am will perfect legal water rights for the project and that the project is not made infeasible by concerns over water rights.

5.5. Significant Impacts That Can Be Reduced to A Less Than Significant Level Through Mitigation

The FEIR/EIS concluded that the environmentally preferred alternative for the MPWSP is Alternative 5a, the reduced capacity 6.4 mgd desalination plant and related facilities. In analyzing direct and indirect project-level and cumulative impacts associated with the MPWSP, the FEIR/EIS concluded that

the 6.4 mgd project would have significant environmental impacts related to geology, soils and seismicity; surface water hydrology and water quality; groundwater resources; marine biological resources; hazards and hazardous materials; land use, land use planning and recreation; traffic and transportation; public service and utilities; aesthetic resources; cultural and paleontological resources; greenhouse gas emissions; agricultural resources; energy conservation; and socioeconomic and environmental justice. However, these impacts can be reduced to a less than significant level through the implementation of specified mitigation measures, as set forth in the MMRP in Appendix D. These impacts are addressed in detail in the CEQA Findings attached as Appendix C.[219]

5.6 Environmental Justice and Disadvantaged Communities

The City of Marina contends that the EIR/EIS is deficient in its analysis of, and mitigation for, environmental justice impacts. The FEIR/EIS analyzed socioeconomic and environmental justice impacts consistent with dictates of both the CEQA and NEPA and found no environmental justice impacts would occur above and beyond the impacts studied in, and mitigation cited throughout, the resource-specific sections in the FEIR/EIS.

The City of Marina raises several environmental issues that it claims would result in physical impacts, such as sensitive coastal habitat and coastal erosion, general construction impacts, brine discharge, and groundwater impacts, that the City believes are environmental justice impacts. While all of these issues were addressed in both a CEQA and NEPA context with respect to

[219] *See also,* Appendix J, Memorandum regarding Responses to Comments Received After Publication of MPWSP Final EIR/EIS, September 12, 2018.

physical environmental impacts, as described below, there is no requirement under CEQA to separately make significance conclusions in an EIR with respect to impacts on minority or low-income communities (including disadvantaged communities as defined by California Water Code Section 79505.5).[220] Nonetheless, the NEPA environmental justice analysis in Section 4.20 did consider the potential for disproportionately high and adverse impacts on minority or low-income communities, and the City of Marina was acknowledged as having a minority and low-income population.

The primary issue the City of Marina discusses in an environmental justice context is groundwater impacts. Because the FEIR/EIS demonstrated that the proposed project would not exacerbate seawater intrusion or cause other adverse groundwater quality or quantity impacts outside of the capture zone, and because the Marina Coast Water District wells would not be included in the project's modeled capture zone (i.e., where the actual water will come from), no socioeconomic or environmental justice-related effect would be expected to stem from such physical impacts.[221]

The project's impacts considered together with existing or foreseeable environmental burdens experienced by nearby communities are analyzed throughout Chapter 4 in the Cumulative Effects subsection of each resource section. Cumulative impacts (which include existing conditions/past

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[220] The Commission has a separate and independent of CEQA obligation to consider community values under Public Utilities Code Section 1002, which has meet in Section 7.5.1 of this decision.

[221] *See,* Responses to Comments Marina-5 through Marina-10, Marina-45 through Marina-61, Master Response 3, Water Rights (particularly Section 8.2.3.7) and Master Response 8, Project Source Water and Seawater Intrusion in the Final EIR/EIS. Appendix J, Memorandum regarding Responses to Comments Received After Publication of MPWSP Final EIR/EIS, September 12, 2018 at 15-21.

contributions) relating to sensitive coastal habitat and coastal erosion, general construction impacts, brine discharge, and groundwater impacts are addressed in the respective resource sections of FEIR/EIS Chapter 4. None of the physical impacts identified would result in substantial adverse impacts remaining after implementation of mitigation,[222] and so no socioeconomic or environmental justice-related effect would be expected to stem from such physical impacts.

5.7. Significant and Unavoidable Impacts that Cannot be Mitigated

Alternative 5a, the environmentally preferred alternative, 6.4 mgd project would have significant unavoidable impacts to terrestrial biology, transportation (during construction), air quality (during construction), noise and vibration (during construction), and cumulative indirect impacts from growth. No feasible mitigation measures or alternatives have been identified that would avoid or reduce these impacts to a less than significant level. The benefits of the project outweigh the significant and unavoidable impacts. Pursuant to CEQA, the Commission must make overriding findings as to the need for the project and that the benefits of the project outweigh the unavoidable significant impacts. These impacts and overriding considerations are addressed in detail in the CEQA Findings attached as Appendix C.

For the MPWSP as a whole, the Commission finds that there are significant and unavoidable impacts as set forth in the CEQA Findings,[223] and has weighed the benefits of the MPWSP (Alternative 5a, 6.4 mgd plant) against the significant

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[222] The one identified project level inconsistency with City of Marina coastal policies concerning sensitive habitat is not a physical impact and did not prevent the Coastal Commission approval of the test slant well as being consistent with Coastal Act policies.

[223] Appendix C, CEQA Findings, Section IX.b.

unavoidable environmental impacts under CEQA. The Commission finds that the project's benefits and economic, legal, social, environmental, and other considerations associated with the MPWSP outweigh and make acceptable the unavoidable impacts identified in the CEQA Findings at Appendix C. The Commission adopts and sets forth a Statement of Overriding Considerations (SOC) within the CEQA Findings and finds that each benefit set out in the SOC is sufficient as an independent basis to outweigh the MPWSP's (Alternative 5a, 6.4 mgd plant) significant unavoidable environmental impacts. The Commission also finds that the benefits of the MPWSP (Alternative 5a, 6.4 mgd plant) outweigh the benefits of any of the other alternatives examined, including the alternatives deemed infeasible and the no-project alternative set out in the CEQA Findings attached to this decision.[224]

6. Settlements

A number of parties have entered into four (4) settlement agreements presented for our approval in Phase 1 of this proceeding. These agreements are referred to as: 1) the 2013 Comprehensive (or Large) Settlement Agreement;[225] 2) the 2013 Plant Size and Operation Settlement Agreement (Sizing Settlement Agreement);[226] 3) the 2016 MPWSP Desalination Plant Return Water Settlement

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[224] Appendix C, CEQA Findings, Section X.

[225] *See,* Comprehensive Settlement discussion above.

[226] Settlement Agreement on Plant Size and Level of Operation, Entered by the Following Parties: California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, Division of Ratepayer Advocates, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, and Planning and Conservation League Foundation, Attachment A to the Settling Parties' Motion to Approve Settlement Agreement on Plant Size and Operation filed on July 31, 2013.

Agreement (Return Water Settlement);[227] and 4) the 2016 Brine Discharge Settlement Agreement (Brine Discharge Settlement).[228] These settlement agreements are not all-party settlements. The parties to this proceeding have submitted testimony and briefing in this proceeding that supports, opposes or remains neutral as to whether the Commission should adopt some or all of these settlement agreements.

The settlements are discussed separately below. The discussion of each provides a procedural history, summary of the substantive terms of the settlement agreement, and whether we grant the motion to adopt the settlement agreement or not.

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[227] Settlement Agreement on MPWSP Desalination Plant Return Water, Exhibit A to California-American Water Company's Notice of Updated Settlement Agreement filed on August 2, 2016. The initial Settlement Agreement on MPWSP Desalination Plant Return Water was filed on June 14, 2016 with the Joint Motion for Approval of Settlement Agreement on Desalination Plant Return Water entered into by California-American Water Company, Coalition of Peninsula Businesses, LandWatch Monterey County, the Monterey County Farm Bureau, the Monterey County Water Resources Agency, the Monterey Peninsula Regional Water Authority, the Planning and Conservation League Foundation, and the Salinas Valley Water Coalition. The Updated Return Water Settlement Agreement includes the signatures of David Stoldt on behalf of WD and the signature of Paul Sciuto on behalf of PCA which were not included in the initial Return Water Agreement filed on June 14, 2016.

[228] Brine Discharge Settlement Agreement (A.12-04-019) attached as Exhibit 1 to Surfrider Foundation's Notice of Updated Settlement Agreement filed on July 1, 2016. The initial Brine Discharge Settlement Agreement was filed on June 14, 2016 attached to a Motion to Approve Brine Discharge Settlement by Surfrider Foundation, on behalf of itself, California-American Water Company, Monterey Peninsula Regional Water Authority, Monterey Regional Water Pollution Control Agency, the Coalition of Peninsula Businesses, the Monterey Peninsula Water Management District, and the Planning and Conservation League Foundation, without the signature of the Executive Director of the Monterey Peninsula Water Management District or Exhibit A to the Settlement Agreement. The Updated Brine Discharge Settlement Agreement found at Exhibit 1 includes the signature of the Monterey Peninsula Water Management District's General Manager, and Exhibit A to the Brine Discharge Settlement Agreement that was inadvertently omitted from the initial filing.

6.1 Proposed Comprehensive Settlement

On December 11-13, 2012 workshops were held on project costs, contingencies, and financial modeling. Applicant served proposed supplemental testimony on January 11, 2013 (supplementing the proposed testimony submitted with the application). Cal PA and intervenors served proposed testimony on February 22, 2013, with Cal-Am serving proposed rebuttal testimony on March 8, 2013. Eleven days of evidentiary hearings were held on April 2-11, 2013 and April 30-May 2, 2013. On April 18, 2013 a notice for an all-party settlement was served by Monterey Peninsula Regional Water Authority. The all party settlement meeting was held on April 30, 2013 at the Commission. Settlement discussion occurred from May through July 2013.

Sixteen parties (a sub-set of parties, including the applicant, ratepayer advocates, environmental groups, and public water agencies) submitted a proposed Comprehensive Settlement Agreement (Comprehensive Settlement) that addresses O&M expenses, cost caps, financing and ratemaking for the MPWSP.[229] The Comprehensive Settlement was submitted as Attachment A to the Settling Parties' Motion to Approve Settlement Agreement filed on July 31, 2013.[230]

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[229] Settlement Agreement of California-American Water Company, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, Landwatch, Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation. The Settlement Agreement is, Attachment A to the Settling Parties Motion to Approve Settlement Agreement filed on July 31, 2013.

[230] The Comprehensive Settlement is attached to this decision at Appendix F.

6.1.1 Overview of Comprehensive Settlement and Updates

The Comprehensive Settlement provided for development, construction, operation and financing of the MPWSP. The Comprehensive Settlement also addressed recovery of costs in rates for a plant sized at either 9.6 mgd or 6.4 mgd.[231] The parties to the Comprehensive Settlement state[232] "consistent with Public Utilities Code Section 1002(a), the MPSWP will serve the public convenience and necessity."[233]

The Comprehensive Settlement was proposed over 5 years ago. Since that time the Commission has adopted the Phase 2 decision, D.16-09-021, approving the GWR Project for up to 3,500 afy. Additional testimony and hearings have occurred since 2013, and the State Water Resources Control Board has issued a subsequent order setting out strict milestones that Cal-Am must meet concerning its reduction in diversions from the Carmel River.[234] The 16 parties to the Comprehensive Settlement continue to generally concur with the framework set forth in it, they also agree that certain modifications given changes since 2013 need to be made to the agreement.[235] The parties have engaged in further

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[231] *See*, Comprehensive Settlement generally, and the Settling Parties' Motion to Approve Settlement Agreement at 2.

[232] The CPCN support is contingent on resolving certain source water issues that will be informed by the Hydrogeologic Study and the Technical Report provided for by the Comprehensive Settlement.

[233] Settling Parties Motion to Approve Settlement Agreement at 4.

[234] Order 2016-0016.

[235] ORA Opening Brief filed December 15, 2017 at 20-21; Cal-Am Opening Brief filed on December 15, 2017 at 65-68.

settlement negotiations,[236] however to date no modified settlement has been proposed to the Commission.[237]

The parties' agreement to the Comprehensive Settlement was based on the conditions that existed in 2013. Given the changed circumstances since 2013, and the modifications needed to significant portions of the Comprehensive Settlement we decline to grant the pending motion for adoption. However, sufficient evidence has been submitted into the record independent of the Comprehensive Settlement for the Commission to adopt the essential framework, and to determine the appropriate O&M costs, costs caps, financing, contingency, and ratemaking mechanisms set forth in the agreement. The major aspects of the Comprehensive Settlement (in the order stated in the Comprehensive Settlement) include: 1) Groundwater Replenishment Project; 2) Hydrogeologic Study; 3) the Desalination Plant and Cal-Am-Only Facilities; 4) Operation & Maintenance (O&M) Costs; 5) Environmental Factors; 6) Contingencies; 7) MPWSP Financing; 8) Ratemaking; and 9) Governance. We first discuss non-financial provisions below, followed by financing structure and ratemaking. We address the initial Comprehensive Settlement and events that have followed. The framework adopted and additional conditions are discussed above in Section 5 of this decision.

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[236] The County and MCWRA continue to be involved in settlement discussions. *See*, Concurrent Reply Brief of County of Monterey and Monterey County Water Resources Agency at 8. *See also*, Surfrider Opening Brief at 31-32.

[237] Nothing in this decision prevents the parties from continuing these settlement discussions. To the extent a settlement is reached by the parties it will need to be presented to the Commission consistent with the Commission's Rules of Practice and Procedure. If such agreement is reached after a decision is adopted in this proceeding the parties will need to submit a petition for modification if they intend for the Commission to incorporate the provisions of any modified settlement agreement into the decision on the MPWSP.

6.1.2 Non-Financial Provisions

This section addresses the provisions of the Comprehensive Settlement other than financial and ratemaking provisions. These provisions include the groundwater replenishment project, hydrogeologic study, the desalination plant and Cal-Am-Only Facilities, environmental factors, contingencies and governance.

The Comprehensive Settlement includes some provisions that have been implemented, such as the parties requesting that the Commission approve a water purchase agreement for the GWR Project water in a separate phase of the proceeding, this was completed with the adoption of D.16-09-021.[238] Additionally, the hydrogeologic study was completed and filed with the Commission on October 12, 2017. Parties have provided comments on the hydrogeologic study as part of the record for this phase of the proceeding.[239] In addition, as the CEQA/NEPA process allows for continual input from members of the public, the Hydro Working Group provided "Comments on Technical Appendices/Attachments to Letters Submitted by Marina Coast Water District and the City of Marina" that was received by the CEQA/NEPA staff on August 21, 2018. As with all input received prior to adoption of this decision, we have reviewed and considered the additional Hydro Working Group input as part of

[238] The Commission adopted D.16-09-021 on September 15, 2016 with an issuance date of September 22, 2016 authorizing Cal-Am to enter into a water purchase agreement with Monterey One Water for up to 3,500 afy.

[239] The Hydro Working Group Study was filed by SVWC and Cal-Am as a compliance filing on October 12, 2017 with an amendment to information compliance filing regarding hydrogeologic study and technical report filed on November 16, 2017. MCWD, City of Marina, PTA, Water Plus, and PWN filed comments on December 8, 2017 with reply comments filed on January 4, 2018 by Cal-Am.

our consideration of whether to certify the FEIR/EIS and approve the project and approve the project. Because the GWR water purchase agreement has been authorized for up to 3,500 afy and the FEIR/EIS sets out Alternative 5a (the 6.4 mgd plant) as the preferred alternative, we need not consider the provisions of the settlement that set out the 9.6 mgd option.

The Comprehensive Settlement includes provisions dealing with contingencies and governance. The parties identified three categories of contingencies if the MPWSP cannot go into operations. These categories are: 1) intake contingencies; 2) discharge contingencies; and 3) siting contingencies. The Comprehensive Settlement includes the parties' preferred contingency order. If a contingency would result in excessive costs, significant environmental impacts, delay, and/or substantial permitting risk, Cal-Am may move to the next ranked alterative on the contingency list. All parties to the settlement reserved the right to challenge any contingency and if all prove infeasible Cal-Am may pursue other options.[240] The settlement also includes the creation of a Governance Committee (Appendix 1 to the Comprehensive Settlement).[241] The purpose of the Governance Committee is to ensure that community values and public agency representation are included in development and implementation of the MPWSP. The Parties to the Comprehensive Settlement request that the Commission "expressly condone, within its decision in this proceeding,

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[240] *See*, Comprehensive Settlement at Section 10.

[241] The Governance Committee was created by an agreement between the MPRWA, MPWMD, the County of Monterey, and Cal-Am entered into on March 8, 2013. *See*, Comprehensive Settlement Section 16 and Appendix 1 thereto.

California-American Water's participation in the Governance Committee consistent with the terms of the Governance Committee Agreement."[242]

Cal-Am recommends a number of modifications to the Comprehensive Settlement. These modifications relate to the adoption of D.16-09-021 where the Commission approved the water purchase agreement for purchase of 3,500 afy of water from the GWR project and construction of the Monterey Pipeline and Pump Station at a cost of $50.3 million.[243] The remaining changes concern financing provisions, adjustment to cost caps, addition of new terms and removal of carry over terms, reduction of MPWSP Construction Funding Charge and adjustment to the formula for the MPWSP Construction Funding Charge.[244] Additional changes recommended by Cal-Am include updating Section 12.2 of the Comprehensive Settlement to apply the first 50% of the funds collected under the MPWSP Construction Funding Charge to the Remaining Cal-Am-Only Facilities,[245] with the remaining 50% applied to the desalination plant (after acquiring permits to begin construction). Cal-Am also proposed updating the appendices to the Comprehensive Settlement:[246] Appendix 2 (Construction Financing Schedule), and Appendix 3 (Uses of Cash) to reflect new capital and O&M amounts. Cal PA argues that "the changes proposed by Cal-Am … are not simply minor modifications, but instead represent substantial and fundamental

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[242] *See*, Settling Parties Motion to Approve Settlement Agreement at 12. We do not take a position on Cal-Am's participation in the Governance Committee to the extent that it continues to operate. Nothing in this decision prevents Cal-Am from continued participation in the Governance Committee.

[243] D.16-09-021 at 54, OP 1.

[244] *See,* Cal-Am Opening Brief at 65-68.

[245] *See,* Sizing Settlement Agreement discussed below.

[246] *See*, Cal-Am Opening Brief at 65-68.

changes … that significantly shift risks on to Monterey District's ratepayers and away from Cal-Am."[247]

We discuss the financing and ratemaking provisions in more detail below.

6.1.3 Financing Structure

The Comprehensive Settlement proposes that a portion of the MPWSP will be financed with tax exempt securitization. Cal-Am will receive a fixed equity of at least 27% of the project's total costs. The Parties agreed that the use of securitization for financing a portion of the MPSWP is reasonable if: 1) it lowers costs to ratepayers; 2) it does not adversely impact Cal-Am's customers outside of the Monterey County District; 3) it does not require separate Cal-Am credit rating; 4) it does not change the current debt-to-equity ratio for the MPWSP portion not financed through securitization; 5) it does not change Cal-Am's current authorized rate of return; 6) it does not materially delay the MPWSP; and 7) it does not create a taxable event for Cal-Am or adverse tax implications for the company or its ratepayers.[248]

The securitization period under the Comprehensive Settlement is for a period of up to 30 years. Proceeds from the securitization will be used to finance the MPWSP at an agreed upon level, reimburse public agency fees and expenses associated with securitization, and reimburse Cal-Am for fees and expenses associated with the securitization. Pursuant to the Comprehensive Settlement, Cal-Am would need to establish a Special Purpose Entity (SPE), sell the right to collect a non-bypassable charge from customers to the SPD, obtain authorization from the California Legislature and receive a financing order from the

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[247] *See*, ORA Opening Brief at 21.

[248] Comprehensive Settlement at Section 11.3(g).

Commission.[249] The Comprehensive Settlement proposes to have necessary true-up adjustments of the securitization surcharge done through a Tier 1 advice letter with the bonds rated by credit rating agencies. The credit rating agencies would also affirm the securitization would not negatively impact the credit of Cal-Am or American Water. If the securitization is not successful, or at any time negatively impacts Cal-Am, Cal-Am may seek recovery for reasonable and prudent costs incurred, or costs associated with the negative impact from customers in the Monterey County District.[250]

If for some reason the public agency is unable to obtain a tax-exempt securitization, Cal-Am and the public agency will work to develop an alternative avenue to seek public agency contribution consistent with the criteria set out in the Comprehensive Settlement.[251]

The 2013 Comprehensive Settlement includes Surcharge 2 collection in the amount of $71.5 million. If Surcharge 2 collection falls short of the $71.5 million, the undercollection would be funded by the State Revolving Fund (SRF)[252] (or Cal-Am if SRF funds are not available). The first $35 million collected under Surcharge 2 would be applied to the Cal-Am-Only Facilities with the remaining $36.5 million to the desalination plant with certain conditions are met.[253]

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[249] Comprehensive Settlement at Section 11.4.

[250] Comprehensive Settlement at Section 11.5 (c)

[251] Comprehensive Settlement at Section 11.6

[252] The SRF uses federal and state funds for capital and revolves in perpetuity through repayments and earnings derived from financed projects. Information regarding the SRF can be found at the SWRCB website.

[253] Comprehensive Settlement at Sections 12.1 and 12.2.

The Comprehensive Settlement also states that Cal-Am will seek SRF financing that will be combined with other financing for the MPWSP. If Cal-Am cannot secure SRF financing on its own, it will seek assistance from a public agency to secure the SRF. If such funds are not available, Cal-Am through American Water Capital Corporation, will provide long-term debt financing. The settlement also states that the Commission, for ratemaking purposes, will treat the SRF loans as set out in D.05-01-048[254], and as debt on the Company's financial statement for financial reporting purposes.[255]

6.1.4 Ratemaking

Under the Comprehensive Settlement the revenue requirement for the rate base portion of the MPWSP would be based on the most current cost of capital decision adopted by the Commission, subject to adjustment to the cost of capital as adopted by the Commission.[256] The interest rate on the securitization and SRF or long-term debt would be set at the time of funding and recovered pursuant to procedures for that instrument.[257] The revenue requirement would also include property taxes.[258] The settlement includes provisions for determining depreciation rates on all facilities.[259] The settlement also authorizes AFUDC for

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[254] In D.05-01-048, the Commission issued an order authorizing San Jose Water Company to 1) enter into a loan contract with the Department of Water Resources to borrow $1,660,250 from the State Drinking Water State Revolving Fund; 2) provide a stand-by letter of credit, as collateral for the loan; and 3) to impose a surcharge to repay the loan pursuant to §§ 454, 816-830, and 551.

[255] *See,* Comprehensive Settlement at Section 13.

[256] *See,* Comprehensive Settlement at Section 14.1.

[257] *See,* Comprehensive Settlement at Sections 11, 12, and 14.1.

[258] *See,* Comprehensive Settlement at Section 14.2.

[259] *See,* Comprehensive Settlement at Section 14.3.

all construction work in progress related to the desalination plant facilities.[260] The income tax elements would be calculated as part of the revenue requirement in the latest GRC.[261] Under the Comprehensive Settlement the first year MPWSP revenue requirement would be determined by the Commission for Cal-Am after completion of the facilities. The first-year revenue requirement for both the plant and Cal-Am-Only Facilities would supersede the previously established revenue requirement for the Cal-Am-Only Facilities. The first-year revenue requirement would be determined based on the assumptions set out in Sections 14 (Ratemaking) and 8.3 (O&M Ratemaking Process) of the settlement. Cal-Am would submit a Tier 2 advice letter to place the revenue requirement into base rates and increase the revenue requirement for the Monterey County District.[262] The revenue requirements authorized under Section 14.6 of the Comprehensive Settlement would remain in place until such revenue requirement is considered as part of the next GRC. O&M estimates for rates would be determined based on the procedures set out in Section 8.3 of the Comprehensive Settlement.

Sections 15.1 and 15.2 of the Comprehensive Settlement provide that Cal-Am would reduce AFUDC by $20 million by obtaining in short term debt to be used during construction. Appendix 3 to the Comprehensive Settlement includes a proposed cash flow statement and considers the parties agreed to financing sources.[263]

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[260] *See,* Comprehensive Settlement at Section 14.4.

[261] *See,* Comprehensive Settlement at Section 14.5.

[262] *See,* Comprehensive Settlement at Section 14.6.

[263] *See,* Comprehensive Settlement at Section 15.

6.1.5 Rule 12 – Decline to Adopt Comprehensive Settlement

The Comprehensive Settlement was entered into by the parties and submitted to the Commission on July 31, 2013 (more than five years ago). Since that time several provisions have become moot, new estimates for costs have been submitted, and modifications to the financing options need to be made to reflect current circumstances, including updated information for Appendix 2 and Appendix 3 to the Comprehensive Settlement. The Settling Parties do not currently agree on these modifications.[264]

All of the parties to the Comprehensive Settlement agree that some modifications are required to implement the settlement. Many of the modifications that need to be made arise from the Commission's adoption of D.16-09-021 (authorizing Cal-Am to enter into a water purchase agreement for GWR Project water up to 3,500 afy).[265] To date a modified Comprehensive Settlement has not been submitted to the Commission for approval.

If the modifications were truly minor and merely a matter of updating the Comprehensive Settlement to reflect the current record the parties would not dispute them. Alternatively, they would have reached agreement on such modifications before the filing of the final round of briefs or at the very latest prior to issuance of this decision.

The Commission considers adoption of a settlement if the settlement meets three tests: is reasonable in light of the whole record, consistent with law, and in the public interest. The proposed Comprehensive Settlement is not reasonable in

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[264] ORA Opening Brief at 21. *See also,* Settling Parties Motion to Adopt Settlement Agreement at 2, filed on July 31, 2013.

[265] Cal-Am Opening Brief at 65-66.

light of the whole record, and is not in the public interest, because many of the provisions are outdated and do not reflect current conditions. We therefore decline to adopt the Comprehensive Settlement.

Nonetheless substantial testimony and materials have been submitted into the record as to many of the proposed components of the agreement. This allows us to adopt the framework (with additional conditions) and key elements as to O&M costs, financing, ratemaking, and contingency provisions set forth above in our discussion of issuance of the CPCN.

6.2. Sizing Settlement Agreement

The MPWSP proposal consists of: 1) a desalination plant and "remaining Cal-Am Only Facilities," and 2) the Cal-Am-Only Facilities authorized in D.16-09-021.[266] The desalination portion of the project is made up of slant wells, source water pipelines, the desalination plant, product water pipelines, brine disposal facilities, ASR Wells, and related appurtenant facilities.[267]

The initial Cal-Am application requested authorization of the MPWSP at the size of 9.0 million gallons per day (mgd) with authorization to reduce the size to 6.4 mgd and supplement water supplies with water purchased from the GWR Project (approved in D.16-09-021) if the GWR Project meets certain milestones by the time Cal-Am begins construction on the MPWSP. Cal-Am updated the proposed size for the MPWSP in 2013 to 9.6 mgd without water

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[266] The "Remaining Cal-Am Only Facilities" include the Aquifer Storage and Recovery (ASR) Pipeline, the ASR Recirculation and Backflush Pipelines and the Valley Greens Pump Station. (*See,* Sizing Motion at 3.) (Hereafter remaining Cal-Am only facilities) The Cal-Am Only Facilities authorized in D.16-09-021 are the upgrade to the Hilby Ave pump station and construction and operation of the Monterey Pipeline evaluated in the EIR for the Pure Water Monterey Groundwater Replenishment Project as the "Alternative Monterey Pipeline."

[267] Sizing Motion at 2-3.

from the GWR Project and 6.4 mgd with 3,500 afy of water from the GWR Project.[268] The parties to the Sizing Settlement Agreement added a third potential sizing option, 6.9 mgd desalination plant with 3,000 afy of water from the GWR Project.[269]

Workshops concerning project cost, contingencies, and financial modeling were held on December 11-13, 2012, and Cal-Am served supplemental testimony on January 11, 2013 regarding the same. Cal PA and intervenors served testimony on February 22, 2013 with Cal-Am serving its rebuttal testimony on March 8, 2013, and evidentiary hearings were held on April 2-11, 2013.

Notice of an all-party settlement meeting was served on April 18, 2013 by Monterey Peninsula Regional Water Authority (RWA). An all-party settlement meeting was held on April 30, 2013 in San Francisco with settlement discussions continuing through July 2013. An additional workshop concerning the GWR Project was held in San Francisco on June 12, 2013. The Sizing Settlement Agreement was submitted to the Commission on July 31, 2013.

The Sizing Settlement Agreement addressed two (2) major issues: 1) desalination plant sizing; and 2) City of Pacific Grove Project. The parties to the Sizing Settlement agreed that the desalination plant should be sized at 1) 9.6 mgd without water from the GWR Project; 2) 6.4 mgd with 3,500 afy from the GWR Project (this was authorized in D.16-09-021); or 3) 6.9 mgd with 3,000 afy from the GWR Project. These sizes are intended for designing and planning purposes only. The sizing proposals did not consider availability of

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[268] CA-12, Supplemental Testimony of Richard C. Svindland, dated January 11, 2013 (Exhibit CA-12) at 5.

[269] Sizing Motion at 3.

Table 13 water rights. Table 13 water rights include Cal-Am's potential right to divert up to 1,488 afy of water from the Carmel River; however this water may not be available and cannot be counted upon. If this water is available, then Cal-Am will lower the operating level of the plant or use those rights during the year to allow other existing rights to be used later to address potential emergencies.[270]

The City of Pacific Grove Project consists of three (3) interconnected components that use recycled water, storm water and dry weather flow to provide new non-potable water supply to use for irrigation as well as residential and commercial uses. The motion requesting approval of the Sizing Settlement refers to the City of Pacific Grove Project as "a valuable part of a comprehensive solution to water issues in California-American Water's Monterey County District."[271] The Sizing Settlement describes the City of Pacific Grove Project in Section 4 as providing "new non-potable water supplies for irrigation at its municipal golf links and cemetery, City parks, and school ball fields, as well as for commercial and residential uses."[272] Cal-Am provided services for these uses with potable water at the time the Sizing Settlement was entered into by the settling parties. The Pacific Grove Project would produce as much as 500-acre feet of recycled, non-potable water per year. Cal-Am included a proposal in its general rate case (GRC) application, filed on July 1, 2013, that addressed the Pacific Grove Project.[273]

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[270] Sizing Motion at 4.

[271] Sizing Motion at 4.

[272] Sizing Settlement at 4.

[273] Section 4.4 of the Sizing Settlement.

Many of the signatory parties continue to support the Sizing Settlement with some modifications to account for the Commission's decision in Phase 2 of this proceeding, D.16-09-021.[274] It has been five years since the Sizing Settlement was submitted in 2013. In addition to the Commission's decision in D.16-09-021, substantial analysis has been conducted as to the environmental impacts of the project as set forth in the FEIR/EIS,[275] and additional testimony concerning the water supply and demand for the Monterey Peninsula was entered into the evidentiary record of the proceeding in late 2017.[276]

We do not believe it necessary to adopt the Sizing Settlement for purposes of approving the MPWSP. Although our decision as to the sizing of the desalination plant is not inconsistent with the Sizing Settlement, we find that there is a substantial record in the proceeding to support the 6.4 mgd desalination plant without adoption of the Sizing Settlement. The testimony submitted by many of the parties provides convincing evidence to support the need for the desalination plant sized at 6.4 mgd. Additionally, the testimony as to the supply needed to serve demand, combined with the Phase 2 decision

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[274] *See*, D.16-09-021 (Authorizing Cal-Am to build the Monterey Pipeline and Pump Station, as well as to allow Cal-Am to enter into the Water Purchase Agreement for the GWR Project water in the amount of 3,500 afy.) (*See also*, the Project Description Section of this decision.)

[275] *See,* FEIR/EIS and Appendices C and D.

[276] *See, e.g.*, Exhibits CA-6, CA-51, MCD-1A, MCD-36A, PCL-1, SF-12, WD-5, WD-15. For other parties we could not identify recent, comprehensive projected demand figures, though some did provide comment on other parties' projections. See, e.g., Opening Brief of the Office of Ratepayer Advocates, Dec. 15, 2017, at 3-7, Opening Brief of Monterey Regional Water Pollution Control Agency at 3, PTA-2A at 3-4, Opening Brief of Public Water Now, Dec. 15, 2017, at 2.

authorizing the purchase of 3,500 afy from the GWR Project, provide an ample record to warrant approval of the 6.4 mgd plant.[277]

Although we do not adopt the Sizing Settlement we do adopt the sizing provisions consistent with option 2 of the Sizing Settlement (6.4 mgd combined with the 3,500 afy from the GWR Project).[278] We also find that the City of Pacific Grove Project that will produce 500 afy of non-potable recycled water is a "valuable part of a comprehensive solution, when integrated with the MPWSP, the GWR Project, and ASR."[279] The additional 500 afy of non-potable water will be used to irrigate parks and other areas in a manner that will allow Cal-Am to use the potable water that would otherwise be used for these purposes to serve customers. This proposal was included in Cal-Am's 2013 GRC proceeding, and we do not disturb the approvals and findings in that case.[280] Our finding here is independent of the Sizing Settlement and based on the record in this proceeding.

6.3. Return Water Settlement Agreement

The potable water supply that the MPWSP will provide to Cal-Am customers will come from source water generated from subterranean slant wells drilled adjacent to the ocean. These slant wells will draw water from strata

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[277] *See e.g.*, Exhibit CA-51 at 10-14, Exhibit RWA-27 at 6-8, Exhibit WD-15 at 15, Exhibit CPB-1A at 4-6.

[278] For further analysis of our decision to adopt the 6.4 mgd desalination plant see sections 4.4.1 5.3, and 6. of this decision.

[279] FEIR/EIS, Section 2.5.3.1 at 2-25.

[280] D.15-04-007, COL 5 (Special Request No. 32 should be granted (regarding Pacific Grove Project)), OP 3 (adopts Special Request No. 32 (with the requirement that Cal-Am file a separate application to recover certain costs)).

underlying the ocean, with the location of the wells overlying the western portion of the Salinas River Groundwater Basin (SRGB).[281]

A concern regarding the production of source water for the MPWSP arose in the proceeding early on. The issues concerned whether the production source water for MPWSP would conflict with the anti-export provisions of the Monterey Water Resources Agency Act (Agency Act)[282] and infringe upon the groundwater rights of members of the Salinas Valley Water Coalition and Monterey County Farm Bureau. Because water cannot be exported from the Salinas Valley, ensuring compliance with the Agency Act becomes a critical component to the proposed project.

In order to address these concerns Cal-Am has committed, through the Return Water Settlement, "to make available for delivery 'Return Water' equal to the percent of SRGB groundwater in the total source water production, as distinguished from seawater in the source water." The water to meet this commitment will be delivered to the Castroville Community Services District (CCSD) and to the Castroville Seawater Intrusion Project (CSIP). The Return Water deliveries will be made in accordance with the provisions of the Return Water Settlement and the separate Return Water Purchase Agreements executed between Cal-Am and CCSD, and Cal-Am and the Monterey County Water

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[281] *See*, Joint Motion for Approval of Settlement Agreement on Desalination Plant Return Water at 3 dated June 14, 2016 (Return Water Settlement Motion); *See also*, FER/EIS at Section 4.4.

[282] The Agency Act authorizes the Agency to obtain an injunction prohibiting the export and use of SRGB groundwater outside of the SRBG and certain areas of Fort Ord. *See*, Appendix H, Return Water Settlement at Recital F. *See also,* Return Water Settlement Motion at 5 ("The Return Water Settlement expressly affirms California-American Water's obligation to comply with the Agency Act. The Return Water Settlement also protects SRGB groundwater by returning water produced from the SRGB to SRGB groundwater users for use in lieu of existing SRGB groundwater production.")

Resources Agency.[283] The desalination plant is sufficiently sized at 6.4 mgd to allow for return of any source water that originated from the Salinas Valley Groundwater Basin through deliveries to the CCSD and CSIP.

A term sheet for what has become the Return Water Settlement was submitted to the Commission on January 22, 2016. Negotiations among the parties occurred between March and May of 2016. Parties provided the required notice of a settlement meeting.[284] The parties to the Return Water Settlement assert that the document "reflects a fair and equitable resolution of the disputed issues and represents an appropriate compromise of their well-developed and vigorously supported positions."[285]

The major aspects of the Return Water Settlement are as follows:

1. **Return Water Deliveries**. Cal-Am agrees to deliver Return Water to the SRGB to use in lieu of existing groundwater production. The specific terms of the Return Water Settlement and separate Return Water Purchase Agreements will be followed. Cal-Am's general obligations are summarized below:
    a. Reserve Water. Cal-Am agrees to deliver Reserve Water in the amount of 175 afy in Return Water to CSIP when MPWSP goes online.[286]
    b. Annual Return Water Obligation. The "Annual Return Water Obligation" that Cal-Am is to provide will be calculated based on the percentage of SRGB

[283] *See*, Return Water Settlement at section 2, 5, 6, and 7.

[284] *See,* Rule 12.1(b). Notice of the all-party settlement conference was served on April 29, 2016, for a settlement conference to be held on May 6, 2016 at 10:00 a.m. (Joint Motion for Adoption of Return Water Settlement at 8.)

[285] Joint Motion for Approval of Return Water Settlement at 7.

[286] Settling Parties Brief at 4 and Return Water Settlement at Section 2(b).

groundwater in MPWSP's total source water production. The formula to calculate the volume of Annual Return Water Obligation is set forth in the Return Water Settlement.[287]

c. Thirty (30) Year Obligation. Cal-Am's obligation to provide Return Water in lieu of groundwater pumping in the SRGB to meet its Annual Return Water Obligation is for 30 years after the MPWSP goes online. This 30-year obligation set out in Section 2(d) of the Return Water Settlement is subject to the provisions of section 8 which provides that upon termination, expiration or non-renewal of the Return Water Purchase Agreements, Cal-Am shall continue to make Return Water available for delivery to the SRGB for use in lieu of existing groundwater production, unless Cal-Am demonstrates that Return Water is not needed to prevent legal injury to prior groundwater rights holders in the SRGB or to avoid significant adverse effects to SRGB groundwater resources.[288]

d. CCSD Delivery Volume. Cal-Am will make available for delivery to CCSD 690-acre feet of Return Water (CCSD Delivery Volume). If Cal-Am's obligation under the Return Water Settlement is determined to be greater than or less than the CCSD Delivery Volume, then certain delivery obligations are triggered. These obligations are as follows: if Cal-Am's Annual Return Obligation is less than the CCSD Delivery Volume, Cal-Am will make available potable water for delivery in the amount of the difference between the Annual Return Water Obligation for that year and the CCSD Delivery Volume (the Excess Water); and if the amount of the Annual Return Obligation exceeds the CCSD

[287] Settling Parties Brief at 4 and Return Water Settlement at Section 2 (c) and Appendix D-Base Return Water Obligation Methodology to the Return Water Settlement.

[288] Return Water Settlement at Section 2(d) and Section 8.

Delivery Volume, Cal-Am will make such surplus available for delivery to CSIP.[289]

e. Reporting. For the first two (2) years, Cal-Am will provide quarterly reports on the quantity of Return Water delivered to each recipient under the Return Water Settlement. For the next three (3) years, Cal-Am will provide semi-annual reports. After the first five (5) years of Return Water deliveries, Cal-Am will provide reports to the Return Water Settling Parties on an annual basis.[290]

2. **Compliance with the Agency Act and Protection of SRGB Groundwater.** Cal-Am, through the Return Water Settlement, has expressly affirmed it will comply with the Agency Act. SRGB groundwater is protected under the terms of the Return Water Settlement by returning water produced from the SRGB to SRGB groundwater users for use in lieu of existing SRGB groundwater production. Under the Return Water Settlement, MCWRA retains all rights, discretion and authority under the Agency Act to ensure compliance with the Agency Act and protect the long-term viability of the SRGB.[291]

3. **Reconciliation with Judicial or Regulatory Requirements**. The parties to the Return Water Settlement acknowledge that a court of law or a regulatory agency, including the Commission, has the authority to require Cal-Am to "undertake other Return Water obligations." To ensure that Cal-Am (and its ratepayers) does not have to meet duplicative Return Water requirements, "the Return Water Settlement provides for a reduction to Cal-Am's obligation

[289] Return Water Settlement at Section 2(e), (f), and (g).

[290] Return Water Settlement Section 2(h).

[291] Return Water Settlement Section 3.

to make available the CCSD Delivery Volume where such duplication would otherwise occur."[292]

4. **Pricing.** The rates set forth in the Return Water Settlement for pricing Return Water and Excess Water are found in Section 5.[293] Generally the rates paid by CCSD represent: 1) the avoided costs to produce groundwater to meet customer demand; and 2) the marginal operation and maintenance costs for MPWSP to produce one AF of potable water. The rates paid by the CSIP represent the CSIP customers' marginal avoided cost for groundwater produced for use by the CSIP customers. Annual review and updates to these rates will occur through Tier 2 AL filings.[294]
5. **Service Area Extensions**. The parties to the Return Water Settlement agree that Cal-Am's certified service area for the Monterey County District is extended to include delivery points and territories necessary for Cal-Am to provide deliveries and services set out in the Return Water Settlement. CCSD and CSIP are not added to Cal-Am's Monterey District. Cal-Am will update its service territory map and tariffs through filing of Tier 2 ALs.[295]
6. **Tariffs**. Appendix E to the Return Water Settlement sets forth proposed tariffs for governing rates and service to be provided to CCSD and the Monterey County Water Resources Agency. These tariffs may be adjusted from time to time with Commission approval to reflect adjustments to the terms of service. Such tariffs, as approved by the Commission, shall govern the rates and

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[292] Return Water Joint Motion at 5 and Return Water Settlement at Section 4.

[293] Return Water Settlement Section 5. The Return Water and Excess Water pricing is determined by formulas set forth in the Return Water Settlement, Appendix F to the Return Water Settlement, existing tariffs, and future Tier 2 advice letters if needed.

[294] Joint Motion for Approval of Return Water Settlement at 5 and Return Water Settlement at Section 5.

[295] Return Water Settlement at Section 10.

service provisions to CCSD and the Monterey County Water Resources Agency, subject to Section 10 (rights to terminate) of the Return Water Purchase Agreements between Cal-Am and CCSD, and Cal-Am and the Monterey County Water Resources Agency.[296]

7. **CEQA**. The Return Water Settlement is contingent upon completion of CEQA review by the Commission. The Parties acknowledge that the CEQA lead agency and responsible agencies retain full discretion to decide whether to approve the commitments necessary for Cal-Am to meet the Annual Return Water Obligations set forth in the Return Water Settlement. This discretion includes the ability to modify commitments to avoid or reduce any significant adverse environmental effects from Return Water activities and the parties' compliance with terms of Return Water Settlement.[297]
8. **Cooperation**. The parties to the Return Water Settlement agree to support entering into Return Water Purchase Agreements substantially in the form set out at Appendix C to the Return Water Settlement. The parties to the Return Water Settlement also agree to Cal-Am's ability to implement and update tariffs to reflect the service area extensions set out in Section 5 of the Return Water Settlement through the Tier 2 AL process. The Return Water Settlement also contains provisions intended to address any disagreements or conflicts that may arise; good faith meet and confer provisions and dispute resolution provisions.[298]

The Return Water Settlement provisions were fully considered and incorporated into the CEQA analysis for the MPWSP the FEIR/EIS. The FEIR/EIS concludes

[296] Return Water Settlement Section 11.

[297] Return Water Settlement Section 17.

[298] Return Water Settlement at Section 9.

that the project (which includes the provisions of the Return Water Settlement) would not generate significant adverse impacts to the Salinas Valley Groundwater Basin.[299]

Pursuant to Commission Rules of Practice and Procedure, Rule 12.1(d), in order to adopt the proposed Return Water Settlement, the Commission must find that the settlement is reasonable in light of the whole record, consistent with the law, and in the public interest. The parties to the Return Water Settlement represent a wide range of interests. Parties to the proceeding that are not parties to the Return Water Settlement have taken various positions from no comment, to support, to opposition. The primary concern of those opposed to the Return Water Settlement goes to overall opposition to the MPWSP, and concerns regarding potential cost if the Return Water amounts are significantly higher than the range estimated by Cal-Am and considered in the FEIR/EIS.

The parties to the Return Water Settlement state, and we agree, that the provisions establish a return water delivery arrangement that is in the public interest, consistent with the record, and in compliance with the law. The Return Water delivered will be used for beneficial use in the SRGB in lieu of groundwater pumping from the SRGB. The deliveries will assist with meeting challenges to public health and water supply faced by CCSD due to water quality degradation of its supply due to increased salinity.[300] The formulas incorporated into the Return Water Settlement were developed by Cal-Am, the MCWRA, SRGB pumpers, and agricultural interests to provide for flexibility in

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[299] FEIR/EIS at Sections 2.5.1, 2.6, Chapter 3, and Section 4.4.

[300] Joint Motion for Approval of Return Water Settlement at 7.

meeting a variety of potential challenges.[301] The Return Water Settlement will also assist in addressing water quality degradation of supply in a severely disadvantaged community.[302] Therefore we find that the Return Water Settlement meets the three tests of Rule 12.

Based on the foregoing and upon review of the entire proceeding record, including the Joint Motion for Adoption of the Return Water Settlement, the accompanying Return Water Settlement, and testimony of the parties, we find that the Return Water Settlement and its terms are reasonable, consistent with the law, in the public interest and fully supported by the record of this proceeding consistent with Rule 12.1(d). For the foregoing reasons, we approve the Return Water Settlement.

In approving the Return Water Settlement, we are doing so with the understanding that Cal-Am's Annual Return Water Obligation will be calculated and based on the methodology set forth in Section 2.c and Appendix D of the Return Water Settlement, and will be within the range of the estimates of OWP set forth in the FEIR/EIS and HWG Hydrogeologic Investigation Technical Report.[303] In the event where Cal-Am is unable to meet the Return Water Obligation or if the return water obligation is greater than an average of six percent (6%) for years 0-7; four percent (4%) in years 8-15; or 1.5% annually from year 16 forward, ratepayers will not bear any additional costs for meeting the return obligation above these amounts. Prior to submitting the Tier 2 advice

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[301] Exhibit CA-51 at 29.

[302] Closing Brief of California-American Water Company, January 9, 2018, at 71; Opening Brief of California-American Water Company at 70.

[303] *See*, FEIR/EIS at 2-37 and 4.4-55- 4.4-56; and Appendix E3 HWG Hydrogeologic Investigation Technical Report dated October 2, 2017 at 64-67.

letters to implement the tariffs proposed in Appendix E of the Return Water Settlement, Cal-Am is to meet with Commission Water Division Staff and parties to this proceeding to ensure that the tariffs include conditions that limit liability to ratepayers. Cal-Am will show in the Tier 2 advice letters that it bears the risk of, and will cover all costs associated with, any non-compliance to the Return Water Settlement, or the percentage caps for corresponding years set forth above.

6.4. Brine Discharge Settlement

Brine discharges from the desalination plant pose a potential environment impact. On February 22, 2013, Surfrider served testimony addressing the potential impacts from brine discharges into the marine environment. This testimony also addressed the then pending amendments to California's Ocean Plan addressing such discharges, specifically from desalination plants. On May 6, 2015, the State Water Resources Control Board adopted the final Ocean Plan Amendment. The Commission released the DEIR on April 30, 2015. Both Surfrider and Monterey Peninsula Regional Water Authority submitted comments on the DEIR's analysis of impacts from the project's brine discharge. In September 2015 the Commission announced that, after considering the DEIR comments and based on conversations with MBNMS, the April DEIR would be modified and recirculated as a joint EIR/EIS in coordination with MBNMS.

Surfrider, Monterey Peninsula Regional Water Authority, and Cal-Am entered settlement discussions of contested issues related to the project's brine discharge, and Cal-Am served notice of an all-party settlement meeting on April 29, 2016. The all-party settlement meeting was held on May 6, 2016. Settlement discussions continued from May to June 2016. On June 14, 2016 six

parties[304] submitted a motion requesting that the Commission adopt and approve the Brine Discharge Settlement.[305] No party filed a response in opposition to the motion.[306]

The Commission then released the January 2017 DEIR/EIS, which included mitigation set out in the Brine Discharge Settlement. The parties to the proceeding also provided comments as to the provisions of the Brine Discharge Settlement in comments on the second release of the DEIR/EIS.

The Brine Parties jointly support the proposed Brine Discharge Settlement as reasonable, consistent with the law, and in the public interest. The Brine Discharge Settlement provides for monitoring and sets out potential mitigation of brine discharge effects from the MPWSP. The Brine Discharge Settlement

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[304] California-American Water Company (Cal-Am), Monterey Peninsula Regional Water Authority (RWA), Monterey Regional Water Pollution Control Agency (PCA), the Coalition of Peninsula Businesses, the Monterey Peninsula Water Management District, Surfrider Foundation (SF or Surfrider), and the Planning and Conservation League, (collectively, the Brine Parties).

[305] Settling Parties' Motion to Approve Brine Discharge Settlement Agreement, filed June 14, 2016, *updated* in Surfrider Foundation's Notice of Updated Settlement Agreement, filed July 1, 2016)(*Hereafter*, Brine Discharge Settlement). The updated Brine Discharge Settlement Agreement is included as Exhibit 1 to the Surfrider Foundation's Motion and as Appendix I to this decision.

[306] On July 13 and 18, 2016 MCD filed comments and a request for deferred hearings. The comments argue that the Brine Discharge Settlement does not meet the Commission's tests for adoption. MCD asserts this is primarily because the MPWSP is not needed and cannot be lawfully operated without causing significant harm. (Comments at 2.) As we determine in today's order, the MPWSP is needed and can be lawfully operated pursuant to adopted mitigation measures. We also find that the Brine Discharge Settlement Agreement meets the Commission's tests for adoption. MCD sought deferred hearings largely to examine environmental facts it claimed were disputed and material. The Commission does not conduct evidentiary hearings on environmental issues. Many days of evidentiary hearing were held on all other relevant matters. Environmental issues were thoroughly addressed through the CEQA process and addressed in legal briefs. The request for deferred hearings was denied by Ruling dated February 28, 2017.

resolves a contested issue in this proceeding and enjoys the broad support from a coalition of parties representing diverse interests. The Brine Parties request that the Commission approve the Brine Discharge Settlement without modification as part of our decision in this proceeding to grant Cal-Am a CPCN for the MPWSP. As explained below, and consistent with the CEQA Findings and MMRP, we do.

The MPWSP includes a desalination plant and related facilities including those related to brine disposal. The proposed brine disposal facilities would consist of a 3-million-gallon brine storage basin and a brine discharge pipeline, which would connect to a new brine mixing structure that in turn connects to the existing Monterey One Water outfall. The outfall consists of a 2.1 mile-long pipeline that terminates at a 1,100-foot diffuser resting above the ocean floor at approximately 90 to 110 feet below sea level. The diffuser has 172 2-inch ports spaced 8 feet apart on alternating sides. During the non-irrigation season (approximately November through March), brine would be diluted prior to discharge with treated wastewater from the Monterey One Water Regional Wastewater Treatment Plant. During the irrigation season (approximately April through October), wastewater is diverted and recycled for irrigation. Undiluted brine would be discharged within the Monterey Bay National Marine Sanctuary. The Brine Discharge Settlement creates standards and conditions for the collection of relevant, long-term water quality data to determine and ensure compliance with defined water quality standards. It also requires implementation by Cal-Am of specific corrective actions when non-compliance is determined to occur before Cal-Am may continue to discharge brine.

Pursuant to Rule 12.1(d), the Commission may approve a settlement if the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The Commission has a well-established policy of adopting

parties' settlements of disputes if they are fair and reasonable in light of the whole record. As recognized in the Brine Discharge Settlement,[307] settlements can "avoid the expense and uncertainty of litigation of some of the matters in dispute … before the Commission."[308]

The record in this proceeding demonstrates the reasonableness of the Brine Discharge Settlement. The brine discharged from the project will be denser than ambient seawater. Without sufficient dilution, the brine discharge would have adverse impact on benthic communities and the Monterey Bay National Marine Sanctuary.[309] The Brine Discharge Settlement establishes a monitoring program to evaluate the effect of these discharges.[310]

Experts from Surfrider, Monterey Peninsula Regional Water Authority, and Cal-Am developed a program to monitor salinity of the waters where the discharge will occur, which will indicate whether brine has been effectively dispersed and diluted to levels required by applicable law. These experts identified preferred monitoring locations, technology, and procedures for monitoring the anticipated brine discharge.

To determine whether brine discharge is sufficiently diluted in the receiving waters, the Brine Discharge Settlement applies the standard proposed by the Ocean Plan Amendment.[311] The MPWSP will be in compliance with the

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[307] Appendix I (Brine Discharge Settlement).

[308] Brine Discharge Settlement at Section 1.1.

[309] Brine Discharge Settlement at Section 1.5. *See also*, FEIR/EIS at 4.5, MMRP at 4.3.

[310] Brine Discharge Settlement at Section 3.

[311] Settling Parties Motion to Approve Brine Discharge Settlement Agreement at 5-6, *citing*, Cal. Dept. of Water Resources, 2015 California Ocean Plan with Desalination Amendment, chapter

Footnote continued on next page

Brine Discharge Settlement if salinity in the area of the outfall is not more than 2 parts per thousand (ppt) more saline than ambient ocean water as measured at a similar location unaffected by the project.[312] If salinity exceeds this standard, and the exceedance is caused by the project's brine discharge, the Brine Discharge Settlement requires mitigation actions that would bring the project into compliance.[313] The Parties will jointly determine appropriate mitigation strategies to increase brine dilution and decrease salinity levels below the 2 ppt threshold. The record supports the proposed mitigation mechanism, including outfall modifications, to increase discharge pressure and brine dilution. The mitigation and approach to address brine discharge set forth in the Brine Discharge Settlement is supported by and incorporated into the mitigation measures required by the FEIR/EIS, CEQA Findings, and MMRP.[314] Thus, the Brine Discharge Settlement is consistent with the record.

The Brine Discharge Settlement is consistent with applicable law concerning both environmental review in general and brine discharges into the marine environment in particular. CEQA requires the Commission to assess a project's significant environmental impacts prior to approval. When an agency determines that impacts will be significant, the agency must identify mitigation measures to reduce or avoid such impacts where feasible. The Brine Discharge

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III.M(2)(e)(1)(b) at 44 (May 6, 2015). (Ocean Plan Amendment), available at the SWRCB website; *see also,* FEIR/EIS at 4.5.

[312] Brine Discharge Settlement at Sections 4.4-4.6.

[313] Brine Discharge Settlement at Sections 4.4-4.6.

[314] *See e.g.*, Appendix C, CEQA Findings, Section IX.a. (Impacts 4.3-4, 4.3-5, and 4.13-5), and Appendix D, MMRP at D-10—D-15 ; *see generally*, Ocean Plan Amendment at chapter III.M2.e.(2)-(4).

Settlement will ensure that brine discharge impacts are addressed on an ongoing basis with oversight from the Brine Parties. The Brine Discharge Settlement requires continuous monitoring and analysis of brine discharge and imposes mitigation strategies to ensure that the Ocean Plan standards are met.[315]

The Brine Discharge Settlement supports the purposes of the Ocean Plan Amendment and is incorporated into the mitigation measures set forth in the FEIR/EIS.[316] The Ocean Plan Amendment's 2 ppt receiving water standard and its requirement of continuous monitoring of brine discharges to ensure that standard is met are applicable to the Brine Discharge Settlement and the MPWSP. Federal guidelines for desalination plant operations in MBNMS include language that states dischargers should dilute brine discharges and adopt a "continuous monitoring program" to evaluate impacts of such discharges.[317] The monitoring program and contingent mitigation options set out in the Brine Discharge Settlement are consistent with and promote the purposes of all applicable laws and regulations. The Brine Discharge Settlement also ensures consistency of its terms with brine discharge regulations by including flexibility for the Parties to modify the monitoring program to provide for compliance with any additional or new monitoring requirements imposed on the MPWSP by other regulatory agencies.[318]

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[315] Brine Discharge Settlement at Section 4.4.

[316] *See*, MMRP (Appendix D) at D-10—D-15.

[317] NOAA, Guidelines for Desalination Plants of the Monterey Bay National Marine Sanctuary at 6-7 (May 2010). *See also,* FEIR/EIS at 4.5-35.

[318] Brine Discharge Settlement at Section 3.2.

Finally, the Brine Discharge Settlement is in the public interest. It demonstrates compromise and consensus between multiple parties with diverse interests on a critical component of the MPWSP. This compromise advances the MPWSP while conserving Commission and the parties' resources by avoiding further litigation on this matter. The Brine Discharge Settlement also protects ratepayers as well as the environment. It protects the ratepayers from unnecessary costs by avoiding construction of expensive and potentially unnecessary mitigation technology and allowing Cal-Am to pursue cost-effective mitigation consistent with the Brine Discharge Settlement.

No party disputes that the MPWSP's brine discharge into the ocean is one of the major potential impacts from the facility. The Brine Discharge Settlement safeguards the public interest through application of "environmentally-protective adaptive management." Finally, the Brine Discharge Settlement sets valuable policy precedent as it "will be the first investor-owned utility program to implement the Ocean Plan's monitoring standards for desalination plants." It may also provide important information that could assist in development of future projects.[319]

The Brine Discharge Settlement is the result of negotiations by multiple parties and was developed using information provided by subject matter experts. These subject matter experts identified preferred locations, technology, and procedures for monitoring anticipated brine discharge from the MPWSP.[320] The Brine Discharge Settlement continues to be supported by the Brine Parties without modification, and it is consistent with the proposed mitigation set forth

[319] Settling Parties Motion to Approve Brine Discharge Settlement Agreement at 7.

[320] Opening Brief of California-American Water Company at 70.

in the FEIR/EIS,[321] and the MMRP attached to this decision at Appendix D.[322] Surfrider argues that if the CPCN is approved, the Commission should adopt the Brine Discharge Settlement noting that no party submitted new testimony that necessitates updating the agreement,[323] and that all parties that signed onto this agreement continue to support it. We agree with Surfrider. Thus, we find that the Brine Discharge Settlement is in the public interest.

In adopting the Brine Discharge Settlement, however, we make clear that the Commission as the CEQA lead agency maintains primary jurisdiction to adopt and implement appropriate compliance, enforcement, and mitigation measures now and over the life of the project that relate to CEQA. Therefore, nothing in our adoption of the Brine Discharge Settlement is to be interpreted to mean that a standard or mitigation measure less stringent than those set forth in the FEIR/EIS, or the MMRP attached to this decision shall be applied through the terms of the Brine Discharge Settlement. This includes any agreements of the parties made through the dispute resolution process set out at Section 5 of the Brine Discharge Settlement. Regardless of the Section 5 Dispute Resolution provision of the agreement, Cal-Am has an independent obligation to maintain compliance with all requirements of this decision, including the mitigation measures set out in the MMRP.

The Brine Discharge Settlement recognizes the Commission's authority over the ultimate compliance, enforcement, and mitigation for the discharge of brine from the MPWSP as set out in Section 6.9 of the Brine Discharge Settlement:

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[321] FEIR/EIS at Section 4.5.

[322] MMRP (Appendix D) at D-10—D-15.

[323] Surfrider Foundation's Phase 1 Opening Brief at 32.

> Among other things, this Agreement helps to define a stable and finite project description that will facilitate the Commission's completion of CEQA review for the Project. The legal effectiveness of this Agreement is contingent on the completion of CEQA review and does not irretrievably commit the Parties to carrying out any physical activities that would be required for California-American Water to meet its obligations under this Agreement. The Commission, as the lead agency under CEQA, the National Oceanic and Atmospheric Administration/Monterey Bay National Marine Sanctuary, as the lead agency under NEPA, and all responsible agencies will retain full discretion with respect to deciding whether to approve or disapprove any commitments necessary or convenient for California-American Water to address matters relating to the discharge of brine from the Project, including full discretion to consider, approve or disapprove alternatives, and also including full discretion to modify commitments and/or adopt other mitigation measures relating to brine discharge to avoid or reduce any significant adverse physical environmental effects from the activities that are within their jurisdiction.[324]

Therefore, if any conflict arises between the Brine Discharge Settlement and mitigation required pursuant to this decision consistent with the MMRP contained in this decision, the MMRP will prevail. To the extent the Brine Discharge Settlement requires additional or more stringent protective measures, which are not in conflict with this decision, Cal-Am will be bound to comply with the Brine Discharge Settlement.

Consistent with the understanding that the Commission retains authority to determine appropriate mitigation, compliance, and enforcement as to measures concerning environmental protection pursuant and with respect to CEQA, we adopt the Brine Discharge Settlement and find that the Brine

[324] Brine Discharge Settlement at Section 6.9.

Discharge Settlement is reasonable in light of the entire record, is consistent with the law, and is in the public interest.

7. CPCN for MPWSP Alternative 5a, A 6.4 Million Gallons Per Day Desalination Plant

Cal-Am has the burden of proving that "present or future public convenience and necessity require or will require such construction" as to the MPWSP for the Commission to issue a Certificate of Public Convenience and Necessity (CPCN). The Commission must examine whether the record supports the need for the MPWSP, and whether it demonstrates that Cal-Am will be able to serve its customers consistent with PUC Section 8201.[325] We concur with Cal PA in that upon issuance of a CPCN Cal-Am is expected to "maintain adequate, efficient, just and reasonable service that is necessary to promote the safety, health, comfort, and convenience of its Monterey customers and the public at-large."[326]

Cal-Am's Monterey District customers have been among the leaders in the state in water conservation;[327] however this district continues to face ongoing

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[325] Pub. Util. Code Section 8201 states:

> Any water company having a franchise to use the streets of a city, shall properly and adequately serve with water the inhabitants of the territory for the service of which it has such franchise.
>
> As used in this section, to "properly and adequately serve with" includes furnishing water of a quality meeting or exceeding standards established by the State Department of Health pursuant to Section 4026 of the Health and Safety Code.

See also, ORA Opening Brief at 2.

[326] ORA Opening Brief at 2-3.

[327] *See c.f.*, SWRCB Order 95-10 (In 1995, Cal-Am served approximately 105,000 customers in its Monterey District, supplying them with approximately 17,000 afy, with 14,106 afy supplied from the Carmel River system.).

constraints as to water supply. Conservation alone will not solve the water needs of the Monterey District (as discussed above regarding demand and supply). Moreover, Cal-Am is faced with addressing the impact of the State Water Resources Control Board CDO and the continuing "urgent need to find an alternative water supply."[328] The CDO requires Cal-Am to reduce its draws from the Carmel River and find long-term permanent alternative water sources to serve its customers.[329] Other existing supplies are inadequate to meet demand (as explained above in the discussion of demand and supply). For example, Cal-Am cannot fully utilize the Seaside Basin as that supply has been adjudicated with Cal-Am facing mandatory triennial reductions until 2021. After 2021 Cal-Am's water right in the Seaside Basin will be reduced to less than half of its 2006 use.[330]

We have in detail previously explained the decades-long history of the Monterey Peninsula's water supply struggles. (See, D.10-12-016 at 9-10 and 33-34.) The Monterey Peninsula population has been dealing with documented water constraints dating back to the 1940s. There is a long and contentious

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[328] D.10-12-016 at 27. *See also,* D.16-09-021 at 3-5.

[329] Cal-Am continues to be subject to the SWRCB CDO which requires that Cal-Am cease all diversions beyond its water right by December 31, 2021, as well as to implement project milestones for the MPWSP. The project milestones include the Commission's issuance of a CPCN for the MPWSP by September 30, 2018 with construction commencing no later than September 30, 2019. *See,* SWRCB Order WR 2016-0016 at 21.

[330] Cal-Am Opening Brief at 3. As explained above, Cal-Am is currently allocated 3,504 afy from the Coastal subarea of the Seaside Basin and 345 afy from the Laguna Seca subareas. These allocations will be reduced over time until they eventually reach 1,474 afy from the overall Seaside Basin. Prior to the Seaside Basin adjudication, Cal-Am's allocation for the Coastal subarea was 4,000 afy. 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 Groundwater Basin.

history that reflects both public and private attempts to reach a viable solution to this long running problem. It is important, in addressing the need for the MPWSP, that we fully recognize this history to provide important context to our decision to approve the MPWSP, despite the relatively high cost that comes with such approval.

Since at least 1997 – for more than two decades – the Commission has been faced with addressing these concerns and helping the community find a viable alternative water supply for the Monterey Peninsula. It has been almost a decade since the Commission approved the Regional Project in D.10-12-016, which subsequently failed to be developed. (See D.10-12-016.) During this time, we have heard from residents and business owners that inaction as to the need to authorize an alternative water source is unacceptable.[331] While there have been some successes (e.g., the GWR Project), there have also been other opportunities to move forward with alternative water supplies that have been unsuccessful. Meanwhile, the compliance deadlines in the State Water Resources Control Board CDO for reduced draws from the Carmel River are fast approaching.

In approving the MPWSP we recognize that desalinated water is relatively expensive, both in terms of capital costs and ongoing operations and maintenance costs.[332] In reaching our decision here the Commission must balance potential benefits against the cost burden to Cal-Am's ratepayers from the construction of the MPWSP, and consider the relative benefits and costs of

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[331] *E.g.*, RT PPH Vol. 1 at 48-50, 60.

[332] The cost per acre-foot (AF) for the 6.4 mgd plant "under the Tier 2 and PTM caps (inclusive of the 3,500 AF of GWR water) is $4,265 per AF and $4,472 per AF, respectfully." *See,* Exhibit CA-54. *See also*, Exhibit CA-54, Attachment 4 (showing 6.4 mgd – Long Range Forecast Under Rate Design Approved in A.15-07-019).

reasonable alternatives. For example, Cal-Am's ratepayers will have an insufficient water supply if the MPWSP is not approved. As explained above in our discussion of demand and supply, the current situation is not sustainable. Other viable alternatives cause unacceptable environmental impacts without offsetting benefits and therefore fail on environmental grounds, as shown in the FEIR/EIS. Without the MPWSP Cal-Am will not be able to meet reasonable long-term future needs once it is required to reduce its draws from the Carmel River in 2021. We consider and reject the 9.6 mgd larger size MPWSP on the basis of economic cost and environmental impact. On balance, the 6.4 mgd MPWSP joined with the GWR proves the best choice in meeting the long-term water supply needs of the Monterey District.

The Commission must decide what is a reasonable cost burden for ratepayers to bear, under what conditions such a cost can be justified, and how the cost increase can be minimized and controlled to achieve an appropriate balance between supplying a sufficient amount of safe, reliable, potable water and maintaining just and reasonable rates. The current projected water supply without the MPWSP is inadequate and the consequences of a no project alternative severe.[333] We must determine what is reasonable in this context. At the same time we must not burden ratepayers with such a high cost that it becomes prohibitive. The Comprehensive Settlement,[334] discussed in more detail

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[333] The consequences would include increasingly burdensome conservation measures almost certainly followed by rationing. There would be little to no opportunity for the Monterey Peninsula to return to normal economic conditions, nor could local agencies achieve their plan goals for moderate growth.

[334] The Comprehensive Settlement was entered into by 16 parties to this proceeding and submitted for approval in July of 2013. It has been five years since the settlement was proposed and it does not reflect current circumstances, however the framework set forth in the

Footnote continued on next page

below, includes a framework to achieve these goals. We, therefore, have adopted the framework set out in the Comprehensive Settlement with additional ratepayer protections.

The water supply problems on the Monterey Peninsula are long-standing, contentious, and bitterly disputed by many parties and interests. The results of this continuing conflict have rendered some prior proposed solutions unachievable.[335] While the Commission alone cannot itself solve the array of the water problems on the Monterey Peninsula, we are required here to consider the pending application by Cal-Am and reach a decision. It is not our place to question whether the CDO is "correct" or otherwise question the bases of the related decisions by the State Water Resources Control Board. It is also not our place to consider whether the adjudicated water amount is "correct," or other similar matters outside our control are optimal. Rather, our duty is to reach a decision on the present amended application considering all the factors required by law and good public policy (including, but not limited to demand, supply, cost, alternatives, environmental impacts, community values, and other relevant factors). The Commission's duty includes considering and deciding what Cal-Am can reasonably do to solve its supply shortfall, and how much ratepayers can reasonably be asked to pay.

Comprehensive Settlement provides a useful starting point for financing and ratemaking provisions that are independently supported by the record of the proceeding.

[335] Other partial solutions have been successful such as strict conservation measures, and implementation of a highly tiered rate structure. However, these partial solutions are not sufficient to meet the water supply needs of the Monterey District once the CDO deadline for Cal-Am to reduce its draws from the Carmel River is implemented in 2021. *See,* D.10-12-016 at 33-34.

In doing so we find that the most viable, feasible, and reasonable option to meeting the water supply shortfall of the Monterey District based on the record before us is approval of the MPWSP at the 6.4 mgd size. In reaching this decision we consider all the circumstances, Cal-Am's legal requirements to serve its customers, the public interest, and the record presented in this proceeding. The MPWSP will satisfy the State Water Resources Control Board CDO requirements and meet the needs of ratepayers at a reasonable cost with the conditions imposed by this decision.

7.1 MPWSP Features, Costs

The record in this proceeding supports issuance of a CPCN to Cal-Am for the MPWSP, alternative 5(a) sized at 6.4 mgd combined with up to 3,500 afy of water purchased from the GWR project.[336] Based on the supply and demand projections discussed above we find that the 6.4 mgd MPWSP is a critical component of the water supply sources necessary to meet both the long and short term needs of Cal-Am customers.

We consider and reject the MPWSP at the 9.6 mgd size. The EIR carefully examined alternatives to the proposed 9.6 mgd plant, and found given a choice between the proposed 9.6 mgd plant and Alternative 5a paired with the GWR Project (as an approved cumulative project), Alternative 5a is the environmentally superior preferred alternative. NOAA, as the lead NEPA agency concurs with this finding as to the preferred alternative. While it is true that implementing Alternative 5a and the GWR Project would result in a larger facility footprint than the proposed project alone, the pairing of Alternative 5a

[336] Authorization to enter into a water purchase agreement for GWR project water, and to construct necessary facilities to transport the GWR water, occurred in D.16-09-021.

and the GWR Project would result in reduced operational energy use and reduced impact on air quality compared to the proposed 9.6 mgd project. Not only would the combination of Alternative 5a and the GWR Project result in reduced effects on groundwater levels influenced by fewer slant wells and less volume of pumping, the MPWSP would provide water to CCSD and the CSIP growers that would benefit the groundwater basin. In addition, Alternative 5a paired with the GWR Project is consistent with the 2016 California Water Action Plan that prefers integrated water supply solutions, the Governor's drought proclamations, the CPUC Water Action Plan goal of promoting water infrastructure investment, and the Ocean Plan and MBNMS Desalination Guidelines.

We find that Cal-Am has met its burden, subject to the conditions set out in this decision, in demonstrating the need for the 6.4 mgd MPWSP. The 6.4 mgd desalination plant combined with the water purchase agreement for GWR water will meet the demands of Cal-Am's customers. The MPWSP will also provide drought-resistant water security for ratepayers in the Monterey District.[337] The MPWSP is the only alternative water source that provides an independent supply not dependent on existing water sources that are already, and likely will continue to be, constrained.[338]

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[337] *See,* discussion above on supply and demand; see *also* Exhibits CA-47 at 2; CA-51 at 17-20; and Cal-Am Opening Brief at 27-33.

[338] Exhibit CA-47 at 2; Cal-Am Opening Brief filed on December 15, 2017 at 27-29; The MPWMD and MRWA support the need for a 6.4 mdg plant, *see*, MPWMD Opening Brief filed December 15, 2017 at 10 and MRWA Opening Brief filed December 15, 2017 at 7. Surfrider Foundation recommends that a 4.8 mgd plant be approved due to the "uncertainty of water supply from the proposed expansion of Pure Water Monterey." *See,* Surfrider Opening Brief filed December 15, 2017 at 23-24. RT Vol. 22 at 3795, D.10-12-016 at 9.

The MPWSP will be one of several water sources utilized by Cal-Am to provide safe, secure, potable water to its customers in the Monterey District. Other water sources combined with the MPWSP include GWR project water, ASR, draws from the Carmel River within its legal water rights, adjudicated rights from the Seaside Basin, and supply from the Sand City Desalination Plant. Nothing in this decision prevents or is intended to create disincentives for Cal-Am to utilize other lower cost sources of water supply such as purchased water from PWM (to the extent available and demonstrated to be cost effective), Carmel river water (within Cal-Am's legal water rights or purchased from other legal water rights holders), other water sellers, and ASR (to the extent available). Cal-Am is strongly encouraged to use the least cost source of water supply to maintain the lowest reasonable rates achievable given the water supply constraints facing the Monterey District. The record supports a finding that the MPWSP is needed, in combination with other water supply sources, to ensure "operational flexibility and reliability" to its customers.[339]

We consider but decline to adopt a plant smaller than 6.4 mgd. 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 (roughly 1,792 afy if the train is running constantly).[340] Operation of a smaller, 4.8 mgd desalination plant could require Cal-Am to find an additional water to meet project needs with little to no savings for ratepayers. However, Cal-Am submitted persuasive evidence that reduction in the size of the desalination plant from 6.4 mgd to 4.8 mgd would increase the annual Operations and Maintenance (O&M) costs by

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[339] Cal-Am Opening Brief at 28.

[340] Exhibit CA-51 at 17, 51, Exhibit RWA-27 at 7. [*see also*, desalination train footnote above]

$340,000.[341] Cal-Am provided evidence showing the calculated one time cost saving of "$1.84 million based upon elimination of one train inside the plant."[342] We find the record supports the calculations presented by Cal-Am and we adopt them as reasonable estimates. The O&M annual cost increases would offset the increased one-time capital costs for the larger 6.4 mgd plant within only a few years.[343] Thus, at this point we cannot identify significant, if any, cost savings to ratepayers associated with construction of a 4.8 mgd size plant compared with the construction of a 6.4 mgd size plant. We also concur with the concerns raised by Cal-Am that any reduction beyond the 6.4 mgd plant could create undue strain on available water supplies and leave no room for any increase in water use within the Monterey District. We therefore find that the desalination plant is appropriately sized at 6.4 mgd.

Some parties assert that Cal-Am should postpone one or more of the slant wells needed to operate the MPWSP at 6.4 mgd. Cal-Am argues that no such postponement should be authorized. We agree with Cal-Am. 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.[344] For example, drilling all seven wells at once reduces overall costs spent on each well (due to economies of scale) while the cost to drill only one well in the future is significantly higher. Drilling all wells at once will

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[341] Exhibit CA-51 at 18, Table 5 (annual O&M costs for 4.8 mgd and 6.4 mgd plant).

[342] Cal-Am Opening brief *citing,* Exhibit CA-51 at 18.

[343] ORA raised concerns regarding the increase in capital cost cap from that of the Comprehensive Settlement, however no party specifically contested the calculations as to overall cost savings presented by Cal-Am through testimony.

[344] Cal-Am Opening Brief at 30; Exhibit CA-51 at 18.

likely result in fewer environmental effects than drilling six wells now and returning in the future to disturb the area to drill the seventh well. Also, delay in drilling just one well increases overall project risks. Risks increase because future conditions and challenges to obtaining necessary permits are unknown but are likely to result in significant costs to ratepayers. Those costs are reasonably avoided by conducting all work at one time.[345]

Cal-Am also presented evidence showing that even if the plant is operated at a reduced (4.8 mgd) level "the raw water flow requirements are about 10.5-12 mgd" and "each slant well is expected to produce approximately 2000 gpm or 2.9 mgd."[346] Therefore "four slant wells are required to produce the raw water requirements and two additional slant wells are needed for back-up and peaking capacity."[347] This means that a total of six (6) wells are needed to operate the 4.8 mgd plant, a reduction of only one well from what is required to operate the 6.4 mgd plant. As noted above, the increased annual O&M cost would offset the cost for elimination of the additional well needed to operate the 6.4 mgd plant in only a few years.[348] We therefore do not find a benefit to ratepayers in deffering the drilling of one well, and therefore will not require postponement in drilling the seventh well.

Several intervenors argue that the MPWSP is not necessary and that other, new water supply options, such as further expansion of the GWR project or sales from Marina Coast Water District, are available to Cal-Am. These parties assert

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[345] *See,* Exhibit CA-51.

[346] Cal-Am Opening Brief at 31.

[347] Cal-Am Opening Brief at 31.

[348] Cal-Am Opening Brief at 31.

that these new alternatives to the MPWSP should be considered prior to issuance of a CPCN for the project before us.[349]

We disagree. Water shortages have been faced, and alternatives have been explored, for decades. This proceeding itself has been before the Commission for more than six (6) years without a decision. Climate change has increased the duration and extent of drought conditions where the traditional water supply sources Cal-Am has relied upon have been significantly reduced and will continue to be further constrained over time.[350] Customers in the Monterey District are entitled to some certainty that a safe, reliable, long-term source of potable water is available at a reasonable cost, satisfying the public convenience and necessity and permitting the Monterey Peninsula to thrive.

A full range of viable and realistic alternatives was examined in the EIR. The parties now proposing new and additional alternatives, such as expansion of the GWR project or Marina Coast Water District sales, have done so too late in the proceeding to allow a reasonable examination.[351] They have done so without providing any assurances that such water will even be available to Cal-Am. They have not convincingly shown that those alternatives are reliable, secure supplies available to Cal-Am customers for the long-term at reasonable prices. Additional delay is not a viable option in the face of the critical need for new

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[349] Marina Coast Water District's Amended Opening Brief and Request for Oral Argument filed on January 3, 2018 at 8, 13-17; Reply Brief of Water Plus filed on January 9, 2018 at 13; Reply Brief of City of Marina filed on January 9, 2018 at 17-21; *See also*, Reply of Monterey Peninsula Water Management District filed on January 9, 2018 at 7-8. *See,* section 4.4.1 above.

[350] RT Vol. 25 at 4485-4486. *See also,* RT Vol. 27 at 4971, Exhibit PTA-2A at 6-7.

[351] Moving forward with issuance of the CPCN, however, does not prevent the parties from continuing settlement discussions, including whether alternative secure water supply sources are available at a lower cost to ratepayers.

water supply along with the strict and severe State Water Resources Control Board CDO deadlines.[352] There are many competing entities seeking water in the Monterey Peninsula. We cannot risk leaving Cal-Am with no viable, realistic alternative source, and we cannot place Cal-Am in jeopardy of missing the milestones set by the State Water Resources Control Board in the CDO.[353]

7.1.1 Cost Cap and Financing Issues

Sixteen (16) parties entered into and submitted the Comprehensive Settlement Agreement on July 31, 2013, which includes cost and financing provisions. The record also contains extensive testimony and briefing from settling parties and other parties on cost and financing issues, including the framework set out in the Comprehensive Settlement. At the same time settling parties agree that numerous developments over the last five (5) years necessitate changes to the agreement. Settling parties disagree on the specific changes.

Cal PA argues that in order to make these changes settlement negotiations must be reopened as any change to the settlement agreement may impact material terms. Cal-Am however, argues that the terms set out in the Comprehensive Settlement remain valid, that the MPWSP needs to stay on track,

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[352] Supplemental or short-term alternative water supply options may be needed if there are delays in MPWSP construction. Consideration of any such options is not within the scope of this proceeding.

[353] *See,* Cal-Am Opening Brief at 27. *See also,* SWRCB Order WR 2016-0016, extending the deadline for Cal-Am to end all unlawful diversions from the Carmel River from December 31, 2016 to December 31, 2021. Order WR 2016-0016 includes intermediate milestones for developing the Cal-Am portions of the GWR project and for developing the MPWSP desalination facility, with the intent of having both projects operational by the end of 2021. To incentivize timely progress on the projects and to more gradually terminate Cal-Am's unlawful Carmel River diversions by the compliance deadline in the event timely progress on the projects is not made, each failure to achieve a milestone will result in a reduction of Cal-Am's effective diversion limit by up to 1,000 afy.

and that any changes are minor modifications that do not invalidate the overall Comprehensive Settlement. We agree with Cal PA that we cannot adopt the Comprehensive Settlement as submitted on July 31, 2013, given the changes needed due to the passage of time, adoption of D.16-09-027, and the current circumstances, as discussed below.

In declining to authorize the Comprehensive Settlement, we do however note that the parties have submitted significant testimony that addresses the major cost, financing, O&M, ratemaking and contingency provisions set forth in the Comprehensive Settlement. We therefore have a solid record to adopt a framework and structure that ensures adequate financing provisions will be in place for the MPWSP while protecting ratepayers from excessive and/or unreasonable costs. We do so below by adopting a cost cap, O&M, financing provisions, ratemaking procedures, and contingency provisions consistent with the basic structure and framework set out in the Comprehensive Settlement.[354] In addition to this framework we also, consistent with the record, adopt provision for apportionment of risk mechanics, and several specific conditions on the granting of the CPCN as set out below. We also confirm that Cal-Am will need to submit a new application requesting issuance of the financing order once the financing structure is in place consistent with this decision.[355]

7.1.2 Cost Cap

Cal-Am argues that the cost cap provisions in the Comprehensive Settlement provide a framework that should be adopted by the Commission. The framework authorizes a cost cap amount for the desalination facility, with an

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[354] *See*, Comprehensive Settlement at Sections 8,10,11,12,13, 14 and 15.

[355] *See*, Comprehensive Settlement Section 11.4(i).

additional amount that could be authorized through submission of a Tier 2 AL. The framework provides that if the cost of the facility exceeds the additional amount authorized for submission of a Tier 2 advice letter then Cal-Am would need to file a petition for modification of the Commission's decision. Cal-Am argues that these amounts should be adjusted upward but the differentials are still appropriate and should be adopted by the Commission within the same framework set out in the Comprehensive Settlement.[356]

Cal-Am also asserts that it has submitted updates to the cost estimates in its December 15, 2015 Supplemental Testimony of Richard Svindland[357] and the September 27, 2017 Direct Testimony of Christopher Cook.[358] The Svindland Supplemental testimony included results of competitive bids for major components of the MPWSP. The information submitted by Cal-Am shows an increase in cost for the 6.4 mgd by roughly 9%. Cal-Am's witness Cook testified to the following updated cost projections for the MPWSP:[359]

- Reduction in cost for the Monterey Pipeline and Monterey Pump Station portion of the project that was approved in D.16-09-021 with a budget of $50.3 million and is currently under construction.
- Design refinements also resulted in cost reductions, such as elimination of the Terminal Reservoir with 3.5 million gallons of storage capacity. This resulted in $8.3 million construction cost savings, and for the 6.4 mgd plant there is a reduction from eight (8) to seven (7) wells, which provides a $2.7 million construction savings.

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[356] *See,* Cal-Am Opening Brief at 34.

[357] *See,* Exhibit CA-40.

[358] *See,* Exhibit CA-49.

[359] *See,* Exhibit CA-49.

- The anticipated construction start date delay (of more than 21 months) increased project escalation and implementation costs. Cal-Am asserts the primary cause for this delay was the delay in release of the FEIR/EIS.

Based on the changes set out in witness Cook's testimony, Cal-Am provided updated cost estimates for the MPWSP.[360] The updated cost cap proposed by Cal-Am for the desalination facilities is $239.2 million for the 6.4 mgd. Cal-Am proposes to maintain the cost cap (subject to possible Tier 2 advice letter or Petition for Modification (PFM)[361] adjustments) with the same differential as set forth in the Comprehensive Settlement.[362]

The Comprehensive Settlement also included costs caps for the Cal-Am-Only Facilities in the amount of $71.01 million, with additional amounts that could be sought for recovery by Cal-Am through a Tier 2 advice letter, and anything beyond this amount could only be sought for recovery by Cal-Am through a PTM. D.16-09-021 authorized $50.3 million of the Cal-Am-Only Facilities. Cal-Am estimates the cost of $39.9 million[363] remaining to be recovered

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[360] *See,* Exhibit CA-49 at 5; *see also*, Cal-Am Opening Brief, Table 2: Updated Costs Estimates for MPWSP at 36.

[361] The Comprehensive Settlement and Cal-Am briefs refer to Petition to Modify. Commission Rule 16.4 uses the term Petition for Modification (PFM). Therefore this decision, consistent with Commission rules, refers to PFM.

[362] *See,* Cal-Am Opening Brief at 36.

[363] The $39.9 includes the increase in cost, primarily due to escalation, from the initial estimate submitted in 2013. The total cost estimated for the 6.4 mgd desalination plant is $239.3 million plus $39.9 million for the remaining Cal-Am Only Facilities. *See,* Exhibit CA-51. *See also,* Exhibit CA-49, Attachment 1, Table 7 (supporting the estimated $39.9 million for the remaining Cal-Am Only Facilities).

in this phase of the proceeding. This includes escalation and other estimated cost increases from the 2013 estimates in the Comprehensive Settlement.[364]

Cal PA counters that Cal-Am has failed to meet its burden of proof for the establishment of the increased cost caps proposed in 2017. Cal PA argues that Cal-Am has not presented "any direct evidence supporting the updated cost estimates proposed…."[365] Cal PA also contests Cal-Am's proposed escalation rate. Cal PA argues that Cal-Am did not include any workpapers or substantiation for the proposed increased cost caps, including all cost updates provided after negotiation of the Comprehensive Settlement.[366]

On specific elements of its cost estimate, Cal-Am uses an escalation allowance of 3.5% per year for the desalination plant and 2% for all other project components (except the ASR System). Cal-Am used the Engineering News-Record (ENR) escalation percentages in its 2015 testimony update.[367] Cal PA argues that the escalation has not been updated since 2015, and that no workpapers were submitted in 2015. Cal PA also argues that other sources "all show significantly lower escalation rates for the years in question."[368]

Cal PA states that with the increase in cost estimates there is also a decrease in estimated water delivered to customers. Cal-Am estimates that the water delivered to customers if a 6.4 mgd desalination plant is built decreases

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[364] *See,* Cal-Am Opening Brief at 37. *See also*, Exhibit CA-49 at Attachment 1, Table 7.

[365] ORA Opening Brief at 13.

[366] ORA Opening Brief at 13, *citing,* CA-49, Attachment 1 at 3. *See,* CA-49 at 3-8 and Attachment 1 at 3.

[367] Exhibit CA-35, RT Vol. 25 at 4524.

[368] *See,* ORA Opening Brief at 14 *citing,* DRA-21, DRA-22, and DRA-23.

22.5% from its 2013 estimates.[369] This decrease in delivered water is based on 1) increased estimates for return water percentages (based on test well performance); and 2) decreased estimates for plant utilization (based on decreased demand estimates). Cal PA asserts that if Cal-Am's estimates are overstated, then the amount delivered to ratepayers will be even less without significant reduction in cost. Cal PA also has concerns that the return water obligation could be higher than anticipated, which would further decrease the amount of water available to ratepayers without a significant reduction in cost.[370]

Cal-Am agrees that the cost caps are a substantial and fundamental part of the Comprehensive Settlement, but it believes the general framework is still valid and continues to assert that the increased cost cap is a "minor modification."[371] In authorizing the CPCN we find that Cal-Am's estimates are the most credible and reasonable. The estimates include several cost reductions and a realistic escalation rate based on industry recognized tools (i.e., ENR). The total increased cost cap of $279.1 million proposed by Cal-Am, includes the remaining amount for Cal-Am-Only Facilities ($239.2 million for the desalination plant at 6.4 mgd and the $39.9 million for the remaining Cal-Am Only Facilities). In adopting this cap, we eliminate the option to use a Tier 2 advice letter for an incremental amount that the Comprehensive Settlement would have allowed and require that any recovery amount in rates beyond the $279.1 million[372] will require Cal-Am to

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[369] ORA Opening Brief *citing,* DRA-20 at 5-7.

[370] We address this concern, as set out above, by placing the burden on Cal-Am to meet such obligation to the extent that it is higher than that estimated in the Return Water Settlement.

[371] *See,* Cal-Am Opening Brief.

[372] This amount excludes the $50.3 million authorized by the Commission in D.16-09-021. The combined cost cap, including the $50.3 million authorized in D.16-09-021 is $329 million.

file a PFM. We find the cost caps proposed by Cal-Am reasonable, however the proposed cap on costs is an increase to that previously agreed upon by the parties to the Comprehensive Settlement with a reduction in the amount of water to be delivered to customers. Therefore, we find any amounts requested beyond the cap should only be allowed through the more stringent Commission review and approval process of a PFM, not an advice letter.

We also find that the ratepayer protections advocated by Cal PA are in the public interest and will ensure that only reasonable and prudent amounts are included in rates. We agree that it is important for the Commission to assess whether the MPWSP is used and useful as well as ensure that the water produced is delivered for use by Cal-Am customers as opposed to a disproportionate portion of the water going to meet the return water obligation. Therefore, we require Cal-Am to track all MPWSP 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 consistent with the framework set forth in the Comprehensive Settlement. This later reasonableness review in the next general rate case following the MPWSP going into operation will include an assessment of the facilities used and usefulness as well as to what extent the MPWSP is able to produce water for use by Cal-Am customers, as opposed to meeting the return water obligation set forth in the Return Water Settlement consistent with the additional restrictions imposed by this decision.

Cal-Am will be required to make quarterly reports to ensure ongoing operations meet the needs of ratepayers as prudent and reasonable costs.[373] The conditions and reporting requirements are discussed in more detail below.

7.1.3 Financing

Cal-Am in its Opening Brief[374] identifies four (4) sources of financing for the MPWSP. These proposed sources are: 1) Construction Funding Charge;[375] 2) SRF debt;[376] 3) Public Agency Contribution (Securitized Debt); and 4) Equity.[377] We agree with Cal-Am that the "formulaic approach to financing" set out in the Comprehensive Settlement provides implementation flexibility that can be adopted by the Commission regardless of costs, size, grants, or other financing elements needed to move the MPWSP forward.[378]

Cal-Am continues to support the financing framework set out in the Comprehensive Settlement. It asserts no changes are needed to Section 11 Securitization of the Comprehensive Settlement. Cal-Am urges the Commission to timely file and approve the financing order for the securitized bonds as soon as possible after the CPCN is approved.[379] Cal-Am states:

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[373] *See,* Administrative Law Judge's Ruling on Pending Motions and Other Subjects, Feb. 13, 2013 (Requires quarter reporting of compliance and progress.).

[374] *See*, Cal-Am Opening Brief at 38.

[375] The Comprehensive Settlement refers to this source as "Surcharge 2." *See,* Comprehensive Settlement at Section 12.

[376] The Comprehensive Settlement discusses SRF Financing at Section 13.

[377] The Comprehensive Settlement discusses both the Public Agency Contribution and Equity in Section 11 Securitization.

[378] Cal-Am Opening Brief at 38-40.

[379] Section 11 Securitization of the Comprehensive Settlement sets out the framework for securitization, issuance of bonds, and process for issuance of the financing order by the Commission.

> The MPWSP model assumed timing of the securitization in December 2020 to: 1) coincide with the cash flow needs associated with construction; 2) minimize the period between securitized bond financing and completion of the desalination plant, and 3) minimize impact on customer bills. The current modeling assumes completion of the MPWSP construction funding charge at the time the revenue requirement and securitized bond financing roll into rates with completion of the desalination plant. One benefit of accelerating the securitization would be reduction in Allowance for Funds Used During Construction (AFUDC).[380]

Cal-Am recommends that securitized bond financing occur when the cash is needed for construction. Cal-Am also continues to support the contingency provisions set out in the Comprehensive Settlement if one or more of the financing components authorized is unavailable.[381] Cal-Am has submitted testimony into the record that supports the framework set forth in the Comprehensive Settlement.

Monterey Peninsula Water Management District supports a public contribution to the project financing consistent with the "securitization" provisions set forth in the Comprehensive Settlement to reduce the cost of the desalination plant.[382] Monterey Peninsula Water Management District also "encourages the Commission to issue a Financing Order to allow for the MPWSP to be funded through securitization consistent with the framework in the Comprehensive Settlement.[383] Cal-Am is to follow the framework set out in

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[380] Cal-Am Opening Brief at 39.

[381] *See,* Section 11.6(a) and 11.6(b); *see also*, Exhibits CA-53 and CA-54.

[382] Exhibit WD-15 at 18.

[383] Exhibit WD-15 at 18 and Monterey Peninsula Water Management District Opening Brief at 12.

Section 11.4 of the Comprehensive Settlement to implement the securitization provisions. The implementation includes Cal-Am establishing an SPE that will issue debt that will be purchased by the public agency, which in turn will issue financing. The public agency will issue the financing through "Water Rate Relief Bonds" and lend the proceeds to the SPE. Cal-Am will sell to the SPE property rights consisting of the right to impose collect and adjust from time-to-time a non-bypassable charge received by the SPE and remitted to the public agency for payment of principal and interest on the Water Rate Relief Bonds. Section 11.4(i) requires Cal-Am to file an application with the Commission for the financing order required by the legislation after the public agency structures the securitization in a manner that will permit Cal-Am to avoid significant cash management costs pursuant to Section 11.4(h). We find this structure to be reasonable and independently supported by the record of the proceeding, and therefore adopt it as a requirement to the financing provisions references as securitization by the parties in the Comprehensive Settlement, testimony and briefing for this phase of the proceeding.

Cal PA opposes Cal-Am's modifications to what the Comprehensive Settlement refers to as Surcharge 2 and what Cal-Am in its briefs refers to as a Construction Funding Charge. The recommended changes are based on the reduced construction costs that are a result of the Commission's approval of a portion (roughly $50 million) of the cost for Cal-Am-Only Facilities in D.16-09-021. Cal PA is concerned that ratepayer protection provisions negotiated in the Comprehensive Settlement will be eliminated with the proposed changes as Cal-Am will be collecting funds from customers for project costs in advance of completing the desalination project. Cal PA is correct that ratepayer protections are important. Those protections are provided in both what we adopted for

approval of the $50.3 million in D.16-09-021[384] and what we adopt in the framework and structure for project financing here.

Cal PA recommends that if the Commission does authorize the collection of a Construction Funding Charge in advance of completing the MPWSP that such costs should be tracked separately in a memorandum account (not netted against costs or other sources of financing) independent of any other costs or surcharges. Cal PA asserts that if the MPWSP is not completed the funds collected under the Construction Funding Charge should be returned to ratepayers.[385] Cal-Am does not disagree with Cal PA's recommendation that if the Construction Funding Charge is authorized it should be tracked separately in a memorandum account, independent of other charges. Cal-Am argues that the framework in the Comprehensive Settlement, that it supports, requires such tracking. Cal-Am also agrees that such costs should be reviewed for reasonableness and prudency, and that it bears the burden of proof in demonstrating the reasonableness and prudency of MPWSP costs.[386] We agree with Cal PA and Cal-Am and adopt these provisions, including return of funds collected from the Construction Funding Charge if the MPWSP is not built, as explained more below.

Cal-Am argues however that there is no need for a specific or "special or more burdensome" review process beyond standard Commission ratemaking processes. We generally agree. The review process we adopt is essentially consistent with normal review of plant costs before they are included in ratebase.

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[384] *See,* D. 16-09-021 at 40-42 and Ordering Paragraphs 6, 7, and 8.

[385] *See,* ORA Opening Brief at 16-18.

[386] *See*, Cal-Am Closing Brief at 43-45.

MPWSP costs, however, will be a particularly significant addition to Cal-Am's ratebase. As a result we adopt limited and specific additional ratepayer protections below.

No party contests the overall framework agreed to by the parties to the Comprehensive Settlement.[387] We therefore adopt the structure set out in the Comprehensive Settlement, with additional ratepayer protections discussed below to ensure all cost recovered by ratepayers are reasonable and prudent.

The structure and framework of the financing provisions set forth in the Comprehensive Settlement are reasonable for the following reasons. We agree with Cal-Am that this approach provides flexibility in implementation regardless of the final costs, size, grants, or other financial elements that may be utilized for completion of the MPWSP. Financing elements specifically authorized in this decision include: 1) the construction funding charge (also referred to as "Surcharge 2") with specific requirements as to review for reasonableness and prudency as set forth below; 2) SRF debt; 3) public agency contribution or securitized debt (referred to as Securitization here and in the Comprehensive Settlement); and 4) equity. Additionally, Cal-Am commits to itself obtaining approximately $20 million[388] of short-term debt that is not part of the permanent

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[387] *See,* Marina Coast Water District Amended Opening Brief filed January 3, 2018 at 20. *See also,* City of Marina Opening Brief filed December 15, 2017 at 35. Neither party provides any specific opposition to the framework set out in the Comprehensive Settlement, but each makes an objection as to the approval of the project generally.

[388] Cal-Am committed in the Comprehensive Settlement to funding $20 million of the initial costs for the MPWSP (including the then potential GWR project which would supply 3,500 afy of water supply) in short-term debt. $7.4 million of this short-term debt was used for the facilities approved in D.16-09-027. This leaves $12.6 million in short-term debt available for the remaining MPWSP facilities until the facilities in D.16-09-027 are completed, in service and in rates.

financing and is to be used during construction.[389] This decision accepts the framework set forth in the Comprehensive Settlement found at Appendix F to this decision for Sections 6, 7, 8, 10, 11, 12, 13, 14, and 15[390] with the revised cost caps (and elimination of the Tier 2 AL as to the cost cap) discussed above, Cal-AM's approximately $20 million in short-term debt financing, and the additional ratepayer protection provisions set forth below.

7.2 Ratemaking

No party contests the ratemaking provisions of the Comprehensive Settlement. In order to ensure that reasonable rates are recovered, and ratepayer protections are in place, we address here the process for determining the revenue requirement for the rate base portion of the MPWSP.

We agree with Cal-Am that the Framework set out in the Comprehensive Settlement[391] for ratemaking at Sections 12 and 14 provide a general structure and key elements for rate recovery of the rate base portion of the MPWSP.[392] However, we also recognize that modifications and updates to certain provisions of the Comprehensive Settlement are needed to implement the elements of these sections. Such modifications and updates are needed to address D.16-09-021 (where the Commission authorized the water purchase agreement that allows

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[389] *See,* Exhibits CA-53 at 16-17, and CA-54 Attachments 1-4.

[390] Section 16 of the Comprehensive Settlement creates a Governance Committee between the MPRWA, MPWMD, the County of Monterey, and Cal-Am. See above, Comprehensive Settlement Section 16 and Appendix 1 thereto. We do not take a position on Cal-Am's participation in the Governance Committee to the extent that it continues to operate. Nothing in this decision prevents Cal-Am from continued participation in the Governance Committee.

[391] *See, e.g.,* Exhibits CA-53 at 8; CA-51 at 27; CA-40 at Attachment 1, Table 3; CA-49 at 3-4 and Attachment 1.

[392] *See,* Appendix F, Comprehensive Settlement Section 14.

Cal-Am to purchase GWR water up to 3,500 afy, and construction of the Monterey Pipeline and Pump Station at a cost of up to $50.3 million), as well as to reflect that the plant size authorized is the 6.4 mgd plant.[393]

Modifications to the framework set out at Sections 6, 7, 8, and 10 through 15 of the Comprehensive Settlement are needed to address the fact that the Commission has already adopted the Phase 2 decision (D.16-09-21), and to account for the increase in the caps authorized by this decision, as well as additional conditions set forth below concerning apportionment of risk and ratepayer protection. Cal-Am is directed to meet and confer with Commission Water Division staff and parties to this proceeding to prepare a Tier 3 advice letter that provides for specific adjustments to the framework set out in Sections 6, 7, 8, and 10 through 15 of the Comprehensive Settlement, as well as provides specific detail to implement such provisions consistent with this decision, and that address the authorizations set out D.16-09-021. The Tier 3 advice letter shall be submitted no later than January 1, 2019.

7.3 Apportionment of Risk

Several parties have raised concerns as to the use of slant wells, asserting that this technology is evolving or experimental.[394] Cal-Am asserts otherwise, claiming that the technology is proven and is the best available technology to meet the needs of the project.[395]

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[393] *See,* Appendix F, Comprehensive Settlement Section 7; *see also*, Cal-Opening Brief at 65-68 and Cal-Am Closing Brief at 67-69.

[394] *E.g.*, PWN Opening Brief at 2-10; Water Plus Opening Brief at 9.

[395] Cal-Am Opening Brief at 4044; Cal-Am Reply Brief at 45-46; RT 3468: 17-21; RT 3469:28 to 3472:17: RT 3469:19-27; HWG Final Report at 14.

Despite evidence from the test slant well, it is not possible to know with a high degree of certainty whether the technology will operate as expected for the estimated 20 to 30 year life of the project. No party presented evidence of successful long-term use of slant wells in an existing desalination application. Therefore, without further assurances that the slant well technology will meet the needs of the project we find it appropriate to apportion risk so that ratepayers will not necessarily bear the full cost of the MPWSP in the event that the slant wells fail or cause the plant to fail or under perform.

We agree with Cal PA that if Cal-Am manages the project successfully and the facility becomes operational within appropriate timeframes Cal-Am will be authorized by the Commission to significantly increase Cal-Am's ratebase funded by the Monterey District. However, if Cal-Am fails to properly manage the risks associated with the MPWSP the costs associated with the MPWSP should be borne by Cal-Am shareholders not ratepayers. This is not inconsistent with normal regulatory treatment of cost recovery being dependent upon a utility prudently managing construction, operation, and risks.

Potential risks identified by Cal PA include: 1) amount of return water percentage required to meet obligations under the Return Water Settlement; 2) construction cost overruns; 3) costs related to legal action regarding the groundwater basin; 4) high operation and maintenance (O&M) costs, 5) operational issues, and 6) other circumstances that result in an abandoned MPWSP.

We have addressed the potential risks associated with an increased percentage in the return water obligation by requiring Cal-Am to provide ongoing reporting as to the obligation. Further, potential risks are addressed by a mechanism to ensure that shareholders not ratepayers pay any costs associated

with any increase in the return water obligation beyond the estimated percentage of water not included as part of the ocean water percentage (OWP) set out in the HWG Report included as Appendix E-3 to the FEIR/EIS.

Once the plant is constructed and online the reasonable costs may be included in ratebase (when the MPWSP is used and useful). The MPWSP is subject to being removed from rates if it is no longer used and useful, if it operates significantly below capacity needed to meet customer need where no lower cost water supply is available, or if the price for delivered water far exceeds the anticipated costs presented in this proceeding. Cal-Am is reminded that—just as is true of all plants for any utility—plant failure may result in the plant being removed completely from ratebase. Complete (100%) failure at any time (one month, one year, or ten years into operation) might result, upon review of the specific circumstances, in 100% of the remaining undepreciated asset being removed from rates.

Partial failure of the slant wells (i.e., underperformance relative to what Cal-Am has asserted in the proceeding[396] and the performance upon which this CPCN is granted) may result in some cost and ratebase disallowance if and when the partial failure occurs.[397] The disallowance will be determined based on

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[396] Cal-Am is expected to operate the MPWSP in a reasonable and prudent manner which includes adoption of practices that are justified on operational or cost efficiency grounds. Cal-Am is also expected to use its best judgement and expertise to determine how best to operate the MPWSP to meet the needs of its customers in the most cost-effective manner. Nothing in this decision prevents Cal-Am from determining the correct production and capacity levels based on the information known to it at the time. However, Cal-Am is to make such determinations as a prudent manager, and the Commission, consistent with its ongoing jurisdiction and regulatory responsibilities, will review and determine whether such actions taken by Cal-Am are reasonable and prudent.

[397] Exhibit CA-51 at 19.

actual results (e.g., if the slant wells produce at 70% of the amount upon which the CPCN was granted[398] – then 30% of the cost and 30% of the ratebase could be subject to potential disallowance based on actual operations).[399] In both the complete and partial failure cases the formula to determine any disallowance will be based on actual operations and results. In order to ensure that ratepayers do not bear a disproportionate burden of the cost for the MPWSP if it fails or has partial failure we will require specific conditions as part of our issuance of the CPCN.

7.4 Conditions Imposed

Due to the unique water supply circumstances on the Monterey Peninsula, Cal-Am and its customers have been challenged with water supply problems for decades. Cal-Am's proposed solution before us now is the MPWSP. It is our responsibility to grant authority to Cal-Am to develop and serve needed supply when it is reasonable, and to provide an opportunity for the utility to earn a reasonable rate of return on its investment. We do that in this decision. At the same time, it is our responsibility to only allow ratepayers to be charged just and reasonable rates. We also do that in this decision by placing important but limited conditions on the award of the CPCN. While there may be different

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[398] Each slant well is expected to produce roughly 2000 gpm or 2.9 mgd. *See,* Cal-Am Opening Brief at 31 and Exhibit CA-51 at 19.

[399] This does not mean that the facility must operate at any given capacity at any given time so long as Cal-Am is acting as a prudent operator in determining the optimal production and capacity levels based on the information known to it at the time. However, if the facility cannot operate at the optimal production and capacity levels due to technical or mechanical failures the Commission may take such failures into account as to whether some or all of the facility should be removed from rates.

views on the proper balance, we find an equitable and reasonable balance in this decision.

This decision grants Cal-Am's request for a CPCN to construct a 6.4 mgd desalination plant and related facilities (the MPWSP). The grant of the CPCN includes several conditions to ensure an appropriate apportionment of risk between shareholders and ratepayers for the cost of the MPWSP. The conditions set out below are in addition to any other conditions or requirements set out and ordered by adopting the MMRP, the Return Water Settlement, and Brine Discharge Settlement.

First, we require Cal-Am to submit regular quarterly reports. The quarterly reports will begin on January 1, 2019.[400] Cal-Am shall submit the reports to the Commission's Director of the Water Division, the Director of the Energy Division, and Cal PA . The quarterly reports will also be published on Cal-Am's website. The quarterly reports shall contain current information on the MPWSP including, but not necessarily limited to, expenditures, construction progress, and milestones. The quarterly reports will also include amounts collected for the Construction Funding Charge (or Surcharge 2), specific progress regarding slant well construction, and any information regarding slant well monitoring data, and monthly estimates as to return water obligation, and actual return water obligation calculated. Cal-Am shall include all relevant information requested by the Directors of either Water Division or Energy Division. The reports are no longer required six months after the MPWSP becomes operational and is placed in ratebase. Cal-Am is to meet with Commission Water Division

[400] *See also,* Administrative Law Judge's Ruling on Pending Motions and Other Subjects, Feb. 13, 2013 (Requires quarter reporting of compliance and progress.).

and Energy Division staff to determine a format and due dates for submission of the quarterly reports within 30 days from the date this decision is adopted.

Second, as discussed above, in approving the Return Water Settlement, we are doing so with the understanding that Cal-Am's Annual Return Water Obligation deliveries will be within the range estimated and will be calculated and based on the methodology set forth in the FEIR/EIS Section 2.c, Appendix E-3 to the FEIR/EIS (HWG Report) and Appendix D of the Return Water Settlement.[401] The HWG Hydrologic Investigation Technical Report (HWG Report), dated October 2, 2017, provides the following major conclusions of the OWP analytical modeling:

- The primary conclusion of this study is that the long-term equilibrium OWP is estimated to range from 96-99 percent.
- The short-term OWP is estimated to range from 87-93% for one year and 92-97% for two years.
- Based on the scenarios evaluated, the continuous pumping time to reach 90% OWP is estimated to range from about .3 to 1.7 years.
- Based on the scenarios evaluated, the continuous pumping time to reach 95% OWP is estimated to range from about .5 to 3.1 years.[402]

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[401] *See,* FEIR/EIS at 2-37 which states: "As discussed in Section 4.4, Groundwater Resources, the HWG analysis estimates that the long term amount of fresh water within the source water (stabilizing over the first several years of project operations) would be between 1 and 4 percent." Section 4.4 of the FEIR/EIS at 4.4-56 states that "…results of the OWP methodology estimated that long-term equilibrium OWP would range between 96-99 percent. The OWP is estimated to range from 87-93 percent after one year of pumping and from 92-97 after two years of pumping."

[402] *See*, HWG Hydrologic Investigation Technical Report at 66-67 dated October 2, 2017, which was filed on October 12, 2017 as a compliance filing in this proceeding by Salinas Valley Water Coalition and Cal-Am; also found as Appendix E3 to the FEIR/EIS.

The cost of the MPWSP desalinated water is relatively expensive and becomes more so the greater the return water obligation. The authorized plant is reasonable as long as the desalination plant does not become a vehicle for unreasonable amounts of return water at increasing costs to Cal-Am ratepayers. Our review of the Hydro Working Group analysis as reported in the FEIR/EIS provides a basis for the return water obligation. The estimates provided in the HWG analysis set forth a basis for determining a reasonable amount for the return water obligation. These estimates demonstrate the obligation should decrease over time.

We recognize the return water amount may vary between years due to several factors with an overall downward trend. We therefore adopt benchmarks for assessing average return water amounts that may be charged to Cal-Am ratepayers over three time intervals. The Commission may also at any time look at the reasonableness of the return water amount and costs to ratepayers as necessary.

Prior to submitting the Tier 2 advice letters to implement the tariffs in Appendix E of the Return Water Settlement, Cal-Am is to meet with Commission Water Division Staff and parties to this proceeding to ensure that the tariffs and Tier 2 advice letters submitted, consistent with the Return Water Settlement, include conditions that limit liability to ratepayers.[403] The tariffs must include conditions that clearly recognize Cal-Am bears the risk and will cover all costs associated with any non-compliance with the Return Water Settlement deliveries

[403] We do not require that the meeting with staff and parties result in unanimous agreement. Rather, we only require that Cal-Am invite staff and parties to such meeting, and discuss and consider all reasonable options at that meeting.

or any portion of the return water obligation that is found by the Commission to be unreasonable.

In assessing the benchmark for what is reasonable we initially presume that the costs for amounts equal to or less than the following averages are reasonable for recovery from ratepayers: an average of six percent (6%) for all years 0-7 combined; four percent (4%) for all years 8-15 combined; or 1.5% annually from year 16 forward. Any return water obligation above these amounts is presumed unreasonable and ratepayers should not bear any additional costs for meeting the return obligation above these amounts. The Commission may also examine the reasonableness of the return water amount and costs to ratepayers at other times as necessary. Cal-Am may provide information to rebut such presumption keeping in mind that the Commission will protect ratepayers against an unreasonable return water amount and related costs charged to ratepayers, and nothing in our adoption of MPWSP Alternative 5(a) negates that commitment.

Third, Cal-Am will record and track separately all collections and expenditures of the Construction Funding Charge (or Surcharge 2) in a memorandum account. If the MPWSP does not go online or become used or useful for ratepayers the unreasonable amount of funds collected shall be returned to ratepayers. Cal-Am shall include in its quarterly reports the amounts collected and expended as of the date of the quarterly report, any other information that Water Division reasonably requires, and any other further information reasonably necessary for a full and complete reporting to the Commission. In anticipation of the MPWSP coming online Cal-Am is to consult with Commission Water Division Staff and parties regarding the Tier 2 advice letter it will submit for the first-year revenue requirement consistent with this

decision and the framework set forth in the Comprehensive Settlement. If the MPWSP does not become operational for any reason after collection of the Construction Funding Charge begins, Cal-Am is to submit a Tier 2 advice letter setting forth the process to return funds collected under this charge within 60 days of filing notice with the Commission that the MPWSP will not become operational.[404]

Fourth, Cal-Am shall track all capital costs for the MPWSP in a memorandum account. All financing, expenditures, schedule, and progress with construction for the MPWSP shall be included in Cal-Am's quarterly reports, along with any information that Commission Water Division staff reasonably requires, and any other information reasonably necessary for a full and complete reporting to the Commission. If the project is not finished, or does not go online, it will not be placed in ratebase. If the project fails at a later date it will be removed from ratebase consistent with the discussion in the Risk Apportionment section set out above.

Fifth, Cal-Am is to meet and confer with Commission Water Division Staff and parties prior to preparing the Tier 3 advice letter that provides for specific adjustments to the framework set out in Sections 6, 7, 8, and 10-15 of the Comprehensive Settlement. The Tier 3 advice letter is to include specific details to implement such provisions consistent with this decision. The Tier 3 advice letter is to be filed no later than January 1, 2018.

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[404] To the extent Cal-Am determines the MPWSP is not viable for any reason it is to immediately file a notice to this effect with the Commission.

Finally, if the MPWSP goes offline for any reason other than routine maintenance or operates below a reasonable capacity for four (4) weeks or more Cal-Am is to notify and confer with Commission Water Division staff to access the seriousness of the outage, whether the MPWSP will be offline for an extended period of time, and to what extent the MPWSP or a portion of its costs should be removed from rates. The notification and meeting should occur within one week of the commencement of the outage or subpar performance. Within thirty days of such notification Cal-Am is to provide a report to Commission Water Division staff setting forth the information provided in the meeting with staff, documentation as to the status of the plant operations and a timeline for bringing the plant back online. The report shall be provided to Water Division staff, Energy Division staff, and Cal PA no later than the beginning of the fifth week of outage or subpar performance. The report is to also include the estimated amount that loss of operation is costing ratepayers and a mechanism to refund/credit ratepayers for such amount.

For a more extended outage, if the MPWSP is offline, or slant wells fail to produce at a level that is cost effective for ratepayers for two (2) or more months, Cal-Am is to immediately notify the Commission no later than the beginning of the ninth week of outage or subpar performance. The notification shall include Cal-Am's proposed process to have the plant back online with a timeline, or to remove the MPWSP from rates and determine an appropriate mechanism to reimburse ratepayers for any recovery of costs for the time the MPWSP is not used and useful. The reasonableness of the costs for the MPWSP shall be assessed in the first general rate case following the plant becoming operational. As appropriate, the Commission shall require Cal-Am to file a separate application to determine reasonableness of costs for the MPWSP, or may elect to

issue an order instituting investigation to assess costs, and/or whether Cal-Am has managed the project prudently.

For each advice letter submitted (consistent with the framework set out in the Comprehensive Settlement and set forth above) Cal-Am must make a showing that the funds spent on the MPWSP are reasonable. Each reasonableness showing must demonstrate that the MPWSP financing is at the lowest cost and most beneficial for ratepayers; and that construction is progressing in a timely manner with the cost caps authorized in this decision. As to the authorized advice letter to seek recovery of the MPWSP for the first year (prior to the first GRC after MPWSP is operational) there are three costs factors considered: 1) costs are for facilities that are used and useful; 2) costs must be reasonable and within the cost cap set forth in this decision; and 3) costs are for facilities that operate at an appropriate capacity to minimize costs for ratepayers.

The Tier 2 advice letters will become effective upon staff approval. Staff are to follow the guidance set out below in its consideration of the Tier 2 advice letters. Cal-Am must include all reasonable information necessary to support the requested relief in each advice letter. The information must include a showing that the three cost factors addressed above are met. Staff shall only approve the advice letters if the facilities are used and useful, and the costs are reasonable and within the cost caps set forth in this decision. The Tier 3 advice letter will become effective upon approval by the Commission.

7.5 Section 1002 Factors[405]

"The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors: " 1) community values; 2) recreational and park areas; 3) historical and aesthetic values; and 4) influence on environment.[406] These factors are considered separately from the CEQA review process; however, the Commission may rely on information provided through the CEQA process in consideration of these four factors.[407] Based on the substantial record set forth in this proceeding, including the FEIR,

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[405] Pub. Util. Code Section 1002 states:

(a) The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

(1) Community values.
(2) Recreational and park areas.
(3) Historical and aesthetic values.
(4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (Chapter 55 (commencing with Section 4321) of Title 42 of the United States Code) or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.

(b) With respect to any thermal powerplant or electrical transmission line for which a certificate is required pursuant to the provisions of Division 15 (commencing with Section 25000) of the Public Resources Code, no certificate of public convenience and necessity shall be granted pursuant to Section 1001 without such other certificate having been obtained first, and the decision granting such other certificate shall be conclusive as to all matters determined thereby and shall take the place of the requirement for consideration by the commission of the four factors specified in subdivision (a) of this section.

(Added by Stats. 1981, Ch. 573, Sec. 3.)

[406] *Id.*

[407] D.08-02-035; D.08-12-058; D.09-12-044; D.10-07-043; D.10-12-025; D.09-12-044.

comments submitted on the EIR, and briefing we find that the MPWSP meets the criteria of Section 1002.

7.5.1 Community Values

As stated above we have heard from the community that a resolution to the water constraints issues on the Monterey Peninsula is needed. Public officials have testified on behalf of the agencies and constituents that they represent that this project is needed. The City of Marina and Marina Coast Water District argue the project does not support community values. However, the majority of the arguments presented by these two parties concern arguments over water resources as opposed to any other type of community values, yet the FEIR/EIS shows that the project would not deplete groundwater supplies that would otherwise be available to users in the Salinas Valley Groundwater Basin, the project would not negatively impact groundwater levels in nearby production wells, and the localized change in groundwater quality due to slant well pumping would not violate water quality standards or interrupt or eliminate the potable or irrigation supply available to other basin users.[408]

We have reviewed all of the reports and data submitted throughout the course of this proceeding regarding groundwater impacts. We do not find the Stanford University/Aqua Geo Frameworks Airborne Electromagnetics ("AEM") Study provides significant new technical data or interpretations that require changes to the conclusions in the FEIR/EIS. The lack of raw data and documented methodologies, among other things, prevent us, or anyone else, from validating the study. However, if we could validate the study, we believe

[408] *See*, Master Response 8 in the FEIR/EIS. *See also,* Marina Coast Water District's April 19, 2018 Comment Letter and Attachments.

the AEM data supports the existing data and hydrogeologic conceptual model reviewed in the proceeding. We remain convinced the conclusions of the FEIR/EIS are based on the best science available and use the most up to date information. Therefore, after reviewing all of the comments, reports, data, and other submissions on this topic we conclude the project would not conflict with water resources relied on by residents of the City of Marina.

Others opposed to the project did not present credible evidence or arguments to persuade us that the project is not needed.[409]

We recognize there are number of communities potentially impacted by the proposed project and we must weigh the various impacts that the MPWSP will have on each of them individually as well as the overall regional community. The Commission gives great weight to the City of Marina's community values,[410] and also considers the community values expressed by others, such as The Latino Water Coalition, Latino Seaside Merchants, and Communidad en Accion, Coalition for Peninsula Businesses, Cal-Am ratepayers, Salinas Valley Water Coalition, the County of Monterey, and others.[411] Those values provide a broad range, including: general support for the project, to "our families need water," statements that projects are on hold waiting for a water supply, requests for the Commission to allow for a desperately needed water solution for the community, and concerns about the economic impact of the project. On balance, the approved project reasonably reflects community values.

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[409] *E.g.,* Citizens for Just Water Opening Brief Regarding Monterrey Peninsula Water Supply Project Final Environmental Report / Final Environmental Impact Statement (April 19, 2018).

[410] *See,* MNA-1 at 10-24.

[411] *E.g.*, CPB-1A at 6-8, 10, RT Vol. 20 at 3375-3377, 3384, Vol. 29 at 5127-5141,5157-5159, 5172-5176.

It addresses the City of Marina's values by mitigating the negative effects on the City (e.g., measures that place limits on noise, require fences and plants around slant wells and plants that reduce visual impacts). It also reflects the community values of others by supporting the County's "four pillars" – agriculture, tourism, education, and research, and providing necessary water and jobs. Thus, we find the MPWSP consistent with the values of the community that the project will serve.

7.5.2 Recreational and Park Areas

Any disruption to parks and recreational areas will be temporary during the construction phase. As to the CEMEX site, even though it will be considered a conservation area in the future, any impacts to the site will be minimal and temporary during the construction phase, and the presence of the wells will not impair the availability of the overall site for any future public access uses. Further, based upon the FEIR/EIS and the record as a whole, we conclude that the Annexation Agreement does not preclude the project. The record shows that Cal-Am provided sufficient consideration of potential impacts on recreational and park areas.

7.5.3 Historical and Aesthetic Values

There is nothing in the record precisely identifying any specific significant historic resources that would be impacted by the MPWSP. Cal-Am has committed to mitigate against any impacts to undiscovered archeological resources, and to comply with all mitigation required in the MMRP as to any potential impacts to undiscovered archeological resources. [412]

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[412] The City of Marina in its April 19, 2018 Opening Brief on Final Environmental Impact Report and Environmental Impact Statement at 71-74 raises an issue regarding potential significant impacts to the Lapis Siding likely being covered by dirt and sand. City of Marina acknowledges

Footnote continued on next page

7.5.4 Influence on the Environment

Elsewhere in this decision we certify the FEIR/EIS. We apply the FEIR/EIS in making our decision on influences on the environment.

Therefore, the Commission has carefully considered each of the areas set out in Section 1002 and finds that each factor has been addressed and considered, with the project being consistent with each factor.

8. Conclusion

In this decision we certify the FEIR/EIS for the Monterey Peninsula Water Supply Project (MPWSP), and it is certified for use by responsible agencies in considering subsequent approvals of portions thereof. We determine the CEQA Findings for the MPWSP in Appendix C accurately reflect the independent analysis contained in the combined FEIR/EIS, are supported by substantial evidence in the administrative record, and are incorporated as findings herein.

We find based on the FEIR/EIS that the remaining significant effects on the environment found to be unavoidable under CEQA Guidelines section 15901 are acceptable due to overriding considerations consistent with CEQA Guidelines section 15093 and as described in the CEQA Findings set forth at Appendix C. We also adopt the Mitigation Monitoring, and Reporting Program (MMRP) set forth at Appendix D and impose, as conditions of approval, all mitigation measures set forth within the MMRP.

We approve the Monterey Peninsula Water Supply Project at the reduced 6.4 mgd production capacity desalination plant as the environmentally preferred

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that the project modification would address any potential impact to this resource, the State Historic Preservation Officer finds no significant impact to a cultural resource, and the FEIR/EIS contains sufficient mitigation to properly address any undiscovered archeological resources.

alternative, and issue a Certificate of Public Convenience and Necessity to California-American Water Company for the Project, subject to California-American Water Company complying with all feasible mitigation measures identified in the combined Final Environmental Report/Environmental Impact Statement, and the Mitigation Monitoring and Reporting Program contained in Appendix D of this decision.

We condition our approval of the MPWSP on Cal-Am carrying out the MPWSP using the environmentally superior alternative (Alternative 5a, Reduced Project 6.4 mgd Desalination Plant – Intake Wells at CEMEX) as identified in the FEIR/EIS, and complying with all applicable mitigation measures as specified in the MMRP. To oversee the process going forward we establish regular reporting and monitoring activities to oversee California-American Water Company's implementation of this decision.

Consistent with the understanding that the Commission retains authority to determine appropriate mitigation, compliance, and enforcement as to measures concerning environmental protection pursuant and with respect to CEQA, we adopt two of the four proposed settlements. We adopt the Brine Discharge Settlement and find that the Brine Discharge Settlement is reasonable in light of the entire record, is consistent with the law, and is in the public interest. We also adopt the Return Water Settlement and find that the Return Water Settlement is reasonable in light of the entire record, is consistent with the law, and is in the public interest.

We reject the Sizing Settlement Agreement, filed on July 31, 2013. We determine that given its age, this settlement is no longer relevant, and that the issues included in it are fully addressed in the decision and decided based on record evidence and the FEIR/EIS.

We decline to adopt the Comprehensive Settlement Agreement filed on July 31, 2013. Given its age, many of the provisions are either moot or require modifications. The parties have not reached agreement on any such modifications, and the issues included in the settlement agreement are fully addressed in the decision and decided based on the record evidence and FEIR/EIS. Although we decline to adopt the Comprehensive Settlement, we do agree that the framework set forth in the agreement provides an appropriate structure, supported by the record, for operations and maintenance costs, financing, ratemaking, and contingency. We therefore adopt this framework, California-American Water Company's updated cost caps, and additional ratepayer protections consistent with this decision.

9. Comments on Proposed Decision

The proposed decision of ALJ Haga, ALJ Houck, and ALJ Weatherford in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments from sixteen parties were timely filed on or before September 4, 2018. The sixteen parties filing comments were: California-American Water Company; California Unions For Reliable Energy; Citizens for Just Water; City of Marina; County of Monterey and Monterey County Water Resources Agency; Marina Coast Water District; Monterey County Farm Bureau; Monterey Peninsula Water Management District; Monterey Regional Water Pollution Control Agency; Planning and Conservation League Foundation; Public Advocates Office of the California

Public Utilities Commission;[413] Public Trust Alliance; Public Water Now; Salinas Valley Water Coalition; Surfrider Foundation; and Water Plus.. Reply comments from twelve parties were filed on or before September 10, 2018. The eleven parties filing reply comments were: California-American Water Company; City of Marina; Coalition of Peninsula Businesses; County of Monterey and Monterey County Water Resources Agency; Marina Coast Water District; Monterey Peninsula Water Management District; Monterey Regional Water Pollution Control Agency; Public Advocates Office of the California Public Utilities Commission; Public Water Now; Surfrider Foundation; and Water Plus. .

Rule 14.3 requires that Comments "focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight." We give no weight to comments that do not comply with this rule.

To the extent required, revisions have been incorporated herein to reflect the substance of these comments. We have specifically addressed that the FEIR/EIS demonstrates the proposed project would not deplete groundwater supplies (as a community value) that would otherwise be available to users in the Salinas Valley Groundwater Basin, and would not negatively impact groundwater levels in nearby production wells, and the localized change in groundwater quality due to slant well pumping would not violate water quality standards or interrupt or eliminate the potable or irrigation supplies available to

[413] The Office of Ratepayer Advocates was renamed the Public Advocates Office of the California Public Utilities Commission pursuant to Senate Bill No. 854, which was signed by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

other basin users. In addition, we further discuss particulate organic material accumulation and our finding of no significant impacts. We also addressed the FEIR/EIS analysis of socioeconomic and environmental justice impacts consistent with CEQA and found no environmental justice impacts will occur above and beyond the impacts studied in, and mitigation cited throughout, the resource-specific sections in the FEIR/EIS. In addition, we addressed the probable rate increases for ratepayers within Cal-Am's Monterey District, including identified low-income populations in Sand City, Seaside, and downtown Monterey. Customers outside the main Monterey District, Bishop, Hidden Hills, and Ryan Ranch would not experience rate increases, and would not be served by the MPWSP. We also further discuss water rights created by the project and our findings regarding the alleged impacts on the water supply of the Marina Coast Water District and the City of Marina. Finally, we direct Cal-Am to enter into discussions with Monterey One Water as to the potential cost, schedule, and amount of water that could be supplied through expansion of the Pure Water Monterey project.

We apply no weight and make no changes where parties simply reargue their positions or fail to identify factual, legal, or technical errors with appropriate citations.[414]

In addition, on September 4, 2018, the State Water Resources Control Board sent a letter to the Commission's CEQA staff providing its input on the proposed decision. In a ruling dated September 7, 2018, the Administrative Law

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[414] *See, e.g.*, Marina Coast Water District's Comments on Proposed Decision at 11 ("MCWD commented extensively throughout the environmental review process."), Opening Comments of Monterey Regional Water Pollution Control Agency at 6-8, Public Trust Alliance's Comments on Proposed Decision, Reply Comments by Public Water now).

Judge clarified that this letter will be included in the Commission's Application 12-04-019 formal file as part of the administrative record, and allowed parties' reply comments to address the letter as well as the comments of other parties. The State Water Resources Control Board letter is attached as Exhibit C to Appendix J of this decision.

10. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Robert W. Haga, Darcie L. Houck, and Gary Weatherford are the assigned ALJs in this proceeding.

Findings of Fact

1. Cal-Am is a Class A investor-owned water utility, regulated by this Commission. Its Monterey District serves most of the Monterey Peninsula, including Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside, as well as the unincorporated areas of Carmel Highlands, Carmel Valley, Pebble Beach, and the Del Monte Forest.

2. Cal-Am supplies the Monterey District with surface water and groundwater from the Carmel River System and the coastal subarea of the Seaside Groundwater Basin (also known as the Seaside Basin). Cal-Am also operates small independent water systems along the Highway 68 corridor east of Monterey that draw water from the Laguna Seca subarea of the Seaside Basin.

3. Water supply on the Monterey Peninsula is available largely from rainfall and has long been constrained due to frequent drought conditions on the semi-arid Peninsula.

4. The Monterey Peninsula population has been dealing with documented water constraints dating back to the 1940s.

5. In 1995, the State Water Resources Control Board issued its Order No. WR 95-10, which concluded that although Cal-Am had been diverting an average of 14,106 afy from the Carmel River, it had a legal right to only 3,376 afy from the Carmel River system, including surface water and water flowing in subterranean stream pumped from the Carmel Valley wells.

6. In 1995, Cal-Am served approximately 105,000 customers in its Monterey District, supplying them with approximately 17,000 afy, with 14,106 afy supplied from the Carmel River system.

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

8. On October 20, 2009, the State Water Resources Control Board issued Order WR 2009-0060, which ordered Cal-Am to cease and desist unlawful diversions of water from the Carmel River by December 31, 2016.

9. On July 19, 2016, the State Water Resources Control Board issued its Order Amending in Part Requirements of State Water Board Order WR 2009-0060, extending the deadline for ending all unlawful diversions from the Carmel River from December 31, 2016 to December 31, 2021. The amending order (Order WR 2016-0016) includes intermediate milestones for developing the Cal-Am portions of the GWR project and for developing the MPWSP desalination facility, with the intent of having both projects operational by the end of 2021. To both incentivize timely progress on the projects and to gradually terminate Cal-Am's unlawful Carmel River diversion by the compliance deadline in the event timely progress

is not made on the projects, each failure to achieve a milestone will result in a reduction of Cal-Am's effective diversion limit by up to 1,000 afy..

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

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

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

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

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

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

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

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

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

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

20. The Commission would like to determine if, in conjunction with the MPWSP approved in this decision, PWM expansion could provide an affordable, specific, concrete, and reliable additional or supplemental source water supply for Cal-Am ratepayers in the Monterey district.

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

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

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

24. Construction and operation of the MPWSP is necessary to ensure Cal-Am operates within its legal water rights which requires cessation of its unlawful diversions from the Carmel River by December 31, 2021, in compliance with the cease and desist order issued by the SWRCB, as well as required reductions to other constrained water supply sources such as the Seaside Basin.

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

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

27. Marina Coast Water District did not provide the Commission and parties enough time or information to, among other things, consider and resolve outstanding questions as to physical transfer of water, renewability of the agreements, and accept the terms such that we could include them in this proceeding.

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

29. The assertions by some parties that the downward trend in water use in the District will continue and that only minimal growth will occur in demand after 2021 are not convincing because those assertions fail to consider that maximum month usage increased in 2017 compared to 2016, conservation

funding is projected to go down, and the conservation and moratorium measures implemented during the drought will end.

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

31. A projection of demand for existing customers of approximately 12,000 afy is appropriately conservative and reasonable.

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

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

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

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

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

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

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

39. The evidence persuasively shows that the tourism industry on the Monterey Peninsula has not fully recovered from the economic downturn that started in 2008, and to the extent it has recovered, it has taken steps to conserve water in ways it would not do if there were no constraints on the water supply in the area.

40. Coalition of Peninsula Businesses has shown that there is a need to identify additional water supply to account for the tourism rebound demand category.

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

42. Public interest considerations weigh heavily in favor of the balanced demand projection of approximately 14,000 afy.

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

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

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

46. Other than the MPWSP (and the alternatives examined in the FEIR/EIS) the Commission does not have viable alternative proposals before us today.

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

48. The MPWSP is the most reasonable approach to solving the long-term problem of water supply in the District and is the best option to ensure Cal-Am customers have a sufficient water source going forward.

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

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

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

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

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

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

55. The environmental document was prepared as a joint EIR/EIS because a portion of the project impacts the Monterey Bay National Marine Sanctuary, and

results in potential environmental impacts on resources that are under the jurisdiction of the federal government.

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

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

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

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

60. The SWRCB prepared, at the Commission's request, a draft report on water rights that was circulated for public comments and then issued as its July 31, 2013 "Final Review of California-American Water Company's Monterey Peninsula Water Supply Project." This report determined that extracting seawater from the ocean does not require water rights and that Cal-Am could

draw ocean water from the landward area of the Salinas Valley Groundwater Basin under certain circumstances.

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

62. In order for Cal-Am to possess appropriative rights to brackish water under a "developed water" legal basis whereby the MPWSP essentially creates a new water source, Cal-Am would need to be able to demonstrate that its extraction and beneficial use of the water source would not injure or harm other legal users of water.

63. There is no permit for an appropriative groundwater right. The project will have to be implemented by Cal-Am in a manner that meets the requirements for an criteria that would create the appropriative groundwater right, including establishing that the project water source is surplus to the needs of groundwater users in the Salinas Valley Groundwater Basin and that operating the project will not injure other lawful users of water.

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

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

66. Cal-Am proposed that Salinas Valley Groundwater Basin groundwater could be extracted without harm to existing lawful water uses by returning desalinated product water into the Salinas Valley Groundwater Basin in the

amount of the fresh water molecules that originated in the Salinas Valley Groundwater Basin that are included in the withdrawn brackish water.

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

68. The return water component of the MPWSP ensures that the Salinas Valley Groundwater Basin is made whole with regards to any fresh water withdrawn by the MPWSP supply wells.

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

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

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

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

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

74. Past efforts to solve the long-standing water supply issues on the Monterey Peninsula have not been successful. These include the proposed New Los Padres Dam and Reservoir, which was proposed by the Monterey Peninsula

Water Management District in 1989, but turned down by the voters in 1995, and the Carmel River Dam, which was proposed by Cal-Am in 1997, but effectively halted by AB 1182 (Stats. 1998, Ch. 797).

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

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

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

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

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

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

81. The FEIR/EIS identifies significant environmental effects of the MPWSP that cannot be avoided or mitigated to less than significant levels. The benefits of the MPWSP outweigh the significant adverse impacts of the project, justifying the statement of overriding considerations needed to approve the MPWSP.

82. The FEIR/EIS reviewed seven alternatives (six action alternatives and the No-Project/No-Action Alternative) and identifies the environmentally superior action alternative for the MPWSP as Alternative 5a, which includes the reduced capacity 6.4 mgd desalination plant.

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

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

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

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

87. The MPWSP (6.4 mgd plant) utilizes a source water intake system consisting of seven new subsurface slant wells (five active and two on standby; these would consist of the converted test slant well and six new wells), an open-water brine discharge system through the existing Monterey One Water outfall, a project water conveyance and storage infrastructure.

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

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

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

91. The MPWSP (6.4 mgd plant) achieves an appropriate balance between supplying a sufficient amount of safe, reliable, potable water and maintaining just and reasonable rates.

92. Cal-am has met its burden, subject to the conditions set out in this decision, in demonstrating the need for the MPWSP sized at 6.4 mgd.

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

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

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

96. The desalination plant is appropriately sized at 6.4 mgd.

97. 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, and the likely environmental impacts associated with constructing it at a later time if needed.

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

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

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

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

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

103. The CEQA Findings are attached as Appendix C, and accurately reflect the independent analysis contained in the FEIR/EIS, the Commission's policy

decisions, as well as other information in the record, and are supported by substantial evidence in the administrative record.

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

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

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

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

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

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

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

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

112. Based on the mandatory cumulative annual reductions, the estimated operational yield from the ASR project and the estimated afy supplied by the Sand City desalination plant, the 2009 Cease and Desist Order found that the total amount diverted by Cal-Am from the Carmel River was not to exceed Cal-Am's water rights of 3,376 afy by the end of December 2016.

113. The 2016 Revised Cease and Desist Order extended the compliance deadline to the end of December 2021 and acknowledged that Cal-Am may, under certain circumstances, divert additional volumes of water from the Carmel River under water rights permits or under water transfers from other rights holders.

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

115. Alternative 5a (MPWSP sized at 6.4 mgd) is the most feasible alternative that provides a viable solution to the water constraints on the Monterey Peninsula, given the adverse social and economic consequences associated with

taking no action or delayed action, in the timeframe imposed by the State Water Resource Control Board's Cease and Desist Orders, and satisfies the prohibitions on exporting water from the Salinas Basin, and certain technological factors.

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

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

118. Based on the FEIR/EIS, the remaining significant effects on the environment found to be unavoidable under CEQA Guidelines section 15901 are acceptable due to overriding considerations consistent with CEQA Guidelines section 15093 and as described in the CEQA Findings set forth at Appendix C.

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

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

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

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

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

124. The MPWSP (6.4 mgd plant) benefits and economic, legal, social, environmental and other considerations associated with the MPWSP outweigh and make acceptable the unavoidable impacts identified in the FEIR/EIS, for the reasons set forth in the statement of overriding considerations in the CEQA Findings at Appendix C attached to and incorporated as part of this decision.

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

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

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

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

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

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

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

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

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

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

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

136. The Comprehensive Settlement framework provides ratepayer protections; however, Cal PA provided sufficient evidence to support the need for additional ratepayer protection and appropriate apportionment of risk between ratepayers and shareholders as to the capital costs for the MPWSP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

155. $279.1 million is a reasonable cost cap for the MPWSP, this amount does not include the $50.3 million authorized for Cal-Am facilities authorized in D.16-09-021. The total authorized project cost, including the amounts authorized in D.16-09-021 is $329.4 million.

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

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

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

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

160. The use of securitization as a component of the MPWSP financing is reasonable if it 1) lowers costs to consumers; 2) does not adversely impact California-American Water Company customers outside of Monterey County District; 3) does not require a separate Cal-Am credit rating; 4) does not alter the Company's current debt to equity ratio (recently modified in D.18-03-035) for the portion of the MPWSP not financed through securitization; 5) does not alter the Company's currently authorized rate of return; 6) does not materially delay the MPWSP; and 7) does not create a taxable event for Cal-Am or adverse tax implications for the Company or its customers.

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

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

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

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

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

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

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

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

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

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

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

172. Cal-Am's current MPWSP financing model assumes completion of the MPWSP construction funding charge at the time the revenue requirement and securitized bond financing enter rates with completion of the desalination plant.

173. Cal-Am made certain concessions regarding financing and ratemaking in order to minimize AFUDC.

174. Securitized bonds have less flexibility than short-term debt.

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

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

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

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

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

180. While the parties have stated concerns that establishing a capital cost cap could impact the competitive bidding process and could also impact the cost of

financing, they acknowledge that a capital cost cap is one way to ensure cost limitations for the protection of ratepayers.

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

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

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

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

185. It is important for Cal-Am to provide regular, detailed quarterly reports to the Commission Executive Director, the Director of the Water Division, and the Director of the Energy Division with a copy to the Director of the Public Advocates Office (Cal PA).

186. Cal-Am has agreed to meet quarterly with the Cal PA. There is value in including Commission Water Division staff in these meetings. There is value in providing detailed information as to progress on the MPWSP, particularly with regard to financing plans, construction bids, and permitting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

202. It is reasonable to require Cal-Am to refund some or all of the Construction Funding Charge if the MPWSP does not become operational or if it does not operate as anticipated or meet customer need.

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

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

205. It is reasonable to require Cal-Am to submit a Tier 3 advice letter, after consultation with Water Division staff and parties, to adopt adjustments to the

financing and ratemaking framework for the MPWSP consistent with this decision.

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

Conclusions of Law

1. Cal-Am is a Water Corporation as defined in Pub. Util. Code § 241, and may not proceed with the proposed project, or an alternative, absent our certification that the present or future public convenience and necessity require this project.

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

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

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

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

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

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

8. Our goal, and the goal of Section 64554, is to ensure a public water system can meet the maximum daily demand and for a system of Cal-Am's size to meet peak hour demand for 4 hours in a day with source capacity, storage capacity, and/or emergency connections.

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

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

11. Cal-Am has met its burden of proof in that its forecast of demand when weighed with those opposed to it has more convincing force and the greater probability of truth.

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

13. Cal-Am has met its burden of proof that its projections of future demand are reasonable in the circumstances of this case.

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

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

16. The tourism industry recovery projection of 500 afy is reasonable under the California Waterworks standards.

17. Cal-Am has met its burden to prove that 14,355 afy is a reasonable projection for the system's projected demand, and intervenors persuade us that a projection of approximately 14,000 afy is the most reasonable and appropriate figure to use.

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

19. The proposed financing framework set out in the Comprehensive Settlement should be adopted, including Cal-Am funding $20 million on the initial costs with short-term debt. $7.4 million of this short-term debt was used for the facilities approved in D.16-09-027. This leaves $12.6 million in short-term

debt available for the remaining MPWSP facilities until the facilities approved in D.16-09-027 are completed, in service and in rates.

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

21. Cal-Am should be required to submit a Tier 3 advice letter, after consultation with Commission Water Division Staff and parties to the proceeding, that provides for specific adjustments to the framework set out in sections 6, 7, 8, and 10-15 of the Comprehensive Settlement, including specific detail to implement such provisions consistent with this decision.

22. Cal-Am should be authorized to file a Tier 2 advice letter to seek recovery of the used and useful portion of the actual MPWSP and Cal-am Only Facilities consistent with the ratemaking framework set forth in the Comprehensive Settlement; the advice letter should include sufficient information to demonstrate that the costs are reasonable, and that the facilities are operating at a capacity that provides the least cost and most benefit to ratepayers given anticipated demand and available lower cost water supply.

23. Cal-Am should be authorized to file a Tier 2 advice letter upon completion of the MPWSP and remaining Cal- Am Only Facilities to seek recovery of the remaining amount of the used and useful facilities consistent with the ratemaking framework set out in the Comprehensive Settlement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54. The Executive Director should be authorized to enter into an agreement with Cal-Am that provides for such reimbursement on terms and conditions consistent with this decision in a form satisfactory to the Executive Director. The terms and conditions of such agreement should be deemed conditions of

approval of the application to the same extent as if they were set forth in full in this decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

69. It is reasonable to require Cal-Am shareholders, not ratepayers, to incur any and all costs for any unreasonable portion of the return water obligation that is greater than an average of approximately six percent (6%)between years 0-7; four percent (4%) between years 8-15; or 1.5% annually from year 16 forward. The Commission may also look at the reasonableness of the return water amount and costs to ratepayers at other times as necessary to ensure the return water obligation being met is reasonable and consistent with the estimates provided in the proceeding to support approval of the MPWSP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

85. Consistent with the understanding that the Commission retains authority to determine appropriate mitigation, compliance, and enforcement as to measures concerning environmental protection pursuant and with respect to CEQA, the Brine Discharge Settlement Agreement should be adopted.

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

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

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

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

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

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

O R D E R

IT IS ORDERED that:

1. The Final Environmental Impact Report is hereby certified for the Monterey Peninsula Water Supply Project, and is certified for use by responsible agencies in considering subsequent approvals.

2. California-American Water Company is granted a Certificate of Public Convenience and Necessity for the Monterey Peninsula Water Supply Project (Alternative 5a), subject to California-American Water Company complying with all feasible mitigation measures identified in the combined Final Environmental Report/Environmental Impact Statement, as set forth and in compliance with the Mitigation Monitoring and Reporting Program contained in Appendix D of this decision.

3. The California Environmental Quality Act Findings for the Monterey Peninsula Water Supply Project in Appendix C accurately reflect the independent analysis contained in the combined Final Environmental

Report/Environmental Impact Statement, are supported by substantial evidence in the administrative record, and are incorporated as findings herein.

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

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

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

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

8. California-American Water Company shall implement the environmentally superior alternative (Alternative 5a) of the Monterey Peninsula Water Supply Project identified in the Final Environmental Impact Report.

9. The Return Water Settlement Agreement, filed on June 14, 2016, is approved, subject to the condition that if the return water obligation is greater than the benchmark of an average of six percent (6%) between years 0-7; four percent (4%) between years 8-15; or 1.5% annually from year 16 forward it will be presumed unreasonable. Ratepayers will not be expected to bear any costs for

meeting the return obligation above these amounts. Cal-Am may present information to rebut this presumption, keeping in mind that the Commission may also look at the reasonableness of the return water amount and costs to ratepayers at other times as necessary to ensure the return water obligation being met is reasonable and consistent with the estimates provided in the proceeding to support approval of the MPWSP.

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

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

12. The Executive Director is authorized to employ staff independent of the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, monitoring and mitigation supervision of construction of the Monterey Peninsula Water Supply Project. Such staff shall be individually qualified professional environmental monitors or be employed by one or more qualified firms or organizations.

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

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

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

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

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

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

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

20. Rate recovery for any Operations and Maintenance expenditures will be authorized consistent with the framework set forth in Section 8 of the Comprehensive Settlement.

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

22. The Commission's Energy Division may approve requests by California-American Water Company for minor project refinements that may be necessary due to the final engineering of the project, so long as such minor project refinements are located within the geographic boundary of the study area of the Environmental Impact Report/Environmental Impact Statement and do not, without mitigation, result in a new significant impact or a substantial increase in the severity of a previously identified significant impact based on the criteria used in the Final Environmental Impact Report/Environmental Impact Statement; substantively conflict with any mitigation measure or applicable law

or policy; or trigger an additional permit requirement. California-American Water Company shall seek any other project refinements by a petition to modify today's decision.

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

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

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

26. Prior to submitting the Tier 2 advice letters to implement the tariffs in Appendix E of the Return Water Settlement, California-American Water Company shall meet with Commission Water Division Staff and parties to this proceeding to ensure that the tariffs and Tier 2 advice letters submitted consistent with the Return Water Settlement include conditions that limit liability to ratepayers, and clearly recognize that California-American Water Company bears the risk for non-compliance or increased return water deliveries consistent with this decision.

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

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

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

30. California-American Water Company shall file a Tier 2 advice letter, after consulting with parties and Commission Water Division Staff, for the first year revenue requirement after the facility has been built and is online consistent with the ratemaking framework set forth in Sections 6, 7, 8, and 14 of the Comprehensive Settlement.

31. If the Monterey Peninsula Water Supply Project goes offline for any reason other than routine maintenance or operates below production capacity levels

required to meet customer need for four weeks or more Cal-Am must promptly notify and meet with Commission Water Division staff to explain why the facility is offline or operating below capacity, as well as to assess the seriousness of the outage, whether the MPWSP will be offline for an extended period of time, and to what extent the MPWSP or a portion of its costs should be removed from rates. .

32. Within thirty days of the notification ordered in Ordering Paragraph 31, Cal-Am is to provide a report to Commission Water Division staff setting forth the information provided in the meeting with staff, documentation as to the status of the plant operations and timeline for bringing the plant back online. The report shall be provided to Water Division staff and Cal PA no later than the beginning of the fifth week of outage or subpar performance. The report is to also include the estimated amount that loss of operation is costing ratepayers and a mechanism to refund/credit ratepayers for such amount.

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

34. California-American Water Company (Cal-Am) must make a showing that the expenditures at issue for the Monterey Peninsula Water Supply Project (MPWSP) are reasonable. Each reasonableness showing must include evidence

that the MPWSP financing is the lowest cost and most beneficial for ratepayers; that construction is progressing in a timely manner within the cost caps authorized in this decision. Cal-Am will be required to demonstrate the reasonableness of such costs in the first General Rate Case after the MPWSP is operational.

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

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

37. Within 180 days of the date of this decision Cal-Am shall file a Tier 2 advice letter providing specific additional information and its assessment as to whether it intends to file an application with the Commission to pursue a Water Purchase Agreement (WPA) for additional water supply to be provided by a PWM expansion. Cal-Am shall serve the Tier 2 advice letter on the service list for this proceeding.

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

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

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

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

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

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

44. Cal-Am shall file notice within 75 days of the issuance of this decision that it accepts the conditions of this decision.

45. Application 12-04-019 is closed.

This order is effective today.

Dated September 13, 2018, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners

APPENDIX A
Procedural History
and
Glossary

PROCEDURAL HISTORY AND GLOSSARY

California-American Water Company (Cal-Am or applicant) filed the instant application for approval of the Monterey Peninsula Water Supply Project (MPWSP) on April 23, 2012. Motions to intervene for party status were granted for:

- Marina Coast Water District (MCD)
- Coalition of Peninsula Businesses (CPB)
- Monterey County Water Resources Agency and County of Monterey (County)
- Monterey Peninsula Regional Water Authority (RWA)
- Water Plus
- City of Pacific Grove (Pacific Grove)
- Citizens for Public Water (CPW)[415]
- Monterey Peninsula Water Management District (WD)
- Sierra Club
- Salinas Valley Water Coalition (SV)
- Monterey Regional Water Pollution Control Agency (PCA)
- Planning and Conservation League Foundation (PCL)
- Latino Water Use Coalition of the Monterey Peninsula/Latino Seaside Merchants Association/Comunidad en Accion Workers Day Committee (LWC)
- Monterey County Farm Bureau (MCFB)
- Surfrider Foundation (SF or Surfrider)
- Public Trust Alliance (PTA).

On the filing of protests, party status was granted to:

- Landwatch Monterey County (Landwatch)
- Public Advocates Office (Cal PA)[416]

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[415] CPW later changed its name to Public Water Now (PWN).

[416] Cal PA was known as the Division of Ratepayer Advocates (DRA) when this proceeding started, and was renamed the Office of Ratepayer Advocates (ORA) during the course of this

Footnote continued on next page

Subsequent motions for party status were granted for:

- Californians Unions for Reliable Energy (CURE) on June 29, 2015
- Citizens for Just Water (CJW) on November 15, 2016
- City of Marina (MNA) on March 29, 2017

On April 30, 2012, MCD filed a Motion to Dismiss. By Ruling filed on June 1, 2012, the MCD motion to dismiss was denied.

The June 1, 2012 Ruling also directed parties to brief threshold issues concerning claims on water rights and preemption. In particular regarding preemption, parties were directed to address whether Monterey County Code of Ordinance, Title 10, Chapter 10.72 (concerning local authority over the construction, operation and ownership of desalination plants) is preempted by Commission authority over the project. On July 11, 2012 opening briefs on threshold issues concerning claims on water rights and preemption were filed. On July 25, 2012 reply briefs were filed.

On June 6, 2012 a Prehearing Conference (PHC) was held. The PHC addressed the status of parties, issues, schedule, and other procedural matters.

On June 28, 2012 the Assigned Commissioner's Scoping Memo and Ruling was filed. It defined the scope, determined the category as ratesetting, adopted a schedule, addressed intervenor compensation matters, and designated Administrative Law Judge (ALJ or Judge) Gary Weatherford as the Presiding Officer. It stated specific issues within the scope and directed that the ALJ could

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proceeding before being renamed the Public Advocates Office. We retain the ORA abbreviation for briefs and other filings submitted and the DRA exhibit identifier in this proceeding.

make revisions or provide further direction regarding the manner in which the issues were to be addressed, and may make revisions to the schedule.

In June and July 2012, timely Notices of Intent to Claim Intervenor Compensation (NOIs), some later amended, were filed by: Water Plus, Landwatch, PCL, CPB, SV, Surfrider, Sierra Club, and CPW. An untimely filing by PTA in August 2012 was authorized by the ALJ. Subsequent ALJ Rulings accepted showings of significant financial hardship by Water Plus, Landwatch, PCL, SV, Surfrider, Sierra Club, and PTA.

By Ruling dated June 29, 2012, Judge Weatherford invited comments on a workshop agenda and instructed Cal-Am to provide a table displaying the cumulative impact of the proposed project on the average residential customer bill. Cal-Am provided the bill information on July 20, 2012.

On July 6, 2012, MCD filed a Motion to Modify and Clarify the Assigned Commissioner's Scoping Memo and Ruling, joined on July 25, 2012 by MCFB and SV. On July 20, 2012, Surfrider filed a Motion to Amend the Assigned Commissioner's Scoping Memo and Ruling, joined on July 25, 2012 by Landwatch.

On July 18, 2012, Judge Weatherford circulated the agenda for a technical workshop set for and held on July 26-27, 2012. The workshop addressed demand projections; available water supply; project sizing, costs, and ratepayer impacts; project governance; and contingency planning. After the workshop Judge Weatherford instructed Cal-Am to be open to, and seriously consider in good faith, any public agency proposal for direct participation in the proposed project. On October 26, 2012, Cal-Am filed a compliance report on the proposals and its responses.

On August 29, 2012, Judge Weatherford ruled on the motions to modify the Scoping Memo. The Ruling amended the scope to include express reference to the public convenience and necessity.[417] The Ruling adopted parallel but separate tracks for consideration of issues regarding (a) the requested Certificate of Public Convenience and Necessity (CPCN) pursuant to Pub. Util. Code § 1001 et seq., and (b) environmental quality issues pursuant to the California Environmental Quality Act (CEQA). The Ruling denied requests to (a) address all feasible, mutually-exclusive alternatives to the applied-for project in the evidentiary hearings (EHs) to be held pursuant to the CPCN track, and (b) defer those EHs until after issuance of a draft environmental report (DEIR). The Ruling revised the schedule (setting EHs in April 2013, issuance of the DEIR in July 2013, publication of the Final EIR in November 2013, filing of the Proposed Decision (PD) in November-December 2013, and Commission action on the PD in December 2013-January 2014). The ruling also set December 11-13, 2012 for a cost and financial modeling workshop that would also incorporate contingency plans (discussed below).

By Ruling filed on August 30, 2012, Cal-Am was directed to file a report containing contingency plans for specified possible events (e.g., unfavorable test well results; unavailability of Salinas Valley Aquifer water; need to relocate facility site). On November 1, 2012, Cal-Am filed a compliance report containing those contingency plans.

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[417] As modified, and later stated in the September 25, 2013 Amended Scoping Memo and Assigned Commissioner Ruling, the statement of scope reads: "Is the proposed Monterey Peninsula Water Supply Project required for public convenience and necessity; and a reasonable and prudent means of securing an adequate, reliable and cost-effective water supply that meets Cal-Am's legal requirements for the Monterey District; and would the granting of the application be in the public interest?"

On October 25, 2012, the Commission adopted Decision (D.) 12-10-030, holding that the authority of the Commission preempts Monterey County Code of Ordinance, Title 10, Chapter 10.72, concerning local authority over the construction, operation and ownership of desalination plants. The decision further held that the findings, conclusions and orders therein were an exercise of jurisdiction that was paramount to that of a county Superior Court concerning the same subject. On November 30, 2012, MCD and the County filed separate applications for the rehearing of D.12-10-030. Cal-Am and PTA filed timely responses to the applications for rehearing, followed by MCD's reply to Cal-Am's response. The Commission issued D.13-07-048 on July 29, 2013 upholding D.12-10-030.

On December 12, 2012, PCL filed a motion asking the Commission to establish criteria to guide the decision on whether to downsize the desalination project based on progress toward implementation of the Groundwater Replenishment Project (GWR). Also on December 12, 2012, PCL moved for an order requiring the publication each quarter of a compliance and progress report. By Ruling filed on February 13, 2013 the motion for publication of quarterly reports was granted, while action on the motion to establish sizing criteria was deferred.

At the conclusion of the workshop on December 13, 2012 a second PHC was held to discuss the then current project description, the possible shifting of rate design and low-income assistance issues to a second phase, the status of public agency participation, the status of the CEQA track, and any developments and preliminary plans for the evidentiary hearings set to begin on April 2, 2013.

Judge Weatherford issued a Ruling on December 26, 2012, directing Cal-Am to provide an updated project description on its web site and at the future

Public Participation Hearings (PPHs); to include certain subjects in its supplemental testimony; and to follow a specified protocol in making discovery documents accessible. That Ruling also established that the issues of rate design and low-income rate relief would be considered in Phase 2 of the proceeding.

On January 9, 2013 PPHs were conducted by Judge Seaneen M. Wilson in Monterey in the afternoon and evening. Testimony was heard in the afternoon from 42 public witnesses, and in the evening from 24 public witnesses. The testimony raised important concerns in a wide variety of areas and with differing opinions including: cost, affordability of new water supplies, environmental impacts, salt water intrusion, extraction of fresh water from existing aquifers, desirability of open sea water extraction compared to extraction by slant wells, the need and desirability of a larger or smaller desalination plant, public versus private ownership of the plant, water rights, coastal erosion and its effect on intake well location, ratepayer versus shareholder funding of the failed Regional Water Project and the proposed MPWSP, high rates, inverted tier rates, increased use of conservation, expanded use of recycled wastewater, use of a portfolio approach to water supply, the role of competition in obtaining new water supplies, alternatives to the MPWSP (e.g., People's Project and/or DeepWater Desalination Project), the need to obtain new water soon and reach a decision on this project soon given the pending deadline in the State Water Resources Control Board's Cease and Desist order, Carmel River restoration, economic impact of the project, lots of record that belong to the Community Hospital of the Monterey Peninsula that are expected to be used for outpatient care, the issue of whether to size the MPWSP to accommodate more than replacement and replenishment only (but also some growth for lots of record and each

community's general plan), the need for an adequate long term water supply, the feasibility of building the MPWSP in phases, and social justice issues.

On January 11, 2013, Cal-Am served Supplemental Testimony. Motions for official notice of facts were variously filed in January 2013 by Cal-Am and SV, and granted in whole and part by Judge Weatherford on March 14, 2013.

By Ruling dated February 13, 2013, Judge Weatherford provided evidentiary hearing guidelines to the parties and directed Cal-Am to coordinate time allotment and the sequencing of the upcoming cross-examinations. On April 1, 2013, an ALJ email Ruling modified the scope of the proceeding to include the range of issues and concerns presented in the prepared testimony served by the parties. (Also see Ruling filed May 20, 2013.)

Ten and a half days of evidentiary hearings were held on April 2-5, 8-11, 30 and May 1-2, 2013.

On May 3, 2013, MCD moved that the schedule be changed to place legal briefing after the completion of the final environmental report (FEIR). On May 30, 2013, Judge Weatherford denied that motion, but provided an updated schedule that allowed briefing after issuance of the DEIR. The Judge provided the agenda for a workshop to be held on June 12, 2013. The workshop was set to discuss milestones and criteria for the determination whether water from the groundwater replenishment project could be included as a component of the water supply, allowing consideration of a smaller sized desalination plant (6.4 mgd rather than 9.6 mgd). That Ruling also memorialized several email Rulings.

On July 31, 2013, Cal-Am and several parties jointly filed and served motions for adoption of two proposed settlement agreements: (1) the

Comprehensive Settlement Agreement, also known as the Large Settlement Agreement[418] and (2) the Settlement Agreement on Plant size and Operation, also known as the Sizing Agreement.[419] The Comprehensive Settlement Agreement was jointly filed by 16 parties including Applicant: Cal-Am, CPW, Pacific Grove, CPB, County, Cal PA, Landwatch, MCFB, MCWRA, RWA, WD, PCA, PCL, SV, Sierra Club, and Surfrider.[420] The Sizing Agreement was jointly filed by nine parties including Applicant: Cal-Am, CPW, Pacific Grove, CPB, Cal PA, RWA, WD, PCA, and PCL. Surfrider, joined by Landwatch, timely filed comments opposing the proposed Sizing Agreement. MCD, PTA, and Water Plus filed timely comments opposing both proposed Settlement Agreements. Cal-Am, RWA, and the County filed timely responses to the comments.

On September 26, 2012 the Executive Director of the Commission asked the SWRCB to comment on the water rights for the MPWSP, specifically whether Cal-Am has the legal right to extract feedwater for the proposed MPWSP. State Water Board staff prepared and released a draft report that was noticed to the public for comment on April 3, 2013. Information in the comment letters was considered and used to revise the report where appropriate. On July 31, 2013 the SWRCB issued its Final Review of the MPWSP.

Following the PHC held by Judge Minkin[421] on September 16, 2013, President Peevey issued an Amended Scoping Memo on September 25, 2013,

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[418] *See*, Appendix F.

[419] *See*, Appendix G, Sizing Settlement Agreement.

[420] CPW (later called PWN) filed a notice of intent to withdraw from this agreement on October 28, 2016.

[421] Judge Minkin was co-assigned to this proceeding on July 18, 2013.

setting forth a revised schedule, affirming the change in scope directed by previous ALJ Rulings, and granting the August 21, 2013 motion to bifurcate the proceeding. Phase 1 would address whether or not a CPCN should be granted for a desalination plant and related facilities. Phase 2 would address the GWR project and, in particular, whether applicant should be authorized by the Commission to enter into a Water Purchase Agreement for GWR water.

On November 4, 2013, Judge Minkin issued a Ruling setting forth several questions on the proposed Settlement Agreements. Cal-Am filed a responsive compliance filing on November 19, 2013, and updated that filing on November 22, 2013.

On December 2, 2013 Judge Minkin convened a hearing on the proposed Settlement Agreements. In response to Judge Minkin's directives, WD filed and served late-filed exhibits on December 11, 2013 and Cal-Am filed and served late-filed exhibits on December 13, 2013.

On January 21, 2014 a Joint Opening Brief on the Sizing Agreement was filed by Cal-Am, RWA, WD, Pacific Grove, CPB, and PCA. Surfrider also filed a timely opening brief, and Landwatch joined in Surfrider's brief. Cal PA, PCL, and SV and MCFB (jointly) filed opening briefs in support of the Settlement Agreements. MCD, Water Plus, and PTA filed timely opening briefs opposing the Settlement Agreements.

On February 14, 2014, several parties timely filed a joint reply brief supporting the Comprehensive Settlement Agreement.[422] Cal PA filed a separate reply brief, supporting both settlement agreements. Cal-Am, CPB, RWA, WD,

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[422] Cal-Am, CPB, County, MRA, Farm Bureau, RWA, WD, Pacific Grove, PCA, PCL, SV, Sierra Club, and Surfrider all joined in this reply brief.

Pacific Grove, and PCA filed a joint reply brief on the Sizing Settlement Agreement. Surfrider filed a reply brief on the Sizing Settlement Agreement, and Landwatch joined in this brief. MCD and Water Plus filed reply briefs opposing both Settlement Agreements.

On January 17, 2014, Governor Brown proclaimed a drought state of emergency. On January 27, 2014, Judge Minkin issued a ruling providing an updated schedule and directing Cal-Am to comment on the impacts, if any, of the Governor's proclamation on this proceeding. On February 7, 2014, Cal-Am filed and served a compliance filing, stating that there was little impact on this proceeding related to the Governor's proclamation of a drought state of emergency.

On March 14, 2014 a joint motion to reduce the Special Request 1 Surcharge[423] was filed by Cal-Am, CPB, RWA, CPW, County, WRA, WD, Pacific Grove, Cal PA, and PCL. The motion requested Surcharge 1 be reduced from 15% to 4.5%. The motion was denied by Ruling filed on June 13, 2014.

A January 23, 2015 Ruling updated the Phase 1 schedule to allow additional time to incorporate more complete data in the DEIR (in particular regarding borehole and test well data, GWR project data and analysis, and effects on groundwater). Dates were deferred for filing opening and reply briefs on legal and policy issues to allow more time after issuance of the DEIR. Also, *ex parte* communications with decision-makers were prohibited effective immediately.

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[423] D.03-09-022 authorized Cal-Am to track preconstruction costs related to a long-term water supply project in a memorandum account. D.06-12-040 authorized Cal-Am to recover via Surcharge 1 the costs in the memorandum account. D.11-09-039 authorized Cal-Am to increase Surcharge 1 from 1% to 15%.

An assigned Commissioner's Ruling filed March 26, 2015 scheduled an all-party meeting to be held on July 30, 2015 in Monterey. A Draft EIR was released on April 30, 205 for an initial 60-day public comment period.

On May 8, 2015 a joint motion asking that the Commission hold a workshop on groundwater modeling was filed by Cal-Am, Pacific Grove, CPB, County, Landwatch, MCFB, MCWRA, RWA, WD, PCL, PWN, SV, Sierra Club, and Surfrider. A Ruling on May 15, 2015 gave notice that that Energy Division would hold a technical (hydrogeology modeling) workshop on May 19, 2015 regarding groundwater modeling issues, conducted as part of Energy Division's environmental review of the project pursuant to CEQA.

A Ruling dated June 29, 2015 granted the motion for party status to CURE, and provided guidance to all parties concerning DEIR comments and issues for briefs.

A Ruling filed June 16, 2015 extended the date for submitting comments on the DEIR. A Ruling filed June 26, 2015 denied the MCD motion for recirculation of the notice of availability of the DEIR.

At the direction of the assigned Commissioner, a Ruling filed July 14, 2015 postponed the all-party meeting given the extensions provided for comments on the DEIR, and the revised briefing schedule.

A second Ruling on July 14, 2015 directed the filing of data on ratemaking and Geoscience patents. Timely responses were filed on July 28, 2015 by Cal-Am and Geosciences.

An August 19, 2015 Second Amended Scoping Memo and Ruling of the Assigned Commissioner further extended the DEIR comment period and extended the statutory deadline for completion of the proceeding to December 31, 2016.

On October 1, 2015 Water Plus moved for dismissal alleging data tampering. An October 29, 2015 Ruling denied the motion.

A PHC was conducted on October 12, 2015. On November 17, 2015, an ALJ Ruling framed the issues and set the schedule for hearings to complete the evidentiary record on Phases 1 and 2. The Ruling indicated that the state DEIR (to be prepared jointly with a federal Environmental Impact Statement (EIS)) would be published after August 2016. Several Rulings were subsequently issued to modify the schedule to collect additional data, and accommodate both Commission and party needs.

On February 22, 2016 Commissioner Sandoval ordered Cal-Am to file an Amended Application to reflect an updated project description. The amended application was filed on March 14, 2016.

A March 17, 2017 Ruling rejected CPW's NOI and showing of significant financial hardship.

Another PHC was conducted on April 11, 2016. EHs were held on April 11, 12, 13, 14, and 15, 2016.

1. PHASE 2 (WPA for GWR)

On April 25, 2016 a joint assigned Commissioner and ALJ Ruling conditionally granted a motion for a separate Phase 2 decision and set further hearing. An additional EH was held on May 26, 2016. Opening briefs on Phase 2 issues were filed on June 6, 2016, and reply briefs were filed on June 13, 2016.

The Phase 2 PD was file and served on August 12, 2016. Comments were filed on September 1, 2016, and reply comments were filed on September 6, 2016. On September 15, 2016 the Commission adopted D. 16-09-021 resolving all Phase 2 issues.

2. PHASE 1 (CPCN)

On March 30, 2016 Water Plus filed a second motion to dismiss the proceeding on the basis of data tampering, violations of law regarding exporting groundwater from Salinas Valley, test well issues, and concerns with GWR water's safety, reliability, and cost. On August 30, 2016 the motion was denied.

On June 14, 2016 a motion for Commission approval of a Brine Discharge Settlement Agreement was jointly filed by seven parties including Applicant: Cal-Am, RWA, PCA, CPB, WD, Surfrider, and PCL. Also on June 14, 2016 a motion for Commission approval of a Desalination Plant Return Water Settlement Agreement was jointly filed by eight parties including Applicant: Cal-Am, CPB, Landwatch, MCFB, MCWRA, RWA, PCL and SV.[424] On July 1, 2016, Surfrider Foundation filed a Notice of Updated Brine Discharge Settlement Agreement to include an exhibit that was inadvertently omitted from the June 14, 2016 filing as well as to include the signature of a settling party.[425]

On July 13, 2016 (amended July 18, 2016) MCD filed consolidated comments on the Brine Discharge and Return Water Settlement Agreements and requested deferred hearings. Comments and responses were filed by several parties. Six parties filed a joint motion on July 22, 2016, to strike MCD's July 18, 2016 amended consolidated comments. Multiple parties filed comments on July 26 through 29, 2016 on the subject. On August 2, 2016, Cal-Am filed an updated Return Water Settlement Agreement and related notice.

On August 30, 2016 CPB's amended NOI was denied.

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[424] *See*, Appendix H.

[425] *See*, Appendix I.

On September 1, 2016, a PPHwas held in Carmel. Testimony was heard from 29 members of the public who raised important concerns in a variety of areas including test wells, costs, environmental impacts, ratemaking, the Monterey Pipeline, needs of low income ratepayers, feasibility and effects of slant wells, ratepayer or shareholder funding of research and testing (e.g., test of slant wells), public versus private ownership, regulatory capture, water quality, role of Commission in protecting ratepayers, conservation, high rates, the DeepWater Desal project as an alternative, the already substantial conservation and sacrifice by water customers in the Monterey area, the need or lack of need for more water supply, relationship of water to economic vitality, legal rights to pump from the Salinas Valley Groundwater Basin, and saltwater intrusion.

On September 8, 2016 Cal-Am's request for official notice of SWRCB's Order 2016-0016 was granted.

On September 12, 2016 PWN filed a Notice regarding Section 3.1 of the Large Settlement Agreement. On September 23, 2016 nine parties file a joint motion to strike PWN's September 12, 2016 Notice. Oppositions and responses were filed. On October 28, 2016 PWN filed Notice of intent to withdraw from the Large Settlement Agreement. By Ruling filed February 28, 2017, the September 23, 2016 joint motion to strike was denied.

On November 15, 2016 CJW moved for party status. The motion was granted on December 21, 2016 by email ruling. By Ruling filed on January 13, 2017 guidance was provided to CJW on its party status and all parties were reminded of procedures for addressing on EIR and CPCN issues.

On November 21, 2016 the Third Amended Scoping Memo and Ruling of the Assigned Commissioner was filed. The ruling extended the statutory deadline to complete this proceeding to June 30, 2018.

On February 17, 2017, MCD's motion, supported by PTA, was denied regarding access to documents, recirculation of DEIR, and recommencement of the comment period.

On March 29, 2017, the ALJ granted MNA's motion for party status.

By Ruling filed June 9, 2017, parties were requested to identify issues for further evidentiary hearing. On June 30, 2017 twenty-three parties filed a Joint Statement of Issues. Responses were filed on July 10, 11 and 12, 2017.

A Ruling filed on August 7, 2017 set a PHC and identified candidate issues for further hearing. The PHC occurred on August 18, 2017, against the backdrop of an August 16, 2017 Joint Prehearing Conference Statement.

A Ruling filed on August 28, 2017 set out nine issues for hearing to consider updated estimates for and information on: demand; supply; costs; project financing; possible plant downsizing; the use of solar and renewables; the CEMEX site; settlement agreements; and Pub. Util. Code § 1002 factors. Evidentiary hearings were held on October 25, 26, 30, 31, November 1, 2 and 3, 2017.

On October 12, 2017, Cal-Am and SV filed a hydrogeologic and technical report. On November 16, 2017 Cal-Am filed an amendment. Parties filed comments on the report on December 8, 2017 and reply comments on January 4, 2018.

On November 20, 2017 the NOI of CJW was denied on the basis that the NOI failed to demonstrate customer status, adequately describe the scope of anticipated participation, and establish significant financial hardship.

A December 4, 2017 Ruling denied Water Plus' third motion to dismiss.

Opening briefs on CPCN issues were filed on December 15, 2017, and reply briefs filed on January 9, 2018.

On January 9, 2018 Cal-Am moved for official notice of the January 2, 2018 letter from the Mayor of Salinas regarding the project.

On January 9, 2018, a Joint Motion for Additional Evidentiary Hearing was filed by ten parties: PCL, PCA, WD, MCD, Landwatch, PTA, CURE, PWN, Surfrider, and Water Plus. A response in support of the joint motion was filed by MNA on January 12, 2018; a response in opposition was filed by Cal-Am on January 16, 2018; a response with conditional support was filed by WD on January 18, 2018; and a response in opposition was filed by CPB on January 24, 2018.

On January 16, 2018 MCD moved for leave to incorporate previously served Exhibit MCD-57 into its opening comments on the Hydrogeologic Investigation Technical Report.

A Ruling filed February 8, 2018 set a Status Conference and requested parties file additional information in support of the motion for additional EH. The Status Conference was held on February 27, 2018.

On March 14, 2018 the deadline to complete the proceeding was extended to December 31, 2018 by the Fourth Amended Scoping Memo and Ruling of the assigned Commissioner.

A joint motion filed March 21, 2018 by MCD, MNA, CURE, CJW, PTA, PWN, and Water Plus requested referral of groundwater rights issues to the SWRCB for expedited hearing and decision.

On May 11, 2018 a motion to open a Phase 3 to this proceeding was filed by twelve parties: PCA, CURE, CJW, MNA, Landwatch, MCD, WD, PCL, PTA, PWN, Sierra Club, and Surfrider. A response in opposition was filed by Cal-Am on May 29, 2018.

Various motions to strike potions of opening and reply briefs were filed in 2017 and 2018. On May 30, 2018 MCD moved for leave to re-submit its January 3, 2018 response in opposition to Cal-Am's motion to strike portions of MCD's opening brief.

On June 6, 2018 MNA moved for amendment to the Ruling that prohibited ex parte communication. MNA asked that ex parte communication be permitted within existing rules for ratesetting proceedings, an all-party meeting be set, and an additional PPH in the City of Marina be held prior to issuance of the PD.

3. CEQA and EIR

On October 12, 2012 the Commission issued a Notice of Preparation of an EIR regarding the MPWSP. This began the formal process of determining the scope of issues and alternatives to be evaluated in the DEIR. Comments were received during the scoping period (October 10, 2012 to November 9, 2012). Three Public Scoping Meetings were held (October 24, 2012 in Carmel; the afternoon of October 25, 2012 in Seaside; and the evening of October 25, 2012 in Seaside).

In November 2012 the Commission issued its EIR Scoping Report. The Scoping Report summarized and documented the comments received during the scoping period. The Commission used the Scoping Report as a tool to ensure that scoping comments were considered during preparation of the DEIR.

On April 30, 2015 the Commission published the DEIR, starting a 60-day comment period. On May 19, 2015 the Commission's Energy Division hosted a technical workshop on the DEIR groundwater modeling.

A Ruling filed June 16, 2015 extended the date for submitting comments on the DEIR. A Ruling filed June 26, 2015 denied the MCD motion for recirculation of the notice of availability of the DEIR. By letter dated July 9, 2015 the

Commission extended the DEIR comment period to September 30, 2015 so that, among other things, the Commission could evaluate recirculating the DEIR as a joint state/federal environmental document and evaluate the potential conflict of interest a subcontractor may have on the project.[426]

On September 8, 2015 the Commission decided to revise and recirculate the DEIR. The revised DEIR would be done jointly with the Monterey Bay National Marine Sanctuary (MBNMS) under the National Oceanic and Atmospheric Administration (NOAA) as a combined state and federal EIR/EIS. The EIR is consistent with requirements under CEQA, and the EIS is based on requirement under the National Environmental Policy Act (NEPA).[427]

The Commission contracted with HydroFocus in October 2015. HydroFocus is a groundwater modeling consultant hired to independently review, revise, and continue to develop and use the model for purposes of the revised Draft EIR/EIS. HydroFocus was selected because of its experience; because it had no existing or recent relationship with Cal-Am, Salinas Valley stakeholders, or any party to the CPUC proceeding; and because it would have no involvement with the design, construction, or operation of the MPWSP. Further, the Commission contracted with Lawrence Berkeley National Laboratory (LBNL) to provide a neutral, third-party review of the Groundwater

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[426] The Commission subsequently terminated its relationship with Geoscience and proceeded with the understanding that Geoscience's role was limited to being a consultant to Cal-Am, the Applicant. Cal-Am submitted the Geosciences model as applicant-provided information to the Commission. The Commission made the model files available to any party that requested them.

[427] Cal-Am filed an application with NOAA on May 19, 2015 for an authorization of activities that are otherwise prohibited within MBNMS.

Model prepared by Geosciences, the Commission's original hydrology consultant.[428]

On March 14, 2016 Cal-Am filed with the Commission an amended application with a revised project description for the MPWSP. The revised project description required additional review in the EIR/EIS. On March 17, 2016 a revised schedule was announced for release of the DEIR/EIS, with publication expected to be on December 21, 2016.

On September 1, 2016 the Commission held a workshop in Carmel. The workshop examined the Draft North Marina Groundwater Model Technical Memo. Presentations were made by LBNL and HydroFocus (the Commission's new hydrology consultant).

On January 13, 2017, the joint Draft EIR/EIS was issued for public comment, starting a 45-day review and comment period. The Commission and MBNMS subsequently extended the comment period by 30 days, with comments due by March 29, 2017.

On March 30, 2018 the Final EIR/EIS was released.

On April 19, 2018 opening briefs on environmental issues were filed. On May 3, 2018 reply briefs were filed.

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[428] In April 2016 the Commission employed the Lawrence Berkeley National Laboratory (LBNL) to conduct an independent evaluation of the model data. The results of LBNL's independent evaluation found that its simulation results matched Geoscience's results (which were presented in Appendix E2 of the April 2015 Draft EIR). A full discussion of the LBNL evaluation and the revisions independently made by Hydrofocus can be found in the January 2017 Draft EIR/EIS. Thus, the credibility of the original model was confirmed by LBNL's independent review, and subsequently the accuracy of the groundwater modeling was improved as a result of the revisions made by HydroFocus.

4. CPCN DECISION

The PD was filed and served on August 13, 2018. Oral argument was held before the Commission on August 22, 2018. The proceeding was submitted at the conclusion of oral argument. Comments on the PD were filed on or beforeSeptember 4, 2018. Reply comments were filed on or before September 10, 2018____.

Glossary	
Acronym/Term	Meaning
AB	Assembly Bill
ADR	Alternative Dispute Resolution
AFUDC	Allowance for Funds Used During Construction
afy	**A**cre–feet per year
Agency Act	Monterey Water Resources Agency Act
ALJ or Judge	Administrative Law Judge
ASR	**A**quifer Storage and Recovery
CCSD	Castroville Community Services District
CEQA	California Environmental Quality Act
CDO	Cease and Desist Order
Commission	California Public Utilities Commission
CPCN	Certificate of Public Convenience and Necessity
CRLF	California Red-Legged Frog
CSIP	Castroville Seaside Intrusion Project
CWP	Coastal Water Project
DEIR	Draft Environmental Impact Report
EH	Evidentiary Hearing
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
FEIR	Final Environmental Impact Report
FEIR/EIS	The combined Final Environmental Impact Report / Environment Impact Statement
GRC	General Rate Case
GWR	Groundwater Replenishment Project, now commonly referred to as the Pure Water Monterey (PWM) Project
mgd	Million Gallons per Day
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOP	Notice of Preparation (of an EIR)
MBNMS	Monterey Bay National Marine Sanctuary
MDD	Maximum Daily Demand
MMRP	Mitigation Monitoring and Reporting Program
MPWSP	Monterey Peninsula Water Supply Project
NOAA	National Oceanic Atmospheric Administration
NOI	Notice of Intent to Claim Intervenor Compensation
O&M	Operations and Maintenance

Order 95-10	SWRCB Order No. WR 95-10
PFM	Petition for Modification
PHC	Prehearing Conference
PHD	Peak Hourly Demand
PPHs	Public Participating Hearings
ppt	Parts Per Thousand
Pub. Res. Code	Public Resource Code
Pub. Util. Code	Public Utilities Code
PWM	Pure Water Monterey (formerly known as GWR)
Return Water Settlement	Settlement Agreement on MPWSP Desalination Plant Return Water
RT	Reporters Transcript
SOC	Statement of Overriding Considerations
SRGB	Salinas River Groundwater Basin
Seaside Basin	Seaside Groundwater Basin
SWRCB	State Water Resources Control Board
USFWS	United States Fish and Wildlife Service
WPA	Water Purchase Agreement

PARTIES

ACRONYM	PARTY
Cal-Am	California-American Water Company
Cal PA	Public Advocates Office of the California Public Utilities Commission (previously the Office of Ratepayer Advocates (ORA) and the Division of Ratepayer Advocates (DRA))
MCWRA	Monterey County Water Resources Agency and County of Monterey
CPB	Coalition of Peninsula Businesses
CURE	California Unions for Reliable Energy
CJW	Citizens for Just Water
Landwatch	Landwatch Monterey County
LWC	Latino Water Use Coalition of the Monterey Peninsula/Latino Seaside Merchants Association/Comunidad en Accion Workers Day Committee
MNA	City of Marina
MCFB	Monterey County Farm Bureau
MCD	Marina Coast Water District
Pacific Grove	City of Pacific Grove
PCA	Monterey Regional Water Pollution Control Agency now known as Monterey One Water
PCL	Planning and Conservation League Foundation
PTA	Public Trust Alliance
PWN	Public Water Now (previously Citizens for Public Water (CPW))
RWA	Monterey Peninsula Regional Water Authority
Sierra Club	Sierra Club
SF or Surfrider	Surfrider Foundation
SV	Salinas Valley Water Coalition
WP	Water Plus
WD	Monterey Peninsula Water Management District

(END OF ATTACHMENT A)