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25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 IN AND FOR THE COUNTY OF MONTEREY

27 CITY OF MARINA; MONTEREY PENINSULA  
28 WATER MANAGEMENT DISTRICT; MARINA  
COAST WATER DISTRICT; and MARINA  
COAST WATER DISTRICT GROUNDWATER  
SUSTAINABILITY AGENCY,

Petitioners and Plaintiffs,

v.

CALIFORNIA COASTAL COMMISSION and  
DOES 1-10,

Respondents and Defendants,

CALIFORNIA-AMERICAN WATER COMPANY  
and DOES 11-20,

Real Parties in Interest.

Case No.:

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

[California Coastal Act, Public Resources  
Code, §§ 30000, et seq.; California  
Environmental Quality Act, Public Resources  
Code, §§ 21000, et seq.; California Code of  
Civil Procedure, § 1094.5]

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MARINA COAST WATER DISTRICT and  
MARINA COAST WATER DISTRICT  
GROUNDWATER SUSTAINABILITY AGENCY

1 Petitioners and Plaintiffs City of Marina (“City” or “Marina”), Monterey Peninsula Water  
2 Management District (“MPWMD”), Marina Coast Water District (“MCWD”), and Marina Coast Water  
3 District Groundwater Sustainability Agency (“MCWD GSA”) (collectively, “Petitioners”) allege as  
4 follows:

5 **INTRODUCTION**

6 1. By this Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief  
7 (“Petition”), four public agencies located in Monterey County challenge the rushed, premature and  
8 fatally flawed decisions of the California Coastal Commission (“Coastal Commission”) to approve  
9 Coastal Development Permit (“CDP”) Nos. A-3-MRA-19-0034 and 9-20-0603 applied for by Real Party  
10 in Interest California-American Water Company (“Cal-Am”) for its Monterey Peninsula Water Supply  
11 Project (“Project” or “MPWSP”).

12 2. The MPWSP proposed by Cal-Am is a sprawling, expensive, and unnecessary  
13 desalination project consisting of an array of industrial components located in multiple jurisdictions. The  
14 Project would be constructed in, around and through the City of Marina and the Project area would  
15 extend approximately 18 miles through Monterey County, from the town of Castroville in the north to  
16 the City of Carmel-by-Sea in the south.

17 3. To supply source water for the MPWSP, Cal-Am proposes to construct an industrial  
18 wellfield, pipelines and other structures within a 39-acre easement area located on Marina’s dunes and  
19 beaches, which would destroy rare coastal dune ecosystems that provide important habitat for  
20 threatened, endangered and protected species, would critically impair a unique coastal public access  
21 point in Marina, and would cause far-reaching adverse economic and cultural impacts to the City and its  
22 residents and businesses, as well as to the other Petitioners and the people and businesses they serve.  
23 The proposed slant wells will not draw water directly from the ocean, but instead would extract fresh  
24 and brackish groundwater from the critically over-drafted Salinas Valley Groundwater Basin (“SVGB”  
25 or “Basin”), thereby depleting the groundwater supply and increasing the extent of seawater intrusion  
26 into the SVGB. After treatment at the desalination plant, almost all this groundwater would be exported  
27 outside of the Basin to Cal-Am’s Monterey District customers. Neither the City nor its water supplier,  
28 MCWD, would receive any of the water produced by the MPWSP.



1 resells to Cal-Am a portion of the water produced by PWM through a water purchase agreement  
2 (“WPA”) approved by the CPUC in 2016. MPWMD also regulates Cal-Am under a comprehensive  
3 water management program and has determined that the water produced by PWM Expansion and Cal-  
4 Am’s other sources of supply, combined with the water produced by PWM, will meet all Cal-Am’s  
5 current and reasonably foreseeable future water needs. On December 1, 2022, the CPUC approved an  
6 amended and restated water purchase agreement (“Amended WPA”) allowing Cal-Am to purchase  
7 2,250 AFY of additional water from PWM Expansion.

8         7. Remarkably, after issuing two comprehensive Staff Reports that recommended denial of  
9 the MPWSP on multiple grounds, Coastal Commission staff suddenly issued a Staff Report (“2022 Staff  
10 Report”) less than two weeks prior to the November 17, 2022 hearing recommending approval of the  
11 CDPs. The 2022 Staff Report flip-flopped on its prior findings and concluded that PWM Expansion  
12 supposedly was no longer a feasible alternative. The Staff Report, however, failed to supply any  
13 independent analysis or factual support for this new conclusion. It also failed to provide “a good faith,  
14 reasoned analysis in response” to expert evidence provided by MPWMD and MCWD that PWM  
15 Expansion remained a viable and environmentally superior alternative. (*Berkeley Keep Jets Over the*  
16 *Bay Com. v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367 [“[W]here comments from  
17 responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that  
18 the agency may not have fully evaluated the project and its alternatives, these comments may not simply  
19 be ignored. There must be good faith, reasoned analysis in response”].) Instead, the 2022 Staff Report  
20 speculated that PWM Expansion may not provide sufficient water to meet long-term demand *after* 2040  
21 and that the MPWSP may be necessary at some point in the future. Not only did the 2022 Staff Report  
22 fail to identify substantial evidence to support its changed position but the Coastal Commission also  
23 failed to address substantial new evidence in the record demonstrating that PWM Expansion had become  
24 an even more reliable alternative.

25         8. The Coastal Commission also impermissibly failed to presume that the Supplemental  
26 Environmental Impact Report (“EIR”) for PWM Expansion was adequate as required by the California  
27 Environmental Quality Act (“CEQA”) (Pub. Resources Code, §§ 21000, et seq.). Monterey One Water  
28 (“M1W”), the lead agency for PWM Expansion, prepared a Supplemental EIR for PWM Expansion,

1 which it certified on or about April 26, 2021. The Supplemental EIR determined that the sources of  
2 water supply for PWM Expansion are sufficient, resilient, and reliable to provide Cal-Am with 2,250  
3 acre-feet per year (“AFY”) of additional water. Prior to issuance of the 2022 Staff Report, MPWMD and  
4 MCWD each submitted expert analyses to the Coastal Commission demonstrating that the 2,250 AFY,  
5 along with Cal-Am’s other water supplies, would meet Cal-Am’s Monterey District water supply  
6 demands through 2050.

7 9. At the November 17, 2022 Coastal Commission hearing, in response to questions from  
8 Coastal Commissioners, staff acknowledged it had not undertaken any independent analysis of Cal-  
9 Am’s current water supply and demand requirements, but instead simply picked an average number,  
10 without any evaluation, based on competing estimates of that supply and demand which were included  
11 in testimony that has been served in a pending Cal-Am CPUC application, but which has not been  
12 attested to or received into evidence in that proceeding. Moreover, the Coastal Commission failed to  
13 acknowledge or address the fact that its approvals of the CDPs were time-limited and would expire  
14 shortly after the time it had determined that the MPWSP may even be necessary to meet long-term  
15 demand. Following the issuance of the 2022 Staff Report, MPWMD and MCWD each provided  
16 independent assessments of Cal-Am’s estimated future water demand confirming the conclusion that  
17 water supplied by PWM Expansion is sufficient to meet future Cal-Am water needs through 2050.

18 10. In approving the CDPs for the MPWSP, the Coastal Commission abused its discretion,  
19 exceeded its jurisdiction, failed to proceed in the manner required by law and failed to support its  
20 findings with substantial evidence in violation of the California Coastal Act (“Coastal Act”) (Pub.  
21 Resources Code, §§ 30000, et seq.), CEQA and other applicable laws. Among its many errors, the  
22 Coastal Commission:

- 23 a. Unilaterally and illegally segmented and phased the Project in violation of  
24 determinations of the CPUC and other responsible agencies;
- 25 b. Abandoned its duty to protect the disadvantaged communities harmed by the  
26 Project in direct contravention of the Coastal Commission’s Environmental Justice Policy and associated  
27 Coastal Act regulations and other statutory requirements;
- 28 c. Failed to meet the rigorous “override” standards imposed by the Legislature for

1 approving a project that the Coastal Commission acknowledges violates the Coastal Act and the City's  
2 Local Coastal Program ("LCP") (Pub. Resources Code, § 30260);

3 d. Failed to comply with the Coastal Act's mandate to protect Environmentally  
4 Sensitive Habitat Areas ("ESHA"), coastal public access and vernal pond/wetlands areas, failed to  
5 protect the community from coastal hazard dangers, failed to prevent groundwater depletion, and failed  
6 to recognize or implement its public trust responsibilities;

7 e. Failed to adequately address concurrent court and agency proceedings on critical  
8 issues (including water supply and demand, alternative water sources, and water rights), all of which  
9 directly relate to whether the Project is feasible, or necessary;

10 f. Failed to comply with its CEQA obligations; and

11 g. Noticed and conducted its hearing in an unfair manner in violation of due process  
12 principles, the Coastal Act, and other applicable standards.

13 11. This decision process, and the ensuing Coastal Commission decisions are substantively  
14 and procedurally deficient and must be set aside.

15 12. The Coastal Commission also violated, as part of its continuing pattern and practice,  
16 critically important CEQA requirements applicable to its certified regulatory program that obligate the  
17 Coastal Commission to provide a 30-day minimum public comment period on its environmental  
18 documents and to provide responses to comments, and thereby undermined the public participation  
19 requirements that are the heart of CEQA.

20 13. Petitioners seek a writ of mandate, declaratory relief, and injunctive relief vacating and  
21 setting aside the decisions of the Coastal Commission granting Cal-Am's appeal from the City's denial  
22 of a CDP for the portion of the MPSWSP within the City's coastal zone (A-3-MRA-19-0034) and the  
23 Commission's approval of the consolidated CDP for the MPWSP (9-20-0603) on the grounds that these  
24 decisions were procedurally and substantively flawed, and thus violated numerous laws, including the  
25 Coastal Act and CEQA.

## 26 **PARTIES**

27 14. Petitioner and Plaintiff City of Marina was incorporated as a general law city in 1975 and  
28 became a California charter city in 1998 pursuant to Article XI of the California Constitution. Marina is

1 a racially diverse, working-class community of about 22,000 citizens located along the central coast of  
2 California in northern Monterey County. The Coastal Commission’s approval of the CDPs at issue in  
3 this proceeding, if not vacated, will cause irreparable impacts to the coastal ecosystems, affordable  
4 groundwater resources, public coastal access, economy, culture and social fabric of the City.

5 15. Petitioner and Plaintiff MPWMD is a public agency that manages the Monterey  
6 Peninsula’s water resources. The Legislature established the Water Management District in 1977 and  
7 granted it “broad powers to manage and regulate use and distribution” of water on the Monterey  
8 Peninsula. (*Monterey Peninsula Water Management Dist. v. Public Utilities Comm.* (2016) 62 Cal.4th  
9 693, 695.) MPWMD uses these powers to promote water conservation and environmental protection,  
10 and to develop water supply projects to address the Monterey Peninsula’s chronic water shortages.  
11 MPWMD’s charge is to integrate management of ground and surface water in the Monterey Peninsula  
12 area and Carmel River watershed, to help those resources recover from overuse and degradation and to  
13 help develop a sustainable water supply for the area.

14 16. Petitioner and Plaintiff MCWD is a county water district formed by California Water  
15 Code Division 12 in 1960 to provide potable water service to all residential, commercial, industrial,  
16 environmental, and fire protection uses in the then unincorporated community of Marina. MCWD  
17 currently provides potable water delivery, recycled water, and wastewater conveyance services to the  
18 Cities of Marina, Seaside, Del Rey Oaks, Monterey, and the County of Monterey as well as various  
19 federal military facilities and two California Universities. MCWD is the sole provider of municipal  
20 water services for approximately 38,200 residents in its operations service areas. These customers rely  
21 solely on MCWD for their domestic drinking water. MCWD and its residential, commercial and  
22 governmental customers would be materially injured by the activities that were approved by the Coastal  
23 Commission for the proposed Project.

24 17. Petitioner and Plaintiff MCWD GSA is single agency Groundwater Sustainability  
25 Agency (“GSA”) formed in accordance with the requirements of California Water District Law  
26 (California Water Code § 34000). The California Department of Water Resources (“DWR”) granted the  
27 MCWD GSA status as a GSA within its jurisdictional boundaries in the Monterey Subbasin, and the  
28 180/400-Foot Aquifer Subbasin, which are both subbasins within the SVGB. MCWD GSA, in



1 coordination with the Salinas Valley Basin GSA (“SVBGSA”) prepared the groundwater sustainability  
2 plan (“GSP”) for the Monterey Subbasin (DWR Basin 3-004,10), which encompasses 30,850 acres (or  
3 48.2 square miles), that was required by the Sustainable Groundwater Management Act (“SGMA”)  
4 (Water Code, §§ 10720, et seq.). The GSP was approved by both MCWD GSA and SVBGSA before  
5 being submitted to DWR in January 2022. That GSP is currently under review by DWR. The GSPs are  
6 designed to bring the groundwater basins into sustainable balance over the next two plus decades. The  
7 MPWSP was not considered in developing the GSPs and would damage the predicted outcomes of the  
8 existing plans. MCWD GSA would be materially injured by the activities that were approved for the  
9 Project.

10 18. Respondent and Defendant Coastal Commission is the state administrative body  
11 authorized to implement and enforce the Coastal Act. The Coastal Commission may sue and be sued.  
12 (Pub. Resources Code, § 30334.) The Coastal Commission issued the decisions approving the CDPs for  
13 the MPWSP and is responsible for the acts and omissions that are challenged in this action.

14 19. Petitioners are unaware of the true names and capacities of Respondents and Defendants  
15 DOES 1 through 10, inclusive, and Petitioners will amend this Petition to insert their true names and  
16 capacities when Petitioners have ascertained them. Petitioners are informed and believe, and on that  
17 basis allege, that these Respondents/Defendants are in some way responsible for the acts, omissions and  
18 events alleged in this Petition. Accordingly, Petitioners sue DOES 1 through 10 in such fictitious names.

19 20. Petitioners are informed and believe, and on that basis allege, that at all times herein,  
20 each Respondent/Defendant identified in Paragraphs 18-19 herein was the agent, employee, servant,  
21 alter ego and/or representative of each of the other Respondents/Defendants and was acting within the  
22 course and scope of such relationship. The Respondents/Defendants identified in Paragraphs 18-19  
23 herein shall be collectively referred to herein as “Respondents.”

24 21. Real Party in Interest Cal-Am is a private, investor-owned corporation and is a water  
25 utility regulated by the CPUC under the Public Utilities Code. Cal-Am is a California corporation with  
26 its principal place of business in San Diego, California.

27 22. Cal-Am is not a public entity, but is a wholly owned subsidiary of American Water, the  
28 largest investor-owned water and wastewater utility company in the United States. American Water has

1 its headquarters in Camden, New Jersey. Cal-Am is named as Real Party in Interest pursuant to Section  
2 21167.6.5, subdivision (a) of the Public Resources Code. Petitioners are informed and believe, and  
3 thereon allege, that Cal-Am is, and at all times herein mentioned was, the applicant for the CDPs.

4 23. Petitioners are unaware of the true names and capacities of Real Parties in Interest DOES  
5 11 through 20, inclusive, and Petitioners will amend this Petition to insert their true names and  
6 capacities when Petitioners have ascertained them. Petitioners are informed and believe, and based on  
7 such information and belief, allege that these Real Parties in Interest may have interests directly affected  
8 by the outcome of this Petition. Accordingly, Petitioners sue DOES 11 through 20 as Real Parties in  
9 Interest in such fictitious names.

#### 10 **JURISDICTION AND VENUE**

11 24. This court has jurisdiction of this action pursuant to Code of Civil Procedure sections  
12 526, 526A, 1060, 1085, and 1094.5, as well as Public Resources Code sections 21080.5, 21168, 30328,  
13 30801, 30803, and 30804. Alternatively, this court has jurisdiction of the CEQA claims under Code of  
14 Civil Procedure section 1080 and Public Resources Code section 21168.5.

15 25. Venue is proper in this court pursuant to Code of Civil Procedure sections 393,  
16 subdivision (b) and 395 because the causes of action alleged in this Petition arose in Monterey County  
17 and further because the Project is proposed to be constructed in Monterey County, the Coastal  
18 Commission approved the CDPs in Monterey County, the environmental impacts will occur in Monterey  
19 County, and the financial impact will be incurred by residents, businesses, public entities, voters, and  
20 Cal-Am ratepayers residing in Monterey County.

#### 21 **LEGAL BACKGROUND**

##### 22 **A. California Coastal Act**

23 26. The Coastal Commission was established in 1972 through a voter initiative. In 1976, the  
24 Legislature adopted the Coastal Act, which made the Coastal Commission a permanent agency with the  
25 authority to regulate coastal development in the defined coastal zone.

26 27. In enacting the Coastal Act, the Legislature declared that "the California coastal zone is a  
27 distinct and valuable natural resource of vital and enduring interest to all the people" and that "the  
28 permanent protection of the state's natural and scenic resources is a paramount concern to present and

1 future residents of the state and nation." (Pub. Resources Code, § 30001, subds. (a) and (b).) Consistent  
2 with this policy, a fundamental purpose of the Coastal Act is to "protect, maintain, and, where feasible,  
3 enhance and restore the overall quality of the coastal zone environment and its natural and artificial  
4 resources." (Pub. Resources Code, § 30001.5, subd. (a).)

5 28. The Legislature further declared "that the duties, responsibilities, and quasi-judicial  
6 actions of the commission are sensitive and extremely important for the well-being of current and future  
7 generations and that the public interest and principles of fundamental fairness and due process of law  
8 require that the commission conduct its affairs in an open, objective, and impartial manner free of undue  
9 influence and the abuse of power and authority." (Pub. Resources Code, § 30320, subd. (a).)

10 29. One key feature of the Coastal Act is a partnership it establishes between the Coastal  
11 Commission and local government entities. The Coastal Act contemplates that cities and counties with  
12 areas located within the coastal zone will adopt LCPs with a Land Use Plan and implementation  
13 provisions to regulate proposed coastal development projects within their jurisdiction. Each local agency  
14 must develop and submit its LCP to the Coastal Commission for review and approval. In authorizing the  
15 certification of LCPs, the Legislature recognized the need to "rely heavily on local government and local  
16 land use planning procedures" to "achieve maximum responsiveness to local conditions." (Pub.  
17 Resources Code, § 30004, subd. (a).)

18 30. Once an LCP is certified by the Coastal Commission, the local entity has delegated  
19 authority to consider and approve coastal development projects within its jurisdiction. The Coastal  
20 Commission, however, retains original permit jurisdiction over certain types of lands, such as tidelands  
21 and defined ocean areas, outside of lands administered by cities and counties.

22 31. In 1982, the Coastal Commission certified the City's LCP. Since that time, the City has  
23 exercised jurisdiction to consider and approve coastal development projects within the City's defined  
24 coastal zone using the applicable standards in its LCP and the Coastal Act.

25 32. The Coastal Commission may hear an appeal from a denial of a permit under a certified  
26 LCP in very limited circumstances. "[A]fter certification of a local coastal program, issuance of coastal  
27 development permits is the purview of the local government, not the Coastal Commission." (*City of*  
28 *Malibu v. California Coastal Com.* (2012) 206 Cal.App.4th 549, 556) Only once the local agency makes

1 that decision does the Commission have jurisdiction to hear an appeal, and even then, the jurisdiction is  
2 limited:

3 The only grounds for appeal to the Coastal Commission from the local government's action on a  
4 coastal development permit for a major public works project or a major energy facility are that  
5 the development does, or does not, conform to the certified LCP and the Coastal Act's public  
6 access policies. (§ 30603, subds. (a)(5), (b)(1), (2).)

6 (*Id.* at p. 555.)

7 33. The Coastal Act contains important policies protecting a wide range of resources and  
8 amenities, including public coastal access, Environmentally Sensitive Habitat Areas (“ESHA”), marine  
9 habitats, groundwater supply, visual resources, commercial fisheries, and sensitive protected species and  
10 their habitats. (See Pub. Resources Code, §§ 30200-30270.)

11 34. In 2016, effective on January 1, 2017, the Legislature added Section 30013 to the Coastal  
12 Act, which reads:

13 The Legislature further finds and declares that in order *to advance the principles of*  
14 *environmental justice and equality*, subdivision (a) of Section 1135 of the Government  
15 Code and subdivision (e) of Section 65040.12 of the Government Code apply to the  
16 commission and all public agencies implementing the provisions of this division. As  
17 required by Section 1135 of the Government Code, no person in the State of California,  
18 on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual  
19 orientation, color, genetic information, or disability, shall be unlawfully denied full and  
20 equal access to the benefits of, or be unlawfully subjected to discrimination, under any  
21 program or activity that is conducted, operated, or administrated pursuant to this division,  
22 is funded directly by the state for purposes of this division, or receives any financial  
23 assistance from the state pursuant to this division.

20 (Emphasis added.)

21 35. “Environmental justice,” as that term is used in section 30013, means the fair treatment  
22 and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect  
23 to development, adoption, implementation, and enforcement of environmental laws regulations, and  
24 policies. (Pub. Resources Code, § 30107.3.)

25 36. Under the Coastal Act, environmental justice includes, but is not limited to: (a) the  
26 availability of a healthy environment for all people; (b) the deterrence, reduction, and elimination of  
27 pollution burdens for populations and communities experiencing the adverse effects of that pollution, so  
28 that the effects of the pollution are not disproportionately borne by those populations and communities;

1 (c) governmental entities engaging and providing technical assistance to populations and communities  
2 most impacted by pollution to promote their meaningful participation in all phases of the environmental  
3 and land use decision-making process; and (d) at a minimum, the meaningful consideration of  
4 recommendations from populations and communities most impacted by pollution into environmental  
5 and land use decisions. (Pub. Resources Code, § 30107.3.)

6 37. In 2019, the Coastal Commission adopted a comprehensive Environmental Justice Policy,  
7 which includes the following statements and commitments:

8 a. Equity: “Equity is at the heart of the Coastal Act.”

9 b. Equitable Access: “The Commission will use its legal authority to ensure  
10 equitable access to clean, healthy, and accessible coastal environments for communities that have been  
11 disproportionately overburdened by pollution or with natural resources that have been subjected to  
12 permanent damage for the benefit of wealthier communities.”

13 c. Climate Change: “Low-income communities are more vulnerable to climate-  
14 driven water quality and supply issues that can result from seawater intrusion, contamination from  
15 extreme storm events, and drought. The Commission will take this reality into consideration when  
16 analyzing the effectiveness and the impacts of sea level rise adaptation and mitigation measures as well  
17 as implementation of those measures.”

18 d. Avoid Disproportionate Effects: The Coastal Commission’s intent “will be to  
19 ensure that low-income communities and communities of color, and other disadvantaged communities  
20 are not disproportionately affected by water contamination or overuse or diminished environmental  
21 services such as those provided by healthy ecosystems, fully-functioning wetlands, and clean waters and  
22 lands in the coastal zone.”

23 38. Under the Coastal Act, any party aggrieved by a decision or action of the Coastal  
24 Commission has the right to judicial review of that decision or action by filing a petition for writ of  
25 mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within 60 days after the  
26 decision or action has become final. (Pub. Resources Code, § 30801.)

27 39. Under the Coastal Act, any person may also maintain an action for declaratory and  
28 equitable relief to restrain a violation of the act and to enforce the duties specifically imposed upon the

1 Coastal Commission. (Pub. Resources Code, §§ 30803, 30804.)

2 **B. California Environmental Quality Act**

3 40. In enacting CEQA, the Legislature declared that "the long-term protection of the  
4 environment ... shall be the guiding criterion in public decisions." (Pub. Resources Code, § 21001, subd.  
5 (d).) The Legislature also declared that "public agencies should not approve projects as proposed if there  
6 are feasible alternatives or feasible mitigation measures available which would substantially lessen the  
7 significant environmental effects of such projects[.]" (Pub. Resources Code, § 21002.) The California  
8 Supreme Court has characterized this latter statutory command as setting forth the "substantive  
9 mandate" of CEQA. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134  
10 (*Mountain Lion Foundation*).

11 41. CEQA requires public agencies to analyze and disclose the potentially significant  
12 environmental impacts that may result from their discretionary approval decisions. CEQA also requires  
13 such agencies to avoid or mitigate those impacts to the maximum extent feasible. (Pub. Resources Code,  
14 § 21100.)

15 42. The Legislature has provided that the Secretary of the Natural Resources Agency may  
16 certify a regulatory program of a state agency as exempt from the requirement of EIR preparation if the  
17 program requires that a project be preceded by the preparation of a written report containing certain  
18 information on the environmental impacts of the project. (Pub. Resources Code, § 21080.5, subd. (a).) A  
19 certified regulatory program involves essentially the same consideration of environmental issues as  
20 provided by use of EIRs and negative declarations. (CEQA Guidelines, § 15002, subd. (I).)<sup>2</sup> Thus, state  
21 agencies operating under a certified regulatory program must prepare a plan or other environmental  
22 review document that serves as a functional equivalent of an EIR. (*Mountain Lion Foundation, supra*,  
23 16 Cal.4th at p. 113.)

24 43. Under Public Resources Code section 21080.5, the Secretary of the Natural Resources  
25 Agency may certify that a state agency's regulatory program meets certain statutory criteria requiring,

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27  
28 <sup>2</sup> The CEQA Guidelines are regulations implementing CEQA and are found in Title 14 of the California Code of Regulations, commencing with section 15000.

1 among other things, (i) "protection of the environment," (ii) consideration of "feasible alternatives or  
2 feasible mitigation measures" to "substantially lessen a significant adverse effect ... on the environment,"  
3 (iii) interagency consultation, (iv) "reasonable time for review and comment by ... the general public,"  
4 and (v) "written responses ... to significant environmental points raised during the evaluation process."(  
5 Pub. Resources Code, § 21080.5, subds. (a), (d).) After such certification, the state agency may prepare  
6 "written documentation containing environmental information" in lieu of an EIR. (*Id.*, subd. (a).) (Pub.  
7 Resources Code, § 21080.5, subd. (d); see also CEQA Guidelines § 15252.) The functional equivalent  
8 EIR must also be “available for a reasonable time for review and comment by other public agencies and  
9 the general public.” (Pub. Resources Code, § 21080.5, subd. (d)(3)(B); see also *id.* at subd. (d)(2)(F).)

10 44. The Coastal Commission’s regulatory program—regarding consideration and granting of  
11 CDPs under the Coastal Act—has been certified as meeting the requirements of Public Resources Code  
12 section 21080.5.

13 45. Although not required to prepare an EIR, the Coastal Commission has an independent  
14 duty to ensure compliance with CEQA. (See Pub. Resources Code, § 21080.5; 14 Cal. Code Regs., §  
15 13096(a) [“all decisions of the commission relating to permit applications shall be accompanied by  
16 written conclusions about the consistency of the application with ... Public Resources Code section  
17 21000 (CEQA)”].)

18 46. Public Resources Code section 21080.5 expressly provides that a certified regulatory  
19 program is exempt only from chapter 3 (state agencies, boards and commissions) and chapter 4 (local  
20 agencies), as well as section 21167 (statutes of limitations) of CEQA. "An agency operating pursuant to  
21 a certified regulatory program must comply with ***all of CEQA 's other requirements.*** [Citations.]"  
22 (*Mountain Lion Foundation, supra*, 16 Cal.4th at pp. 113-114, emphasis added; see also *Sierra Club v.*  
23 *Bd. of Forestry* (1994) 7 Cal.4th 1215, 1228 (*Sierra Club*).) To effectuate the above-mentioned  
24 legislative policies, the Commission must simultaneously comply with both the Coastal Act and CEQA,  
25 consistent with the partial CEQA exemption created by Public Resources Code section 21080.5. (See  
26 Pub. Resources Code, § 21080.5; Cal. Code of Regs., tit. 14 §§ 13096, subd. (a), 13057, subd. (c).)

27 47. The Coastal Commission is a “responsible agency” in the context of this matter.  
28 Responsible agencies are agencies, other than the lead agency, that have discretionary authority to carry

1 out or approve a project. (CEQA Guidelines, § 15381.) Before reaching a decision on a project, a  
2 responsible agency must consider the environmental effects of the project as shown in the EIR. (*Id.* at §  
3 15096, subd. (f).) A responsible agency is responsible for mitigating or avoiding the environmental  
4 impacts of the parts of the project that are subject to its legal authority. (*Id.* at § 15096, subd. (g).) If  
5 there have been changes in a project or changes in circumstances, or if significant new information  
6 becomes available after the lead agency certified the EIR for the project, the responsible agency must  
7 determine whether any of these changes require preparation of a subsequent or supplemental EIR. (Pub.  
8 Resources Code, § 21166; CEQA Guidelines, §§ 15162-15163.)

9 48. Thereafter, under CEQA, any party may bring an action or proceeding—  
10 to attack, review, set aside, void, or annul a determination or decision of a state agency  
11 approving or adopting a proposed activity under a regulatory program that has been  
12 certified pursuant to paragraph (3) of subdivision (d) does not comply with this section  
13 shall be commenced not later than 30 days from the date of the filing of notice of the  
14 approval or adoption of the activity.  
(Pub. Resources Code, § 21080.5(g); see also *id.* at § 21168.)

## 14 GENERAL ALLEGATIONS

### 15 **A. The CPUC's EIR and CPCN**

16 49. The MPWSP proposed by Cal-Am is a water supply project consisting of multiple  
17 components located in multiple jurisdictions. The Project area extends approximately 18 miles, from the  
18 town of Castroville in the north to the City of Carmel-by-the Sea in the south.

19 50. The primary purpose of the MPWSP is to enable Cal-Am to halt its illegal diversions of  
20 water from the Carmel River, which the SWRCB concluded in 1995 adversely impacted endangered  
21 species and their riparian environment. Cal-Am ceased making such illegal diversions as of December  
22 31, 2021 and has since that time successfully operated its system.

23 51. On or about April 23, 2012, Cal-Am filed Application (“A.”) 12-04-019 seeking approval  
24 from the CPUC for the MPWSP desalination project.

25 52. Cal-Am filed an amended application with the CPUC on or about March 14, 2016 in  
26 which it proposed two alternative variants for the MPWSP: (1) a desalination plant with a 9.6 mgd  
27 capacity, or (2) a 6.4 mgd desalination plant, if and only if, combined with a WPA for 3,500 AFY of  
28 product water from PWM.



1           53.     On or about September 22, 2016, the CPUC issued its Decision (“D.”) 16-09-021 that  
2 separately approved Cal-Am’s WPA for PWM. Subsequent to this approval, the 6.4 mgd desalination  
3 plant became Cal-Am’s proposed MPWSP.

4           54.     In September 2018, the CPUC, as the lead state agency, certified a Final EIR for the  
5 MPWSP (“MPWSP EIR”). The MPWSP EIR concluded that the MPWSP would result in “significant  
6 and unavoidable impacts” related to air quality, greenhouse gas emissions, and traffic.

7           55.     The MPWSP EIR included mandatory mitigation measures, including a requirement for  
8 Cal-Am to complete modifications to M1W’s outfall before the MPWSP could operate. However, Cal-  
9 Am failed to include the outfall modifications in its CDP application and the Coastal Commission failed  
10 to require Cal-Am to do so. Moreover, to date, Cal-Am lacks any agreement with M1W to utilize or  
11 modify the outfall as required by the CPUC.

12           56.     Pursuant to Public Utilities Code Section 1001, no water utility, like Cal-Am, can begin  
13 the construction of any line, plant, or system without first having obtained from the CPUC a certificate  
14 that the present or future public convenience and necessity requires or will require the specifically  
15 identified construction, i.e., the CPCN.

16           57.     In September 2018, following its certification of the MPWSP EIR, the CPUC in D.18-09-  
17 017 granted Cal-Am a CPCN specific to and *only* for Alternative 5a of the MPWSP, which is Cal-Am’s  
18 6.4 mgd desalination plant and related infrastructure (e.g., slant wells and pipelines). This approval was  
19 also subject to Cal-Am’s compliance with all feasible mitigation measures identified in the MPWSP EIR  
20 and an adopted Mitigation Monitoring and Reporting Program specific to Alternative 5a. As to other  
21 proposed alternatives, the CPUC expressly rejected both a 4.8 mgd alternative as well as phasing of the  
22 6.4 mgd desalination components of the MPWSP. The CPUC thereby agreed with Cal-Am’s arguments  
23 that a smaller or phased project would neither result in cost savings for ratepayers nor substantially  
24 lessen environmental impacts. These approvals and limitations are embodied in D.18-09-017.  
25 Importantly, the Coastal Commission’s approvals for the MPWSP at issue in these proceedings are not  
26 consistent with D.18-09-017 and have not been authorized by the CPUC.

27           58.     After unsuccessfully seeking rehearing before the CPUC, MCWD and the City  
28 commenced original actions in the California Supreme Court directly challenging the CPUC’s decision

1 to certify the MPWSP EIR, which is the only method for seeking judicial review of final CPUC  
2 decisions in water cases under Public Utilities Code section 1756, subdivision (f). Those petitions for  
3 writ of review were consolidated as Supreme Court case number S253585 and summarily denied in a  
4 one page order, without issuance of a written opinion stating the reason for the denial. As a result, the  
5 CPUC never prepared a record of decision and there is no judicial opinion addressing the adequacy of  
6 the MPWSP EIR. Nonetheless, the CPUC's decision to certify the MPWSP EIR by law is presumed  
7 adequate.

8         59. This Petition does not challenge the CPUC's decision to certify the MPWSP EIR in 2018.  
9 Rather, it challenges the Coastal Commission's failure, four years, later to fulfill its independent  
10 statutory obligations under the Coastal Act and CEQA. Among other deficiencies, the Coastal  
11 Commission failed to adequately address significant new information arising after the CPUC's  
12 certification of the MPWSP EIR, failed to fulfill its obligations as a CEQA responsible agency in  
13 reviewing and approving the Project and failed to reconcile the MPWSP as approved and conditioned by  
14 the CPUC with the modified project it purported to approve in its CDP decisions.

15         **B. Cal-Am's CDP Appeal and Consolidated CDP Application**

16         60. To supply source water for the MPWSP, Cal-Am proposes to drill slant wells that will  
17 extract fresh and brackish groundwater from the shallow coastal aquifers of the SVGB, in close  
18 proximity to MCWD's municipal wells and in a volume five times in excess of the volume of  
19 groundwater MCWD currently draws. The proposed slant wells would be located in the coastal zone  
20 within rare coastal dune habitat that supports endangered species and which has been designated as  
21 primary habitat under the City's LCP and ESHA under the Coastal Act.

22         61. MCWD relies exclusively on these coastal aquifers for its municipal water supply.  
23 MCWD has eight municipal wells in the Monterey and 180/400 Foot Subbasins, which are located in or  
24 immediately south of and adjacent to the property where the MPWSP slant wells are proposed to be  
25 constructed.

26         62. On June 28, 2018, Cal-Am applied to the City for a CDP (CDP 2018-01) for the  
27 industrial components of the Project proposed for construction located within the City's coastal zone  
28 jurisdiction. These components included six new subsurface intake slant wells, seven slant well intake

1 mechanical piping vaults, five slant well electrical enclosures, two surge tanks, various pipelines,  
2 vehicle access routes and other structures. Following the CPUC’s certification of the MPWSP EIR and  
3 approval of the CPCN, the City set CDP 2018-01 for a public hearing.

4 63. On or about January 18, 2019, the Marina Planning Commission and Marina City  
5 Council jointly held a public workshop regarding the CDP for the MPWSP.

6 64. The Marina Planning Commission held public hearings regarding the CDP on February  
7 14, 2019, and March 7, 2019.

8 65. On March 7, 2019, following those public hearings, the Marina Planning Commission,  
9 based on all testimony and documents presented to it, unanimously voted to deny the CDP for the  
10 Project as set forth in Marina Planning Commission Resolution No. 2019-06.

11 66. Cal-Am appealed the Planning Commission decision to the Marina City Council, but  
12 shortly before the scheduled City Council hearing, Cal-Am withdrew its appeal and purported to appeal  
13 the City’s decision directly to the Coastal Commission. In addition, two members of the Coastal  
14 Commission at that time and two other entities also filed appeals of the City’s decision with the Coastal  
15 Commission. These appeals were designated by the Coastal Commission as Appeal No. A-3-MRA-19-  
16 0034.

17 67. The City and MCWD objected to the Coastal Commission hearing the appeals on  
18 multiple grounds.

19 68. On July 11, 2019, following a public hearing, the Coastal Commission determined that it  
20 had jurisdiction of Appeal No. A-3-MRA-19-0034) (“Appealed CDP”).

21 69. In 2019, Cal-Am also separately filed with the Coastal Commission an original  
22 consolidated application for a CDP covering those Project components located within the LCP  
23 jurisdictions of the City of Seaside and the County of Monterey, as well as for Project infrastructure  
24 located seaward of the mean high tide line (“Consolidated CDP”).

25 70. The proceedings related to this Project were pending before the Coastal Commission for  
26 more than three years prior to the November 2022 hearing and included the following events:

27 a. The Coastal Commission set the Appealed CDP and the Consolidated CDP for  
28 public hearing on November 14, 2019. The October 28, 2019 Staff Report (“2019 Staff Report”) issued

1 before the hearing recommended denial of both CDPs because the Project did not conform with Coastal  
2 Act and City LCP provisions regarding ESHA and coastal hazards, among other grounds. Staff also  
3 found that the Project did not meet the test for an “override” under Section 30260 of the Coastal Act  
4 because: (i) there was a “feasible less environmentally damaging alternative to the proposed project that  
5 could be constructed in a different location,” (i.e., PWM Expansion); and (ii) “the public welfare would  
6 not be harmed by denial of this proposed project.” After determining that two of the three mandatory  
7 override tests could not be satisfied, the 2019 Staff Report did not analyze the Project’s compliance with  
8 the third test under Section 30260 (i.e., whether Project impacts would be mitigated to the maximum  
9 extent possible). At its November 2019 meeting, the Coastal Commission found a substantial issue  
10 existed with respect to the appeal and continued both the Appealed and Consolidated CDPs for further  
11 review.

12 b. The Coastal Commission set consideration of the CDPs for a second public  
13 hearing on September 17, 2020. On August 25, 2020, prior to the hearing, another Staff Report (“2020  
14 Staff Report”) was issued in which Staff recommended to the Coastal Commission that it deny both  
15 CDPs sought by Cal-Am. Among other determinations, the 2020 Staff Report concluded:

16 The proposed Project is extraordinarily controversial, spawning at least ten lawsuits over  
17 the Project’s more than eight-year history. It also raises significant impacts to [ESHA]  
18 and the need to consider whether a feasible and less environmentally damaging  
19 alternative to the Project exists. The Project also involves the most significant  
environmental justice concerns the Commission has considered since it adopted an  
Environmental Justice Policy in 2019.

20 \* \* \*

21 Staff recommends finding that the Project is inconsistent with relevant Coastal Act and  
22 LCP policies and that the Commission may not approve the Project despite those  
23 inconsistencies because the PWM Expansion is a feasible, less damaging alternative that  
will adequately provide water and protect the public welfare.

24 Shortly before the scheduled hearing, Cal-Am withdrew its application for the Consolidated CDP and  
25 the Coastal Commission continued consideration of the Appealed CDP.

26 c. On or about November 5, 2020, Cal-Am filed a new application with the  
27 Coastal Commission for a Consolidated CDP for the MPWSP. On three separate occasions over  
28 the next two years, the Coastal Commission staff found Cal-Am’s application incomplete for

1 numerous reasons. On or about September 1, 2022, despite Cal-Am’s refusal to provide the  
2 information needed by the Coastal Commission and the public to meaningfully evaluate the  
3 Project’s adverse impacts on coastal resources, the Coastal Commission’s Executive Director  
4 unilaterally waived the applicable regulation (Cal. Code Regs., tit. 14, § 13502), thereby  
5 allowing the application to be deemed complete, and set both CDPs for public hearing on  
6 November 17, 2022.

7           d.       On or about October 5, 2022, Cal-Am sent a letter to the Coastal  
8 Commission purporting to modify its Project, requesting that the Coastal Commission approve  
9 Cal-Am’s new unilateral proposal to “phase” construction of the MPWSP. Specifically, Cal-Am  
10 requested authorization to construct a smaller initial phase of the Project that would produce 4.8  
11 mgd of water. However, the only project that had been approved by the CPUC in D.18-09-017  
12 was the 6.4 mgd desalination project. Indeed, the CPUC had expressly rejected the alternative of  
13 constructing a smaller or phased project. Contrary to Public Utilities Code section 1001, Cal-Am  
14 has never sought approval from the CPUC for construction of a 4.8 mgd MPWSP. The CPUC  
15 has not authorized a CPCN for Cal-Am to construct a 4.8 mgd project or a phased 6.4 mgd  
16 project.

17           e.       The City, MPWMD, MCWD and others requested, in writing, that the  
18 Coastal Commission postpone the hearing on the Project to allow time for thorough public  
19 review and comment and for fully informed Coastal Commission decision-making. As explained  
20 by Petitioners in their respective letters, significant uncertainty exists regarding Cal-Am’s ability  
21 to obtain water rights for its Project, as well as other required governmental approvals the Project  
22 requires—and additional time is needed to address key unresolved issues including  
23 environmental justice impacts, conflicting updated estimates of supply and demand, and whether  
24 there is a need for the Project based on the CPUC’s forthcoming consideration of the updated  
25 supply and demand record, environmental impacts associated with the required outfall  
26 modifications and approvals, groundwater impacts and water rights.

27           f.       The Coastal Commission ignored Petitioners’ written requests to postpone  
28 the hearing and instead issued a rushed 2022 Staff Report. The 2022 Staff Report completely

1 reversed staff's two prior recommendations that the CDPs be denied and recommended approval  
2 of the CDPs with 20 new "special conditions" that purportedly would address the glaring lack of  
3 information in the Coastal Commission's record regarding the Project's potential environmental  
4 impacts, the feasibility of alternatives and mitigation, the public welfare impacts and the  
5 maximum mitigation requirements.

6 g. The 2022 Staff Report did not fully disclose, analyze, or mitigate the  
7 impacts associated with the newly proposed phased construction of the Project. The staff  
8 recommendation does not reconcile its conflict with mitigations required by the CPUC-approved  
9 version of the Project.

10 h. Despite the Coastal Commission's failure to provide the required public  
11 comment period on its CEQA-equivalent document, Petitioners submitted preliminary comments  
12 by November 11, 2022. Given the extremely short public review and comment period,  
13 Petitioners advised they did not have sufficient time to fully evaluate or provide complete  
14 comments prior to the hearing.

15 i. The Coastal Commission issued an Addendum to the 2022 Staff Report  
16 ("Addendum") on November 14, 2022. The Addendum included a number of revisions to the  
17 Special Conditions. It also provided conclusory and incomplete responses to some of the public  
18 comments submitted on the 2022 Staff Report. It did not address many of the City's,  
19 MPWMD's, or MCWD's comments regarding Project's environmental impacts, mitigation, and  
20 alternatives.

21 j. MCWD submitted written comments on the Addendum on November 16,  
22 2022 and the City submitted additional written comments on key aspects of the 2022 Staff  
23 Report and Addendum on November 16, 2022.

24 k. The Coastal Commission held a public hearing to consider the CDPs on  
25 November 17, 2022. Prior to the hearing, the Coastal Commission issued Special Hearing  
26 Procedures for the hearing which prescribed time limits for elected officials, tribal  
27 representatives, public agencies, water districts and agencies, organizations, and members of the  
28 public. Despite allowing only one minute for members of the public to provide oral comments,

1 the Coastal Commission did not allow all individual members of the public who signed up to  
2 speak before the hearing to testify. Nor did the Coastal Commission provide sufficient time for  
3 agency representatives and organizations to present their comments. The Commission also  
4 changed staff's prior statements to the MCWD GSA that it would have eight minutes to present  
5 testimony as a public water agency under its special procedures and informed a representative of  
6 MCWD GSA mere minutes before its presentation that it would only be recognized as an  
7 organization and allowed to speak for five minutes in the aggregate, and that this increment of  
8 time needed to be divided between three speakers. As a result, the MCWD GSA groundwater  
9 expert was not able to provide her complete, prepared comments and counsel for MCWD GSA  
10 was unable to provide any comments at the hearing.

11           1.       During the Coastal Commission deliberations, several Commissioners  
12 stated their belief that the Project would have major adverse environmental justice and other  
13 impacts on Marina that were *not* being adequately addressed by the existing Special Conditions.  
14 The Coastal Commission Chair then asked staff if they could design mitigation or other measures  
15 to address this issue and protect Marina. Commission staff responded on the record that they had  
16 struggled to address this issue but did not have any additional mitigation to propose. Toward the  
17 end of the Coastal Commission deliberations, the Chair and several other Commissioners  
18 requested that Cal-Am agree to \$25 million payment to Marina to address environmental justice  
19 impacts. Cal-Am declined, but Cal-Am agreed to raise its proposed compensation from \$1 to \$3  
20 million. Despite acknowledging the inadequacy of the measures to protect Marina and thereby  
21 ensure protection of the public welfare, the Coastal Commission voted (in a split decision) to  
22 approve both the Appealed and Consolidated CDPs with conditions.

23           71.       On or after November 30, 2022, the Coastal Commission filed a Notice of Decision dated  
24 November 30, 2022 ("NOD") with the California Natural Resources Agency regarding its CEQA  
25 determinations for the CDPs pursuant to Public Resources Code section 21080.5. The California Natural  
26 Resources Agency did not post the NOD on its website until on or about December 20, 2022.

27           **C.       Measure J**

28           72.       In 2018, voters on the Monterey Peninsula approved Measure J, an initiative which

1 directed MPWMD to adopt a new policy to, if feasible, acquire and maintain water systems in its  
2 territory as public assets. Measure J specifically directed MPWMD to acquire Cal-Am’s water system  
3 via a negotiated purchase or, if necessary, eminent domain.

4         73.     Measure J was a response to the Monterey Peninsula’s ongoing water crisis and  
5 dissatisfaction with Cal-Am. For decades, residents and businesses have struggled with increasing water  
6 prices, scarce water supply, delays in bringing new sources of water online, and recurring moratoria on  
7 new water connections. Measure J’s findings catalogued the inadequacies of Cal-Am’s service, noting  
8 the following:

9             a.     Under Cal-Am’s ownership and management, the Monterey Peninsula’s water  
10 service has become the most expensive water service in the entire United States, according to a Food  
11 and Water Watch report in June 2017.

12            b.     Since 2007, the total cost of water billed to ratepayers by Cal-Am, including  
13 surcharges, increased from \$2,501 to \$6,484 per acre-foot, a 159 percent increase. During the same  
14 period, the consumer price index increased by merely 12.5 percent.

15            c.     In 1995, the SWRCB ordered Cal-Am to cease illegal pumping from the Carmel  
16 River, to implement conservation and demand management strategies, and to plan for a new water  
17 supply. In 2009, SWRCB issued a follow-up enforcement order, and threatened Cal-Am with mandatory  
18 water restrictions for its failure to make adequate progress after its initial order 14 years earlier.<sup>3</sup>

19            d.     In 2006, the Monterey Superior Court ordered Cal-Am to cease its over-pumping  
20 from the Seaside Groundwater Basin, finding that it threatened the long-term sustainability of the basin.

21            e.     Cal-Am has failed to complete three water supply projects since 1995. As a result,  
22 the CPUC approved Cal-Am’s recovery of its stranded costs, in excess of \$34 million, as a charge to  
23 Cal-Am’s ratepayers.

24            f.     Cal-Am’s record shows it lacks the capacity to manage the Monterey Peninsula’s  
25

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26 <sup>3</sup> The SWRCB’s 2009 order, extended in 2016, remains in effect. *See* State Water Resources Control  
27 Bd., *Matter of the Unauthorized Diversion and Use of Water by the California American Water Co.*,  
28 Order WR 2009-0060 (Oct. 20, 2009) (“2009 Cease and Desist Order”), as amended by Order WR  
2016-0016 (July 19, 2016).



1 water system to ensure provision of reliable, efficient, cost-effective water service to ratepayers.

2 74. Measure J found that, in contrast to Cal-Am, MPWMD has achieved a successful track  
3 record of developing and managing water supply projects, including complex water storage and  
4 reclamation projects that have expanded the region's water supply. After noting that 85 percent of  
5 consumers in the United States receive water from public agencies, Measure J concluded that:

6 Public ownership of the Monterey Peninsula's water system will benefit residential and  
7 business customers and ratepayers by lowering water service costs, guaranteeing  
8 transparency in meetings and actions by governing bodies, assuring public access to  
9 records, and [providing] full accountability of local elected officials in water system  
management and water service delivery.

10 75. As directed by Measure J, MPWMD took steps to determine whether acquisition of Cal-  
11 Am's water system would be economically feasible.

12 76. On or about September 24, 2019, MPWMD obtained a Letter of Confidence from  
13 Barclays Capital, Inc. affirming that MPWMD would have sufficient access to financing to fund both  
14 the acquisition of Cal-Am's system and future capital needed to operate the system.

15 77. On or about October 29, 2019, MPWMD's financial consultant completed a study of the  
16 feasibility of acquiring Cal-Am's water system, which concluded that public ownership would likely  
17 lead to significant savings for MPWMD residents and businesses. That study highlighted the many  
18 advantages of acquisition, including MPWMD's lower costs of public financing, reduced administrative  
19 overhead, and tax-exempt status.

20 78. Following the adoption of Measure J, MPWMD continues its efforts to comply with the  
21 voter's directive to acquire Cal-Am's water system. MPWMD prepared an EIR in 2020 to analyze the  
22 potential environmental effects of acquiring Cal-Am's water system. Cal-Am filed a lawsuit challenging  
23 MPWMD's EIR. The Monterey Superior Court deemed Cal-Am's action meritless on December 7,  
24 2021, in *California American Water Co. v. Monterey Peninsula Water Management Dist.*, No.  
25 20CV003201.

26 **D. PWM Expansion**

27 79. In 2018, the CPUC initially considered a proposal to expand PWM referred to as the  
28 PWM Expansion, which was expected to provide an additional 2,250 AFY of purified recycled water for

1 injection into the Seaside Groundwater Basin. At that time, the CPUC found that PWM Expansion was  
2 speculative and therefore not a feasible alternative, as either a standalone alternative or as a component  
3 of a smaller-sized (less than 6.4 mgd) desalination facility alternative, because PWM (the base project)  
4 was not yet fully operational. Because of this, the CPUC did not consider PWM Expansion to be viable,  
5 at that time.

6 80. The CPUC, however, indicated that in the event the MPWSP was delayed, PWM  
7 Expansion could be implemented in the future. If so, the CPUC would revisit the size of the  
8 desalination facility to avoid excessive costs to Cal-Am’s ratepayers. (CPUC D.18-09-017.)  
9 Accordingly, the CPUC ordered Cal-Am to track the progress of PWM Expansion and investigate  
10 whether it could become a viable alternative. Cal-Am reported to the CPUC in March 2019 that the  
11 MPWSP was on track to be completed and operational by December 31, 2021, and that Cal-Am would  
12 not explore PWM Expansion. Events proved Cal-Am’s estimates to be erroneous, and further  
13 demonstrated that PWM Expansion was, in fact, viable.

14 81. MPWMD, M1W, and MCWD have collaborated on PWM Expansion. MPWMD funded  
15 significant pre-construction costs for PWM Expansion.

16 82. M1W, as the lead agency, prepared an environmental document and, on or about April  
17 26, 2021, it certified the Supplemental EIR for PWM Expansion.

18 83. As described in the Supplemental EIR, water supply sources for PWM Expansion are  
19 sufficient, resilient, and reliable to provide Cal-Am with 2,250 AFY of additional water. The  
20 Supplemental EIR summarized source water availability and yield estimates for proposed seasonal  
21 storage, thereby demonstrating that PWM Expansion has abundant resilience to drought. The analysis  
22 includes a drought scenario where all advanced water purification facility needs are met and there is still  
23 residual recycled water supply available for agricultural use through the Castroville Seawater Intrusion  
24 Project.

25 84. M1W presently has adequate rights to secondary effluent prescribed by Water Code  
26 section 1210 and rights to other sources enumerated in its Amended and Restated Water Recycling  
27 Agreement with the Monterey County Water Resources Agency (“MCWRA”), as amended in 2019, to  
28 sufficiently meet the water supply requirements of PWM Expansion.

1 85. Implementation of PWM Expansion would increase production of PWM for purchase by  
2 Cal-Am from 3,500 AFY to an average of 5,750 AFY of purified recycled water, after injection in the  
3 Seaside Groundwater Basin. Cal-Am would extract the same amount for treatment and distribution to its  
4 customers throughout Cal-Am’s Monterey District service area.

5 86. PWM is fully permitted and operational. When PWM was initially constructed, it was  
6 designed to accommodate PWM Expansion. Only minor modifications or amendments to existing  
7 permits are required to implement PWM Expansion.

8 87. Implementation of PWM Expansion will result in Cal-Am’s water supply significantly  
9 exceeding demand in the early years of operation. The total water supply available from PWM  
10 Expansion (without a desalination plant), compared to customer demand with a growth rate adopted  
11 from the Association of Monterey Bay Area Government 2022 Regional Growth Forecast, shows that  
12 PWM Expansion can “bank” excess available water supply in the Seaside Basin, which will build up a  
13 significant drought reserve, utilize storage space available to Cal-Am, and provide further protection  
14 against seawater intrusion.

15 **E. Pending CPUC Proceedings**

16 88. On or about April 27, 2021, after Cal-Am withdrew its MPWSP application to the  
17 Coastal Commission in 2020, MPWMD filed a complaint with the CPUC against Cal-Am requesting  
18 that the CPUC order Cal-Am to enter into an amended water purchase agreement for PWM Expansion.  
19 Ultimately, the CPUC dismissed the complaint as moot after Cal-Am reached agreement with M1W and  
20 MPWMD on the terms of an agreement. Before the CPUC dismissed the complaint, however, it ordered  
21 Cal-Am to file an application requesting the CPUC to approve a water purchase agreement for PWM  
22 Expansion and to provide updated demand and supply estimates for the MPWSP. (D.22-03-038.)

23 89. In doing so, the CPUC also recited its original assumption that the MPWSP would be  
24 operational by December 31, 2021, and that Cal-Am would submit a separate application or the CPUC  
25 would issue an Order Instituting Investigation to determine the reasonableness of Cal-Am’s expenditures  
26 “if the desalination plant was not constructed in a timely manner.” (D.22-03-038, at p. 5.) Instead, as of  
27 the date of D.22-03-038 (March 30, 2022), the CPUC found that the “6.4 mgd desalination plant has not  
28 been constructed,” and that Cal-Am’s incomplete application for a CDP had been rejected multiple

1 times. (D.22-03-038, at p. 5.)

2 90. On or about November 29, 2021, Cal-Am filed A.21-11-024 requesting the CPUC  
3 approve: (a) Cal-Am’s execution of the Amended WPA for PWM Expansion; (b) updated estimates of  
4 supply and demand for the MPWSP; and (c) authorization for Cal-Am to recover its costs.

5 91. The CPUC phased the A.21-11-024 proceeding as follows: (a) Phase 1 addresses whether  
6 CPUC approval of the Amended WPA for PWM Expansion is reasonable, prudent, and in the public  
7 interest, whether Cal-Am’s ratemaking proposals are reasonable, and whether Cal-Am’s supply and  
8 demand estimates support approval; and (b) Phase 2 will “[r]eview and approve updated water supply  
9 and demand estimates for the MPWSP.” The CPUC also left open the “potential for a third phase if  
10 determined necessary after review of information provided in the first two phases.” (A.21-11-024  
11 Scoping Ruling (February 9, 2022), at p. 3.) Cal-Am stated its position that Phase 3 could address the  
12 “need [for] any changes or alterations or anything like that” with respect to the MPWSP, but those  
13 should not be considered until after completion of Phase 2. (A.21-11-024 Prehearing Conference  
14 Transcript (January 25, 2022), at p. 28.).

15 92. On or about December 1, 2022, the CPUC issued its Phase 1 decision (D.22-12-001)  
16 conferring authority upon Cal-Am to enter into the Amended WPA to purchase additional water supply  
17 from PWM Expansion and approving Cal-Am’s recovery in rates of costs for Cal-Am’s related  
18 facilities.

19 93. Phase 2 has commenced, but, to date, only the initial schedule by which Cal-Am and  
20 intervenors served their direct and rebuttal testimony on updated demand and supply estimates for the  
21 MPWSP has been completed. Evidentiary hearings have not been scheduled or held yet, and the  
22 proffered testimony has not been admitted into evidence. However, by way of the Phase 2 testimony,  
23 multiple parties presented supply and demand estimates to the CPUC. Significant supplies are available  
24 to Cal-Am from PWM, PWM Expansion, Aquifer Storage and Recovery (“ASR”), the Sand City Water  
25 Supply Project (a small, already operational desalination plant with a rated capacity of 300 AFY), and  
26 the existence of Cal-Am’s Carmel River permits and other recognized water rights.

27 94. Petitioners are informed and believe, and on that basis allege, that due to reductions in  
28 demand over the last 25 years and the availability of new water sources, Cal-Am does not need the

1 MPWSP to comply with the SWRCB’s Orders 95-10, WR 2009-0060 and 2016-0016, all of which  
2 require Cal-Am to eliminate its illegal appropriations from the Carmel River,<sup>4</sup> nor does Cal-Am need the  
3 MPWSP to provide a sufficient future supply to its Monterey District.

4 95. The CPUC accepted Cal-Am’s original water demand forecasts when it certified the  
5 MPWSP EIR and issued the CPCN (D.18-09-017), but those forecasts are now outdated and can  
6 therefore no longer provides a rational basis to determine the amount of water supply needed by Cal-  
7 Am. Testimony provided in Phase 2 of A.21-11-024 supports the finding that there is no immediate or  
8 even long-term need for the MPWSP. Based on updated demand analyses reflecting substantial  
9 conservation achieved since 1995, with the 2,250 AFY of water from PWM Expansion, Cal-Am’s 6.4  
10 mgd desalination facility approved by the CPUC is not needed. Without the desalination facility, Cal-  
11 Am can maintain a 10 percent cushion of legal supply—a cushion which it has operated without for  
12 decades—and still meet its customers’ water demands through 2050, even assuming all projected  
13 population growth occurs.

14 96. Cal-Am’s overall water demand and its customers’ per capita uses have decreased  
15 dramatically since 1995 and have continued to decrease since 2018. While some future population  
16 growth is anticipated in Cal-Am’s service area, the trend towards increasing and maintaining water  
17 efficiency, a critical component overlooked by Cal-Am’s previous demand estimates, is also expected to  
18 continue.

19 97. In 2022, Cal-Am forecasted it will require 14,950 AFY of water by 2050 (as compared to  
20 2021 demand of 9,280 AFY). This estimate of future water demand is vastly overstated. Cal-Am’s  
21 2022 forecast includes unsupported claims of increased per capita water consumption. Cal-Am’s 2022  
22 forecast ignores continued conservation, includes population that is not within Cal-Am’s service area,  
23 and double- or even triple-counts such elements associated with water demand such as legal lots of  
24 record, tourism rebound, Pebble Beach entitlements, and Regional Housing Needs Assessment numbers,  
25 all of which improperly inflate future demand estimates.

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27 <sup>4</sup> In 1995, the SWRCB issued Order No. WR 95-10, which found that out of the 14,106 AFY diverted  
28 by Cal-Am from the Carmel River system approximately 10,730 AFY of that water was taken illegally  
without a valid basis of right.

1 98. The CPUC is expected to issue a decision on Phase 2 issues in the first half of 2023 at the  
2 earliest. As the Scoping Ruling in A.21-11-024 makes clear, that decision is a necessary prerequisite to  
3 consideration of any future need or changes to the MPWSP approved by the CPUC in 2018.

4 **F. Water Rights Litigation/SWRCB Proceeding**

5 99. On or about May 11, 2020, the City of Marina filed a lawsuit against RMC Lonestar,  
6 RMC Pacific Materials, LLC (“CEMEX”), Cal-Am, MCWD, and MCWRA in Monterey County  
7 Superior Court, Case No. 20CV0011387 (the “Water Rights Litigation”).

8 100. The City’s operative Second Amended Complaint contains two declaratory relief claims:  
9 (a) that CEMEX has breached or will imminently breach a written Annexation Agreement and  
10 Groundwater Mitigation Framework for Marina Area Lands (“Groundwater Mitigation Framework”), in  
11 part by granting an easement to Cal-Am for the Project slant wells and associated infrastructure that  
12 would violate that agreement’s restrictive covenant limiting groundwater withdrawals at the CEMEX  
13 property to 500 AFY (the MPWSP is projected to extract over 17,000 AFY) and the provision in the  
14 agreement that prohibits export of groundwater outside the Basin; and (b) that Cal-Am’s plan to export  
15 groundwater to users outside the Basin will also violate the Monterey County Water Resources Agency  
16 Act (“Agency Act”) (Water Code Appendix, Chapter 52).

17 101. On or about August 4, 2020, MCWD filed a cross-complaint in the Water Rights  
18 Litigation against Cal-Am, RMC Lonestar, CEMEX, and MCWRA.

19 102. MCWD’s operative First Amended Cross-Complaint alleges Groundwater Mitigation  
20 Framework claims similar to the City’s as well as causes of action against Cal-Am to enjoin invasion of  
21 MCWD’s primary and paramount water rights and for unreasonable use of water in violation of Article  
22 X, Section 2 of the California Constitution.

23 103. MCWD operates and maintains groundwater production wells in the SVGB. MCWD  
24 pumps water from these wells, treats it, and then delivers this water to MCWD's customers, including  
25 Marina. The Project will also pump groundwater from the SVGB.

26 104. Cal-Am has no overlying, appropriative, prescriptive, or other groundwater rights in the  
27 area of the SVGB from which it proposes to extract water for the Project.

28 105. The court in the Water Rights Litigation issued an order under Water Code Section 2000,

1 et seq., referring to the SWRCB eight questions relating to whether Cal-Am can lawfully extract the  
2 source water for its Project from beneath the CEMEX Property.

3 106. The Executive Director of the SWRCB assigned the court’s reference to the  
4 Administrative Hearings Office (“AHO”) to conduct an adjudicative hearing and any necessary related  
5 proceedings, and to prepare a proposed report of referee with answers to the court’s eight questions for  
6 transmittal and consideration by the SWRCB.

7 107. Following completion of the SWRCB’s final report of referee, the report will be  
8 transmitted to the court and the court will thereafter adjudicate the claims raised in the Water Rights  
9 Litigation.

10 108. Both the SWRCB referral proceeding and the Water Rights Litigation remain ongoing.  
11 Multiple rounds of hearings before the AHO have occurred and are scheduled to continue into mid-  
12 2023. Trial in the Water Rights Litigation is currently set to begin on October 23, 2023.

### 13 **STANDING**

14 109. The Coastal Commission had mandatory duties to comply with the Coastal Act and the  
15 non-exempt portions of CEQA (Pub. Resources Code, §§ 21000-21098, 21155-21156, 21158-21666,  
16 21167.1-21189.3) before approving the Appealed and Consolidated CDPs for the Project.

17 110. Petitioners have direct and beneficial interest in the Coastal Commission’s compliance  
18 with the Coastal Act and CEQA. These interests have been directly and adversely affected by the  
19 Coastal Commission’s approval of Cal-Am’s CDPs.

20 111. The City has a substantial interest in ensuring that the impacts of the MPWSP are fully  
21 mitigated given the substantial adverse environmental, social, cultural, and economic impacts of the  
22 construction and operation of the MPWSP on the City’s drinking water supplies, fragile coastal  
23 ecosystems, and businesses. Moreover, the City is a disadvantaged community that will bear the brunt of  
24 the wide range of disproportionate adverse impacts from the MPWSP, which the Coastal Commission  
25 has determined “raises the most significant environmental justice issues the Commission has had to  
26 address since the 2019 adoption of the Commission’s environmental justice policy.” (2022 Staff Report,  
27 p. 4.) The maintenance and prosecution of this action will confer a substantial benefit to the City’s  
28 residents and businesses, as well as Cal-Am’s low-income ratepayers, by remedying the Coastal

1 Commission’s violations of the Coastal Act and CEQA.

2 112. The Coastal Commission’s approval interferes with MPWMD’s substantial interest in  
3 implementing voter-approved Measure J. The maintenance and prosecution of this action will confer a  
4 substantial benefit on the public by advancing the voter-adopted Measure J and by remedying the  
5 Coastal Commission’s violations of the Coastal Act and CEQA.

6 113. MCWD has a substantial interest in ensuring that the impacts of the MPWSP are fully  
7 mitigated. Among other reasons, operation of the proposed slant wells will adversely affect water  
8 supplies and water quality in the SVGB, including without limitation the Monterey Subbasin, impairing  
9 MCWD’s water rights, contracts, and ability to provide essential public services. The maintenance and  
10 prosecution of this action will confer a substantial benefit on the approximately 38,200 residents in its  
11 Marina and Ord Community service areas, who rely on MCWD for their domestic drinking water and by  
12 remedying the Coastal Commission’s violations of the Coastal Act and CEQA.

13 114. MCWD GSA has a substantial interest in ensuring that the impacts of the MWSP are  
14 fully mitigated and do not interfere with its ability to fully implement the GSP for the Monterey  
15 Subbasin or, with SVBGSA, to fully implement the GSP for the 180/400-Foot Aquifer Subbasin.

16 115. Petitioners have the right to enforce the mandatory duties imposed upon the Coastal  
17 Commission by law.

18 116. Petitioners have no other plain, speedy, and adequate remedy in the ordinary course of  
19 law, and each will suffer irreparable injury unless this court issues the relief requested in this Petition.

20 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 117. Petitioners objected to the Coastal Commission’s approval of the CDPs in writing and  
22 orally prior to the close of the Coastal Commission’s public hearing on the CDPs.

23 118. The grounds for noncompliance with the Coastal Act and CEQA alleged in this Petition  
24 were presented to the Coastal Commission orally and in writing prior to the close of the Coastal  
25 Commission’s public hearing on the CDPs.

26 119. In the alternative, because the Coastal Commission severely limited the time allowed for  
27 public review and written comment on the 2022 Staff Report, limited time to provide oral comments at  
28 the public hearing for the Project, and abruptly ended public comment at the public hearing prior to



1 allowing all individuals signed up to speak to do so, there was no opportunity for Petitioners or all  
2 members of the public to raise the grounds of noncompliance alleged in this Petition prior to the Coastal  
3 Commission’s approval of the CDPs.

4 120. Petitioners have exhausted their administrative remedies.

5 **STATUTE OF LIMITATIONS**

6 121. On November 17, 2022, the Coastal Commission voted to approve the Appealed and  
7 Consolidated CDPs for the MPWSP.

8 122. In accordance with Public Resources Code section 21080.5, the Coastal Commission  
9 filed a NOD dated November 30, 2022 with the California Natural Resources Agency on or after  
10 November 30, 2022.

11 123. Petitioners filed this Petition prior to the expiration of applicable statutes of limitation  
12 under CEQA (Pub. Resources Code, § 21080.5), the Coastal Act (Pub. Resources Code, § 30801), and  
13 any other applicable statutes of limitations.

14 **NOTICE OF CEQA SUIT**

15 124. On or about December 27, 2022, Petitioners e-mailed and sent via overnight delivery a  
16 letter to the Coastal Commission giving notice of Petitioners’ intent to file this action. A copy of that  
17 notice is attached hereto as **Exhibit A**.

18 125. In accordance with Public Resources Code Section 21167.7, a copy of this pleading shall  
19 be provided to the Attorney General.

20 **RECORD OF PROCEEDINGS**

21 126. Pursuant to Public Resources Code Section 21167.6, subdivision (b)(2), Petitioners elect  
22 to prepare the record of proceedings in this action. Concurrently with this Petition, Petitioners are filing  
23 a notice of their election to prepare the administrative record.

24 **FIRST CAUSE OF ACTION**

25 **Violation of the California Coastal Act**

26 **(Public Resources Code, §§ 30000, *et seq.*) and Public Trust Doctrine**

27 127. Petitioners reallege and incorporate herein by reference each and every allegation  
28 contained in Paragraphs 1 through 126 of this Petition.

1           128. The policies of Chapter 3 of the Coastal Act “constitute the standards by which ... the  
2 permissibility of proposed developments is determined.” (Pub. Resources Code, § 30200, subd. (a).)  
3 These policies include, but are not limited to, protecting and maximizing public access, protecting and  
4 creating recreational uses, preventing depletion of groundwater supplies, protecting and enhancing  
5 marine resources, protecting ESHA, protecting scenic and visual qualities of coastal areas, and  
6 avoidance and mitigation of adverse effects of sea level rise. (*Id.* at §§ 30200-30270.)

7           129. Since certain components of the MPWSP would be located within primary habitat under  
8 Marina’s LCP and ESHA under the Coastal Act and because the Project is not a “resource-dependent  
9 use,” Cal-Am cannot obtain a CDP for the slant wells except through an “override” under Coastal Act  
10 Section 30260. This override provision embodies a rigorous determination in which three important  
11 criteria must be met: (a) that *alternatives* are infeasible or more environmentally damaging; (b) that to  
12 not approve the CDPs would adversely affect the *public welfare*; and (3) that adverse effects are  
13 *mitigated to the maximum extent feasible*. (Pub. Resources Code, § 30260, emphasis added.)

14           130. Further, since the Project involves placement of fill in coastal waters the Coastal  
15 Commission cannot approve the Project unless it determines that there is no feasible, less  
16 environmentally damaging alternative to the MPWSP. (Pub. Resources Code, § 30233.)

17           131. In approving the CDPs for the MPWSP, the Coastal Commission proceeded without and  
18 in excess of its jurisdiction, failed to proceed in the manner required by law, abused its discretion, and  
19 made decisions based on findings that are not supported by the evidence, on all of the grounds set forth  
20 below and elsewhere in this Petition.

21           132. The Coastal Commission committed prejudicial error by improperly finding Cal-Am’s  
22 appeal from Marina Planning Commission’s denial raised a substantial issue and granting the appeal,  
23 and approving the permit, even though the Coastal Commission independently found that the CDP was  
24 not in conformity with the City’s LCP and doing so by improperly reaching findings under Public  
25 Resources Code Section 30260, without complying with the procedures that are set out in the Coastal  
26 Act for doing so in Public Resources Code section 30515 or California Code of Regulations, title 15,  
27 section 13666-13666.4.

28           133. The Coastal Commission committed prejudicial error by improperly segmenting and

1 purporting to phase the Project, including in the following manner:

2 a. Although the Coastal Commission conceded that the Project has a 60-year  
3 operational life, it improperly segmented its approval of the Project by deciding it would only issue  
4 CDPs for 25 years. Evidence in the record, including but not limited to the 2019, 2020, and 2022 Staff  
5 Report, reflects that wave erosion from sea level rise and expected dune sand recession will limit the life  
6 of the planned slant wells to only 20-25 years. By artificially segmenting the Project, and in doing so in  
7 a manner not analyzed under CEQA, the Coastal Commission only analyzed and mitigated impacts of  
8 the Project for less than half its operational life, thereby failing to analyze the coastal impacts of drilling  
9 new slant wells and constructing new pipelines and related infrastructure in the coastal zone in 20-25  
10 years, with further anticipated substantial impacts to ESHA and other coastal resources.

11 b. The Coastal Commission decided to approve Cal-Am's phased construction of the  
12 CPUC-approved 6.4 mgd MPWSP by considering only a 4.8 mgd increment of the Project in its  
13 decision. This phasing is based on only a letter from Cal-Am to the Coastal Commission stating that this  
14 is Cal-Am's current plan. Phased construction of the MWSP has never been approved by the CPUC  
15 and CPUC approval is mandatory under Public Utilities Code section 1001 before any regulated utility  
16 may proceed with construction of any new plant. To the contrary, in its 2018 decision issuing a CPCN  
17 for the MPWSP, the CPUC expressly rejected a 4.8 mgd desalination plant for the MPWSP for  
18 financial, environmental, and other reasons.

19 c. The Coastal Commission also failed to ensure that it had included all components  
20 of the Project located in the coastal zone before making its decision. Cal-Am plans to use M1W's  
21 existing outfall for the wastewater treatment plant, which traverses the CEMEX Property in Marina, to  
22 discharge the brine from the MPWSP desalination plant. To do so, Cal-Am must obtain CDPs from both  
23 Marina and the Coastal Commission to install a new outfall liner and make other modifications that will  
24 protect the existing outfall from this discharge. However, contrary to the CPUC's express direction in  
25 2018, Cal-Am never applied for these permits and has failed to reach agreement with M1W to use the  
26 outfall or pursue an alternative course of action. Because these permits have not been sought and the  
27 coastal impacts associated with the outfall work have not been analyzed or quantified, the Coastal  
28 Commission erred in approving the CDPs for the slant wells. Moreover, Cal-Am failed to provide

1 documentation of its legal interest in the outfall as required under the Coastal Commission regulations  
2 (14 Cal. Code Regs., § 13053.5, subd. (a)) because it failed to obtain an agreement with M1W for this  
3 work.

4 134. Coastal Act section 30231 articulates a strong policy of preventing depletion of  
5 groundwater supplies. Cal-Am plans to install an industrial wellfield to pump 17,300 AFY of  
6 groundwater from the “critically over-drafted” SVGB at the CEMEX Property. These extractions will be  
7 approximately five times more than the total annual extractions of MCWD, the water provider for the  
8 City and portions of the Fort Ord community and will thereby threaten the continued viability of the  
9 SVGB as an affordable groundwater source for MCWD’s customers.

10 135. According to hydrogeologic experts not paid by Cal-Am, these extractions will  
11 substantially deplete fresh and brackish groundwater in the Basin, cause increased seawater intrusion,  
12 substantially lower groundwater levels resulting in adverse impacts to groundwater production wells and  
13 at important local vernal ponds/wetlands, and will interfere with MCWD’s prior and paramount  
14 appropriative rights to pump groundwater for its customers in Marina, the Ord Community, and the  
15 other areas it serves. The consequences could be catastrophic. In reaching its decisions, the Coastal  
16 Commission disregarded its prior Staff Report findings and illegally attempted to avoid these issues  
17 through future deferred mitigation without meeting required legal standards.

18 136. As the 2022 Staff Report, inclusive of the Addendum, recognizes, the Project’s industrial  
19 wellfield, pipelines and other components in the coastal zone will cause adverse impacts to at least 35  
20 acres of valuable ESHA, including permanent impacts to potentially several dozen acres of unique  
21 Flandrian dune and coastal habitat ESHA in Marina. Moreover, the Project will cause significant and  
22 permanent impacts to many protected wildlife species such as the threatened Western snowy plover,  
23 which has federally designated critical habitat and nests located within the Project site. Cal-Am contends  
24 that the Habitat Mitigation and Monitoring Plan (“HMMP”) that it prepared in 2020 purportedly fully  
25 mitigates these Project impacts, but the 2019, 2020, and 2022 Staff Reports determine that the HMMP  
26 does not conform to the Coastal Commission’s requirements. Special Condition 10, approved by the  
27 Coastal Commission, requires Cal-Am to prepare a new HMMP sometime in the future. This attempt at  
28 deferred mitigation for these critical impacts fails to meet legal requirements and fails to mitigate to the

1 maximum extent feasible as required by Coastal Act Section 30260.

2 137. Seven sets of vernal pools and wetlands, totaling about 25 acres, are located near the  
3 MPWSP industrial wellfield. These features are protected by Marina under a 1994 Comprehensive  
4 Management Plan developed and approved by Marina. Recent scientific research has concluded that  
5 these vernal ponds constitute “groundwater dependent ecosystems” which are sustained by water levels  
6 in the Dune Sand Aquifer from which Cal-Am will extract groundwater to feed the MPWSP. Many  
7 experts, including the independent hydrogeologist employed by the Coastal Commission, have  
8 concluded that the Project’s extractions will cause between one and four feet of permanent drawdown in  
9 groundwater levels. These drawdowns, which vary depending on the pond’s distance from the slant  
10 wells, are expected to cause significant biological damage to these sensitive ecosystems. The Coastal  
11 Commission decisions failed to protect or effectively mitigate for these impacts.

12 138. Many sections of the Coastal Act require strong protection and enhancement of public  
13 access. (See, e.g., Public Resources Code, §§ 30210-30214.) Cal-Am holds a 39-acre easement over an  
14 area stretching over the beach and sand dunes on the CEMEX property down to the high tide line upon  
15 which it plans to install the Project’s extensive wells, pipelines and related infrastructure. Under the  
16 Coastal Commission’s June 2017 CEMEX sand mining settlement with CEMEX and the City, the  
17 CEMEX property is being conserved for conservation, recreation and educational purposes in  
18 perpetuity. Given the sand dune topography, this is a unique access point to Marina’s dunes and beaches  
19 that corresponds with new development that is occurring in Marina. The MPWSP facilities will greatly  
20 impair, both temporarily and permanently, the public access of Marina’s residents and visitors. Although  
21 the Coastal Commission recognized that these impacts would occur, it erred in failing to preserve and  
22 protect this access, and its single condition of approval on this issue is arbitrary and capricious,  
23 ineffective, and fails to meet legal requirements.

24 139. Pursuant to Coastal Act section 30253 and Marina’s LCP, new development must be  
25 sited to avoid and minimize risks associated with coastal and geologic hazards, such as from wave  
26 erosion, wind erosion, tsunami inundation, and shaking from earthquakes, for the entire duration of the  
27 development’s life. However, the Project is not sited in compliance with these requirements. The 2022  
28 Staff Report explains that “[t]he Bay shoreline near Cal-Am’s proposed well field has exhibited the

1 highest annual erosion rates in the state, due in part to relatively high levels of wave energy and the  
2 easily erodible sand that makes up most of the Bay shoreline. The area has experienced, and will likely  
3 continue to experience, storm-driven erosion that results in losses of as much as 100 feet of beach during  
4 a single event.” Rather than defining all coastal hazard impacts for the expected 60-year life of the  
5 Project, the Coastal Commission essentially threw up its hands and decided to only issue CDPs for 25  
6 years, thereby avoiding any analysis of coastal impacts or mitigation during the remaining 35- to 40-year  
7 operational life of the Project’s coastal facilities. This represents an abdication of the Coastal  
8 Commission’s Coastal Act responsibilities.

9 140. The public trust doctrine creates an affirmative and ongoing fiduciary duty in all  
10 California public agencies, including the Coastal Commission, to protect and preserve public trust  
11 resources for the benefit of all Californians and future generations. (*National Audubon Society v.*  
12 *Superior Court* (1983) 33 Cal. 3d 419, 446 [“[t]he states has an affirmative duty to take the public trust  
13 into account in the planning and allocation of water resources, and to protect public trust uses whenever  
14 feasible”]); see also *Marks v. Whitney* (1971) 6 Cal. 3d 251 [public trust protects environmental and  
15 recreational values].) This duty encompasses the preservation of public trust resources in their natural  
16 state. In particular, in connection with these CDP applications, the Coastal Commission was required to  
17 protect the terrestrial and special dune habitats, the vernal ponds and wetlands, and (under recent law)  
18 the groundwater that is interconnected with the vernal ponds and wetlands. By approving the CDPs  
19 despite its huge impacts on these resources, the Coastal Commission has failed to meet its obligations  
20 under the public trust doctrine.

21 141. The City is a diverse, working-class community. It qualifies as a community of color and  
22 a low-income community under various federal, state and local laws and programs. The Project would  
23 have wide-ranging and disproportionate impacts on the social, economic, cultural and environmental  
24 values of this community of concern. As the 2020 Staff Report concluded: “The proposed Project also  
25 results in adverse coastal resource effects within the community of Marina that is already  
26 disproportionately burdened by many other industrial uses and would receive none of the project  
27 benefits. There is a long history of government institutions allowing unwanted industrial development  
28 to be concentrated in underserved communities of color without their consent. Approving yet another

1 would perpetuate this discriminatory land use practice in Marina.” By approving the CDPs, the Coastal  
2 Commission has failed to comply with its environmental justice responsibilities under its governing  
3 statutes, regulations and Environmental Justice Policy, and also has ignored the embedded  
4 environmental justice considerations that are at the heart of the “public welfare” prong of the “override”  
5 test addressed below.

6 142. The Coastal Commission’s findings and conclusions regarding the “override” under  
7 Coastal Act sections 30260 and 30233 are legally deficient and not supported by substantial evidence.  
8 As explained below, none of the findings and conclusions made on the alternatives, public welfare and  
9 maximum mitigation standards are supported by substantial evidence or are legally sufficient.

10 143. To grant an “override,” the Coastal Commission was required to find that “alternative  
11 locations are infeasible or more environmentally damaging” (Pub. Resources Code, § 30260) and that  
12 “there is no feasible less environmentally damaging alternative” (Pub. Resources Code, § 30233). PWM  
13 Expansion will provide 2,250 AFY of additional water for Cal-Am’s service area and, with other  
14 supplies, will meet all of Cal-Am’s water demands through 2050 according to experts for MPWMD,  
15 MCWD and other parties. PWM Expansion is a more immediate, affordable, and environmentally  
16 acceptable water supply solution than the MPWSP, particularly since it will have no adverse coastal  
17 zone impacts. On December 1, 2022, the CPUC approved the Amended WPA for PWM Expansion.  
18 PWM and PWM Expansion also guard against drought by their capacity and the capability to inject  
19 treated water into the Seaside Basin for storage that creates reserve supplies available during even  
20 extended droughts.

21 144. In its 2019 and 2020 Staff Reports, the Coastal Commission explicitly determined that  
22 PWM Expansion was a feasible and less environmentally damaging alternative to the MPWSP, thereby  
23 precluding the Coastal Commission from granting an override to Cal-Am for the MPWSP. Based in  
24 large part on these determinations, Staff recommended denial of both CDPs. However, in its decisions,  
25 made only two weeks before final CPUC approval of the Amended WPA, the Coastal Commission  
26 suddenly reversed course in contravention of all facts and staff’s prior findings. The 2022 Staff Report  
27 along with statements made by staff at the hearing demonstrate that staff adopted an arbitrary approach,  
28 made key calculational errors, and lacked substantial evidence for its findings, which were then adopted

1 by the Coastal Commission.

2 145. The second prong of the “override” test under Coastal Act section 30260 requires the  
3 Coastal Commission to determine that to not approve the CDPs “would adversely affect the public  
4 welfare.” In its 2019 and 2020 Staff Reports, the Coastal Commission determined that denying the  
5 CDPs for the Project would not adversely affect the public welfare, thereby finding that the Project does  
6 not meet this test. This determination was based on an extensive analysis by the Coastal Commission  
7 regarding the wide-ranging environmental justice impacts of the Project on both Cal-Am’s low-income  
8 ratepayers and on the disadvantaged communities in Marina and served by MCWD that will bear most  
9 of the Project’s impacts without any of its benefits. This conclusion was also based on the recognition  
10 that a denial “is likely to lead to implementation of a project alternative that would benefit the public  
11 welfare.”

12 146. However, in the 2022 Staff Report, staff again suddenly changed their conclusion without  
13 any credible factual or evidentiary basis. Staff continued to assert that the major environmental justice  
14 impacts that are integral to the public welfare analysis remained, but newly asserted that the Coastal  
15 Commission could adopt “special conditions” that would supposedly mitigate these impacts. However,  
16 for Cal-Am’s low-income ratepayers, it purported to approve some measures to provide rate relief that  
17 have never been approved by the CPUC, which is the sole agency with regulatory authority to establish  
18 just and reasonable rates for Cal-Am’s customers. As the CPUC has exclusive jurisdiction to regulate  
19 Cal-Am’s rates and charges, the Coastal Commission findings are based on unsupported speculation as  
20 to whether the Coastal Commission’s special conditions will provide any real rate relief to Cal-Am’s  
21 low-income ratepayers. The Coastal Commission expressed great concern about the public welfare  
22 impacts on Marina, but failed to identify, articulate, or adopt conditions to lessen these public welfare  
23 impacts. Thus, the Coastal Commission acted arbitrarily, beyond its authority and without substantial  
24 evidence, in determining that the public welfare would be adversely affected by denying the CDPs.

25 147. The third prong of the “override” test under Coastal Act section 30260 requires the  
26 Coastal Commission to find that “adverse environmental effects are mitigated to the maximum extent  
27 feasible.” This standard is more stringent than the mitigation standards under CEQA. As explained  
28 above, the Project will have significant [and unavoidable] adverse impacts on ESHA, unique sand



1 dunes, protected species, groundwater, public access, and other resources in contravention of Coastal  
2 Act policies and standards. However, the few mitigation measures adopted by the Coastal Commission  
3 to address these impacts are not only anemic and ineffective, but they also constitute improper deferred  
4 mitigation that has not been adopted and applied in accordance with the requisite legal standards. The  
5 Coastal Commission’s mitigation measures fail to meet even CEQA standards for mitigation and  
6 certainly fall far short of the “maximum mitigation” standard under the Coastal Act. For these reasons, it  
7 was error for the Coastal Commission to approve the CDPs on the basis of a Section 30260 override.

8       148. Many of the 20 written Special Conditions and the further conditions orally adopted by  
9 the Coastal Commission at the November 17, 2022 meeting are wholly inappropriate, ineffective, and  
10 fail to comply with Coastal Act requirements. Among other legal deficiencies, many of them elevate  
11 Cal-Am and essentially disenfranchise the City, whose residents are directly affected by the Project.  
12 Cal-Am is provided with the discretion of deciding what public access, ESHA mitigation, etc. is needed,  
13 which only requires review and approval by Coastal Commission staff, and then Cal-Am implements it.  
14 The disadvantaged community of Marina, which is also the certified local coastal agency for the  
15 CEMEX Property, is marginalized and ignored. Second, many conditions do not mitigate to the level of  
16 “mitigation to the maximum extent feasible” (a much higher standard than the normal CEQA standards)  
17 for environmental impacts. Third, many conditions fail to impose real mitigation -- rather they  
18 improperly defer mitigation without appropriate standards. The defective conditions include, but are not  
19 limited to, Special Conditions 1, 2, 5, 6, 8-13, 17 and 20.

20       149. The Coastal Commission also erred in finding that Cal-Am’s applications were complete  
21 and approving the CPDs, when Cal-Am had not met the Commission’s minimum application  
22 requirements, including demonstrating it has an interest in the M1W outfall, which is required for the  
23 Project to operate. (Pub. Resource Code, § 30601.5.) M1W has not approved a lease for the Cal-Am to  
24 utilize or modify the outfall, or commenced CEQA review for the required outfall modifications at the  
25 time the Coastal Commission deemed Cal-Am’s application complete or when it approved the CDPs for  
26 the Project.

27       150. The Coastal Commission's decision to approve the CDPs also violated the Coastal Act  
28 and other law by approving a “4.8 mgd project” that has not been authorized by the CPUC, the sole

1 agency with the regulatory jurisdiction to do so. Under Public Utilities Code Section 1001, no public  
2 utility water corporation, including Cal-Am, can construct a “line, plant, or system” without the CPUC  
3 granting a CPCN for the specifically described plant. By D.18-09-017, the CPUC granted a CPCN for a  
4 6.4 mgd MPWSP only and has made clear since that time that the CPCN was limited to and specific to  
5 that plant size. (D.22-03-038, at pp. 4-5.). The Coastal Commission’s approval of CDPs for a 4.8 mgd  
6 Project is unlawful where no such Project has been authorized by the CPUC, no CPUC decision has  
7 been issued amending the CPCN for the 6.4 mgd MPWSP, and Cal-Am has not applied to the CPUC for  
8 a CPCN for such a project. In doing so, the Coastal Commission acted arbitrarily and capriciously and  
9 exceeded its jurisdiction.

10 151. The Coastal Commission also failed to utilize procedures that provided reasonable notice  
11 of the Coastal Commission's actions and reasonable opportunity for public agencies and the public to  
12 review and comment on the Staff Reports and thereby failed to provide the fullest reasonable  
13 opportunity for public participation as required by the Coastal Act and Coastal Commission’s  
14 regulations.

15 WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

16 **SECOND CAUSE OF ACTION**

17 **Violation of CEQA**

18 **(Public Resources Code, §§ 21000, *et seq.*)**

19 152. Petitioners reallege and incorporate herein by reference each and every allegation  
20 Paragraphs 1 through 151 of this Petition.

21 153. In order to safeguard the environment, CEQA and the CEQA Guidelines place certain  
22 obligations on “responsible agencies.” CEQA prohibits a responsible agency from approving a project as  
23 proposed if there are feasible alternatives or mitigation measures that would substantially lessen or avoid  
24 any significant effect the MPWSP would have on the environment. (CEQA Guidelines, § 15096, subs.  
25 (g)(1)-(2).)

26 154. Under CEQA, any agency granting an approval for a project, whether it be a lead agency  
27 or a responsible agency, must prepare a subsequent or supplemental EIR when new information of  
28 substantial importance shows, in part, that (a) significant effects previously examined will be

1 substantially more severe than shown in the EIR; or (b) alternatives previously found not to be feasible  
2 would in fact be feasible and would substantially reduce one or more significant effects of the project,  
3 but the project applicant declines to adopt the alternatives. (CEQA Guidelines, § 15162, subd. (a); Pub.  
4 Resources Code, § 21166.) If any one of the conditions listed in CEQA Guidelines section 15162  
5 occurs, a subsequent or supplemental EIR must be prepared by “the public agency which grants the next  
6 discretionary approval for the project.” (CEQA Guidelines, § 15162, subd. (c).)

7 155. Given the significant new information that the 2022 Staff Report acknowledges did not  
8 exist at the time the CPUC certified the MPWSP EIR, coupled with numerous changes to the overall  
9 scope of the Project, i.e., “phasing” the construction, (which were not analyzed in the MPWSP EIR), the  
10 2022 Staff Report was required serve as the functional equivalent of a subsequent or supplemental EIR.  
11 (CEQA Guidelines, § 15252; *Friends, Artists, & Neighbors of Elkhorn Slough v. California Coastal*  
12 *Com.* (2021) 72 Cal.App.5th 666, 693 (*FANS*), citing *Mountain Lion Foundation, supra*, 16 Cal.4th at p.  
13 113.) This significant new information included, but was not limited to:

14 a. The record contains significant new information that PWM Expansion, which the  
15 CPUC found was not feasible when it certified the MPWSP EIR in 2018, would in fact be feasible and  
16 would substantially reduce one or more significant effects of the Project. As 2019 and 2020 Staff  
17 Reports acknowledged, there have been many significant new developments regarding PWM Expansion  
18 and water demand in Cal-Am’s service area since the CPUC last considered water demand data,  
19 certified the MPWSP EIR, and approved the MPWSP. Despite this prior analysis, the 2022 Staff Report  
20 changed course by ignoring the complete scope of PWM Expansion and its ability to provide Cal-Am  
21 with a reliable short-term and long-term supply of sustainable recycled water. In particular, the 2022  
22 Staff Report did not consider the potential for years where Cal-Am does not use all available water  
23 within its portfolio. During those instances, any leftover water capacity would thus be a “surplus,” which  
24 Cal-Am can store in the Seaside Basin as part of ongoing ASR measures. Given historical fluctuations in  
25 water supply and demand, consistent recharge and storage will allow Cal-Am to create a reliable  
26 inventory of water in years where water supplies are higher than average (i.e., years with excessive  
27 rainfall or reduced demand), which it can subsequently rely on in following years where natural supply  
28 is lower but demand is higher (i.e., drought years). Therefore, given that PWM Expansion is now

1 approved, feasible, satisfies Cal-Am’s water supply/demand needs, and is less environmentally  
2 damaging with no environmental justice implications, the Coastal Commission erred in finding it was  
3 not a feasible alternative to the MPWSP. Moreover, the 2022 Staff Report failed to analyze or disclose  
4 whether the MPWSP—when added to PWM Expansion which was not approved when the CPUC  
5 certified the MPWSP EIR—has the potential for inducing growth in the Monterey Peninsula area. The  
6 evidence in the record indicates that with both MPWSP and PWM Expansion, Cal-Am will have more  
7 than 144,000 acre-feet of cumulative excess supplies by 2050.

8           b.       The 2020 Staff Report determined that “current evidence does not support a  
9 finding that Cal-Am’s proposed Project is consistent with the groundwater protection provision of  
10 Coastal Act Section 30231.” And that “additional modeling and analysis is needed to identify the extent  
11 of Cal-Am’s likely or potential effects on possible depletion of groundwater supplies.” Despite this prior  
12 acknowledgement, the 2022 Staff Report fails to provide the additional modeling and analysis Coastal  
13 Commission staff previously found was needed to evaluate the Project’s groundwater impacts. Instead,  
14 the 2022 Staff Report proposed special conditions, including Special Condition 12, requiring Cal-Am to  
15 submit a mitigation plan for the protection of groundwater resources, which impermissibly defers the  
16 required analysis. The Addendum states that Special Condition 12 is not CEQA mitigation measure and  
17 does not constitute deferred mitigation. The Addendum’s conclusions, however, are not supported by  
18 substantial evidence in the record and are not consistent with the requirements of CEQA. The  
19 Addendum erroneously states that the MPWSP EIR’s conclusion made over four years ago that the  
20 Project would not result in significant groundwater impacts is conclusive for purposes of CEQA. This  
21 was legal error. The Addendum also ignores the City’s findings when it denied the CDP for the Project  
22 that there was significant new information regarding the Project’s potential groundwater impacts  
23 requiring supplemental environmental review under CEQA. Even more importantly, it ignores  
24 significant new information developed since that time that was part of the Coastal Commission’s record,  
25 including information from the ongoing SWRCB proceeding demonstrating the Project’s withdrawal of  
26 groundwater from the overdrafted SVGB will increase the lateral extent of seawater intrusion,  
27 contaminating additional groundwater within the Monterey Subbasin and areas that MCWD relies on for  
28 its water supplies. The evidence in the record further shows that Cal-Am’s new groundwater modeling,

1 which the Coastal Commission did not independently review or evaluate, does not address many of  
2 recommendations in the 2020 Staff Report and that Cal-Am’s new modeling vastly underestimates the  
3 Project’s drawdown and groundwater impacts. The Coastal Commission had an obligation under CEQA  
4 to evaluate this significant new evidence and disclose the Project’s impacts on groundwater before it  
5 considered whether to approve the Project—not after.

6 c. Whether Cal-Am can obtain water rights to extract the source water for the  
7 MPWSP using the slant wells is a fundamental feasibility issue for the Project. The 2022 Staff Report  
8 failed to analyze or review this information and instead proposed Special Condition 1, which  
9 impermissibly defers and delegates this decision until after a decision in *City of Marina v. RMC*  
10 *Lonestar, et al.* (Monterey Superior Court Case No. 20CV001387) or to the Executive Director’s  
11 discretion based on the SWRCB’s report on the court-referenced questions.

12 d. The 2020 Staff Report also found the new groundwater modeling showed that the  
13 Project was not consistent with the provisions of Coastal Act Section 30231 and the City’s LCP due to  
14 the potential significant adverse impacts to wetlands and vernal ponds in the Project area. The 2020  
15 Staff Report further determined that it would be difficult to provide adequate mitigation to identify  
16 potential impacts as well as to identify “sites where creating or restoring wetland or vernal ponds could  
17 be successful and would not result in the conversion of other sensitive habitats.” The 2022 Staff Report  
18 further discloses that the Project “could adversely affect the functions and values at up to several dozen  
19 acres of [] vernal pools and wetlands.” The 2022 Staff Report, however, fails to provide any information  
20 let alone sufficient information for the Coastal Commission or the public to evaluate the environmental  
21 impacts of the Project on wetlands and vernal pools as required by CEQA. Instead, the 2022 Staff  
22 Report included Special Condition 13, which requires Cal-Am to submit a Wetlands and Vernal Pond  
23 Adaptive Management Program that will be evaluated by the Executive Director to ensure it is  
24 adequately protective of area wetlands and vernal ponds. The 2022 Staff Report offers no explanation  
25 for deferring this analysis. There is no reason why the monitoring plan, which requires establishing the  
26 baseline, conducting the impact assessment, and collecting the corresponding data could not be  
27 completed prior to the Coastal Commission’s consideration of the Project as required by CEQA.  
28 Without a proper analysis of the magnitude and extent of potential impacts to wetlands and vernal pools,

1 the Coastal Commission lacked substantial evidence to find that Special Condition 13 will, in fact,  
2 minimize those impacts. Moreover, Special Condition 13 lacks enforceable performance standards that  
3 Cal-Am’s monitoring plan must meet. Rather, the condition of approval allows Cal-Am to develop  
4 significance thresholds for evaluating “adverse effects” (whatever that means) until after the Project is  
5 approved. Thus, Special Condition 13 does nothing more than require a “plan to create a plan” to  
6 mitigate the Project’s future significant impacts to wetlands and vernal pools—a “plan” that can be  
7 developed privately by Cal-Am and Commission staff after the CEQA process has closed and outside of  
8 any public scrutiny. This a glaring violation of CEQA’s mitigation deferral rule and also violates  
9 CEQA’s public disclosure requirements. Even more problematic, Special Condition 13 requires Cal-Am  
10 to develop a Wetland Resiliency, Enhancement, Restoration, and Monitoring Plan to address any, and  
11 all, prior and future impacts to wetlands and vernal ponds without requiring Cal-Am to reduce or halt  
12 pumping and without addressing any requirements or the feasibility of mitigating such impacts.

13         156. The 2022 Staff Report also fails to evaluate, disclose, and mitigate the Project’s full  
14 impacts on terrestrial ESHA by impermissibly piecemealing the Coastal Commission’s review of the  
15 modifications to the M1W outfall required for the Project to operate. As a reviewing agency, the Coastal  
16 Commission must be afforded with enough information about the proposed outfall liner work so that it  
17 can fully assess the potential environmental consequences of the proposed decision. (*Planning and*  
18 *Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.) “Where  
19 individual projects are, or a phased project, is to be undertaken and where the total undertaking  
20 comprises a project with significant environmental effect, the *responsible agency* or Lead Agency must  
21 prepare a single EIR for the ultimate project.” (*Hixon v. County of Los Angeles* (1974) 38 Cal.App.3d  
22 370, 376, fn. 3.) The outfall liner is a requisite element of the Project—the CPUC imposed outfall  
23 modifications as a mandatory mitigation measure in the MPWSP EIR. If approval of a development is  
24 conditioned upon, “legally compels,” or “practically presumes completion of another action,” the two  
25 are considered “one single project” under CEQA. (*Banning Ranch Conservancy v. City of Newport*  
26 *Beach* (2012) 211 Cal.App.4th 1209, 1223.) The Coastal Commission’s special conditions to mitigate  
27 impacts to terrestrial ESHA also fail to establish enforceable performance standards as required by  
28 CEQA. In addition, Special Condition 10, which allows Cal-Am to pay an in-lieu fee of \$250,000 per

1 acre-foot for required ESHA restoration, is legally inadequate mitigation and does not ensure the  
2 Project’s ESHA impacts will be mitigated at all, much less at the required ratios specified in the  
3 condition.

4 157. Furthermore, the 2022 Staff Report fails to disclose or address the impacts associated  
5 with removal or relocation of the slant wells after the CDPs expire as required by CEQA.

6 158. Under CEQA, the 2022 Staff Report was required analyze “[a]lternatives to the activity  
7 and mitigation measures to avoid or reduce any significant or potentially significant effects that the  
8 project might have on the environment.” (CEQA Guidelines § 15252, subd. (a)(2); Pub. Resources Code  
9 § 21080.5, subd. (d)(3)(A).) For the reasons outlined above, in Petitioners’ comments on the 2022 Staff  
10 Report and Addendum, and other comments in the Coastal Commission’s record, the 2022 Staff Report  
11 failed to meet these requirements.

12 159. The Coastal Commission’s decision to approve the CDPs allowing Cal-Am to construct  
13 and operate the slant wells and related infrastructure for the MPWSP is invalid as an abuse of discretion  
14 because the Coastal Commission’s findings are not supported by substantial evidence, its decision is not  
15 supported by the findings, and it has not proceeded in the manner required by law. Specifically, the  
16 Coastal Commission failed to comply with CEQA. Among other things, when approving the CDPs, the  
17 Coastal Commission:

18 a. Failed to proceed in a manner required by law by failing to prepare an adequate  
19 functional equivalent EIR or other CEQA document given the significant new information that the 2022  
20 Staff Report acknowledges did not exist at the time the CPUC certified the EIR for the MPWSP  
21 including analyzing alternatives to the Project and mitigation measures to avoid or reduce any  
22 significant or potentially significant effects that the Project might have on the environment and making  
23 the Staff Reports available for a reasonable time for review and comment by other public agencies and  
24 the general public;

25 b. Failed to provide an accurate and consistent project description. Instead, the  
26 project description relied upon by the Coastal Commission in the 2022 Staff Report (its EIR-functional  
27 equivalent document) is inconsistent, misleading, and improperly segments the Project;

28 c. Impermissibly deferred the Coastal Commission’s obligations to evaluate the

1 whole of the Project’s impacts and consider the feasibility of alternatives and mitigation measures in its  
2 CEQA-equivalent document;

3 d. Impermissibly delegated the Coastal Commission’s discretion to actually approve  
4 the CDPs to staff and other public agencies;

5 e. Failed to adequately analyze the impacts of Cal-Am’s newly announced “phased”  
6 Project;

7 f. Failed to adequately disclose all of the Project’s potential impacts, including  
8 impacts to ESHA, wetlands, vernal ponds, groundwater dependent ecosystems, water supply, water  
9 quality and groundwater resources, growth inducing impacts, as well as impacts associated with the  
10 modification of the M1W outfall;

11 g. Failed to adequately analyze the whole of the Project’s impacts on terrestrial  
12 ESHA and adopt mitigation that ensures impacts to ESHA are mitigated to the maximum extent  
13 feasible;

14 h. Failed to adequately analyze impacts related to the future location of slant wells;

15 i. Failed to adopt legally adequate mitigation for the Project and approved the  
16 Project with unmitigated impacts;

17 j. Failed to adopt properly deferred mitigation with adequate performance standards  
18 and thresholds as required by CEQA;

19 k. Failed to adopt findings supported by substantial evidence as required by Public  
20 Resources Code section 21081;

21 l. Failed to comply with CEQA’s mandatory 30-day public review period, depriving  
22 Petitioners and the public adequate time for review and comment;

23 m. Failed to adequately respond to comments submitted by Petitioners and the  
24 public;

25 n. Failed to proceed in a manner required by law by failing to prepare and circulate a  
26 functional equivalent EIR that reflects the Coastal Commission’s independent judgment; and

27 o. Failed to proceed in a manner required by law by disregarding the legally  
28 adequate analyses and impact conclusions for PWM Expansion as disclosed in M1W’s certified Final



1 Supplemental EIR.

2 160. As a result of the foregoing defects, the Coastal Commission’s approval of the CDPs is  
3 contrary to law and invalid and must be set aside.

4 WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

5 **THIRD CAUSE OF ACTION**

6 **Fair Hearing Violation/Violation of Due Process**

7 **(Code of Civil Procedure, § 1094.5)**

8 161. Petitioners reallege and incorporate herein by reference each and every allegation  
9 Paragraphs 1 through 160 of this Petition.

10 162. Code of Civil Procedure Section 1094.5, subdivision (b) requires the Coastal  
11 Commission to conduct a fair hearing prior to approving the CDPs.

12 163. The Coastal Act further expressly provides “that that the duties, responsibilities, and  
13 quasi-judicial actions of the commission are sensitive and extremely important for the well-being of  
14 current and future generations and that the public interest and principles of fundamental fairness and due  
15 process of law require that the Commission conduct its affairs in an open, objective, and impartial  
16 manner free of undue influence and the abuse of power and authority.” (Pub. Resources Code, § 30320,  
17 subd. (a).)

18 164. The procedural due process right to an opportunity to be heard has been interpreted to  
19 encompass the right to a fair hearing. Fair hearing requirements include unbiased decision makers, an  
20 opportunity to review the evidence considered by the agency, and the right to be actually heard by those  
21 who make the decision.

22 165. “[T]he broad applicability of administrative hearings to the various rights and  
23 responsibilities of citizens and businesses, and the undeniable public interest in fair hearings in the  
24 administrative adjudication arena, militate in favor of assuring that such hearings are fair.” (*Nightlife*  
25 *Partners, Ltd. V. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.) In California, a quasi-judicial  
26 decision maker who exhibits an “unacceptable probability of actual bias” must recuse themselves from  
27 participating in the hearing and decision before a legislative body. (*Nasha LLC v. City of Los Angeles*  
28 (2004) 125 Cal.App.4th 470.

1           166. Petitioners and the public are constitutionally entitled to an opportunity to be  
2 meaningfully heard at the public hearing before the Coastal Commission can approve the CDPs and  
3 impose the significant environmental impacts associated with the MPWSP on rights and lives of those  
4 living or owning property within the impact area of the Project, as well as Cal-Am's ratepayers.

5           167. The manner in which the Coastal Commission conducted the public hearing for the CDPs  
6 was flawed and those errors amounted to a prejudicial abuse of discretion in violation of Petitioners' and  
7 the public's due process rights and right to a fair hearing.

8           168. Commissioners were unfairly influenced by staff who played both an advocacy and  
9 advisory role.

10           169. Comments made by Commissioners during the hearing demonstrate that Coastal  
11 Commission members had prejudged facts related to the CDPs and could therefore not be impartial  
12 decisionmakers.

13           170. Statements made by individual Commissioners demonstrate impermissible probability of  
14 bias and the record of proceeding shows undue deference was afforded to political concerns and that  
15 deference to political whims injected an unfair bias into the Coastal Commission's adjudicatory  
16 proceeding. By reason of this bias, the hearing was fundamentally unfair.

17           171. The Coastal Commission chair interrupted and curtailed comments from Commissioners  
18 who raised concerns or expressed their reasons the Coastal Commission should deny the Project, while  
19 encouraging Commissioners who supported the Project to speak at length.

20           172. Among other things, in approving the CDPs, the Coastal Commission:

21           a. Failed to maintain and apply objective, written, ascertainable standards related to  
22 the hearing for the CDPs;

23           b. Denied members of the public the opportunity to speak at the hearing;

24           c. Imposed conflicting and improperly noticed constraints on persons and entities  
25 that were allowed to speak thereby interfering with their ability to submit relevant facts into the record;

26           d. Applied different standards related to the opportunity to present evidence during  
27 the hearing thereby truncating the time allowed for Petitioners' representatives to speak, improperly  
28 modified time limits shortening the length of presentation time Petitioners had previously been

1 promised, and upon which Petitioners had relied;

2 e. Arbitrarily cut off the time for public comment denying as many as 40 members  
3 of the public who had signed up and were waiting to speak the opportunity to be heard; and

4 f. Improperly afforded Cal-Am additional time to address comments from  
5 Commissioners about their concerns without affording Petitioners any time to respond or comment.

6 173. The Coastal Commission’s failures interfered with and denied Petitioners and the public  
7 of their right to be heard and resulted in in an unfair hearing in favor of Cal-Am.

8 WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

9  
10 **FOURTH CAUSE OF ACTION**

11 **Declaratory Relief Under Coastal Act and CEQA for Pattern and Practice: Failure to Provide a**  
12 **Reasonable Public Review Period or Respond to Comments for Staff Reports that Function as**  
13 **EIR-Equivalent Documents**

14 **(Pub. Resources Code, §§ 30000 et seq.; Code of Civ. Proc., § 1060)**

15 174. Petitioners reallege and incorporate herein by reference each and every allegation  
16 Paragraphs 1 through 173 of this Petition.

17 175. Under Public Resources Code section 21080.5, certified regulatory programs are only  
18 exempt from chapters 3 and 4, and section 21167 of CEQA. (Pub. Resources Code, § 21080.5, subd.  
19 (c).) Over two decades ago, the Supreme Court rejected the argument that certified regulatory programs  
20 are “exempt” entirely from CEQA. (*Sierra Club, supra*, 7 Cal.4th at pp. 1230-1231.) Rather, as the  
21 Supreme Court explained, “section 21080.5 establishes a limited exemption from CEQA’s EIR  
22 requirements for qualifying state agencies having environmental protection responsibilities.” (*Mountain*  
*Lion Foundation, supra*, 16 Cal.4th at p. 126.)

23 176. Public Resources Code section 21091 (found in chapter 2.6 of CEQA) sets forth the  
24 minimum timeframe for public review of draft EIRs: “The public review period for a draft  
25 environmental impact report may not be less than 30 days.” (See also CEQA Guidelines, § 15105.)

26 177. Public Resources Code section 21091 also sets forth an agency’s obligation to respond to  
27 comments from the public and reviewing agencies. In pertinent part, subdivision (d) requires that  
28 agencies “shall evaluate comments on environmental issues that are received from persons who have

1 reviewed the draft [EIR] and shall prepare a written response pursuant to subparagraph (B).”

2 Subparagraph (B) provides that “[t]he written response shall describe the disposition of each significant  
3 environmental issue that is raised by commenters. The responses shall be prepared consistent with  
4 Section 15088 of [the CEQA Guidelines].”

5 178. The Coastal Commission did not comply with the minimum comment period set forth in  
6 Public Resources Code section 21091 or adequately respond to comments as required by CEQA.

7 179. The Coastal Commission has a pattern and practice of violating CEQA’s requirements for  
8 adequate public comment period and responses to comments in its Staff Reports that serve as CEQA or  
9 EIR equivalent documents.

10 180. The Coastal Commission has previously admitted that it does not comply with these the  
11 foregoing requirements for its Staff Reports that serve as CEQA or EIR equivalent documents. The  
12 Coastal Commission has previously claimed that because it has a certified regulatory program, it is  
13 exempt from section 21091’s minimum public comment period even though section 21091 is found in  
14 chapter 2.6 of CEQA. The Coastal Commission has also claimed that it is not required to comply with  
15 CEQA’s requirements for responses to comments, but instead, is only required to comply with its  
16 regulations.

17 181. The applicable Coastal Commission regulation regarding distribution of Staff Reports  
18 prepared for CDPs state they “shall be distributed within a reasonable time to assure adequate  
19 notification prior to the scheduled public hearing.” (Cal. Code Regs., tit. 14, § 13059.) The Coastal  
20 Commission does not interpret this provision consistent with CEQA’s minimum 30-day notice  
21 requirement when Staff Reports serve as EIR-equivalent documents. In doing so the Coastal  
22 Commission fails to recognize that the Legislature amended CEQA to include the minimum 30-day  
23 notice requirement 10 years after the Coastal Commission’s regulatory program was certified. Prior to  
24 that, CEQA only required that EIRs be circulated for a “reasonable time.” (Cal. Stats. 1989, ch. 907, §  
25 2.) When the Legislature added the 30-day notice requirement to CEQA, it chose not to place the  
26 requirement in a chapter from which regulatory programs are exempt. It must be presumed this  
27 placement was intentional. (*Estate of McDill* (1975) 14 Cal.3d 831, 837.)

28 182. Public participation is the bedrock element of CEQA. (See *Laurel Heights Improvement*

1 *Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*) [“public  
2 participation is an “essential part of the CEQA process”].) “The requirement of public review has been  
3 called ‘the strongest assurance of the adequacy of [environmental review under CEQA].’” (*Mountain  
4 Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051.) The Coastal Act similarly  
5 provides that the Coastal Commission’s review of coastal development “should include the widest  
6 opportunity for public participation.” (Pub. Resources Code, § 30006; *Save Oxnard Shores v. California  
7 Coastal Com.* (1986) 179 Cal.App.3d 140, 153 [“Coastal Act seeks to insure open consideration and  
8 effective public participation in Commission proceedings”].) Thus, interpreting the Coastal  
9 Commission’s regulatory program as the Coastal Commission does is antithetical to both CEQA and the  
10 Coastal Act.

11 183. The applicable Coastal Commission regulation regarding responses to comments provide  
12 that a Staff Report prepared for CDPs must include “[r]esponses to significant environmental points  
13 raised during the evaluation of the proposed development as required by [CEQA].” (Cal. Code Regs., tit.  
14 14, § 13057, subd. (c)(3).) The Coastal Commission does not interpret this regulation as requiring  
15 responses to significant environmental comments on its EIR-equivalent documents as required by  
16 CEQA. Instead, the Coastal Commission has interpreted this regulation to merely suggest that the  
17 Coastal Commission should respond to comments that it receives before the Staff Report is released for  
18 public review. Under this interpretation, the Coastal Commission is not required to provide written  
19 responses to any comments it receives on its EIR-equivalent documents.

20 184. By disavowing its obligation to provide written responses to comments raising concerns  
21 about how environmental issues are addressed in its EIR-equivalent document, the Coastal Commission  
22 disregards a critical component of the environmental review process. As the Supreme Court explained in  
23 *Mountain Lion Foundation*, CEQA’s “written response requirement ensures that [the decisionmakers]  
24 will fully consider the information necessary to render decisions that intelligently take into account the  
25 environmental consequences. [Citations.] It also promotes the policy of citizen input underlying  
26 CEQA.” (16 Cal.4th at p. 133; see also *Ultramar, Inc. v. South Coast Air Quality Management Dist.*  
27 (1993) 17 Cal.App.4th 689, 698-700 [expressly holding that CEQA’s 30-day minimum public review  
28 and comment period applied to certified regulatory programs.]

1           185. The Coastal Commission's decision to approve the CDPs, without complying with  
2 CEQA's reasonable 30-day minimum public comment period and without responding to comments as  
3 required by CEQA is invalid as an abuse of discretion because the Coastal Commission has not  
4 proceeded in the manner required by law. Furthermore, the Coastal Commission's failures are part of an  
5 overall pattern and practice of failing to comply with CEQA and interpreting its own regulations in an  
6 arbitrary fashion inconsistent with both the Coastal Act and CEQA. Among other things, when  
7 reviewing proposed projects, the Coastal Commission:

8           a. Refuses to comply with CEQA's mandatory minimum public comment and  
9 review period and fails to comply with Coastal Commission's own regulations to provide reasonable  
10 notice; and

11           b. Refuses to adequately disclose and respond to public comments as required by  
12 CEQA, the Coastal Act, and Coastal Commission's own regulations.

13           186. Petitioners further seek declaratory relief that this pattern and practice violates both  
14 CEQA and the Coastal Act and cannot continue. A judicial declaration is necessary and appropriate at  
15 this time to ensure that when the matter is reheard that Coastal Commission staff treats the evidence and  
16 the public fairly so that the matter can be fully and fairly heard on the evidence in compliance with the  
17 Coastal Commission's mandatory duties under CEQA, the Coastal Act, and the Coastal Commission's  
18 own regulations.

19           187. Petitioners have no plain, speedy, or adequate remedy at law. Any other remedy to which  
20 Petitioners might be entitled would be attended by such uncertainties and delays as to deny substantial  
21 relief, involve a multiplicity of suits, and cause further irreparable injury, damage, and inconvenience to  
22 Petitioners. The award of damages to Petitioners is not adequate protection from the continuing  
23 infringement upon the exercise their rights to fully and fairly participate in the proceedings before the  
24 Coastal Commission.

25           WHEREFORE, Petitioners pray for judgment as hereinafter set forth.  
26  
27  
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**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for judgment against the Coastal Commission as follows:

1. For alternative and peremptory writs of mandate directing the Coastal Commission to vacate and set aside in its entirety its decisions to approve the CDPs for the slant wells and associated components of the MPWSP in the coastal zone;
2. For alternative and peremptory writs of mandate directing the Coastal Commission to comply with the requirements of the Coastal Act, CEQA, the CEQA Guidelines, and Code of Civil Procedure Section 1094.5 fair hearing requirements;
3. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining the Coastal Commission and its agents, employees, officers, and representatives from issuing any permits or taking other actions in furtherance of the Project pending full compliance with the requirements of the Coastal Act, CEQA, the CEQA Guidelines, and Code of Civil Procedure Section 1094.5 fair hearing requirements;
4. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Cal-Am and the Coastal Commission and their agents, servants, and employees, and all others acting in concert with Cal-Am and the Coastal Commission on their behalf, from taking any action to implement the MPWSP, pending full compliance with the requirements of the Coastal Act, CEQA, the CEQA Guidelines, and Code of Civil Procedure Section 1094.5 fair hearing requirements;
5. For a declaratory judgment as to the illegality of the pattern and practice of the Coastal Commission in failing to comply with CEQA, the Coastal Act, and its own regulations in failing to provide for a 30-day comment period and failing to respond to significant environmental comments raised during the Coastal Commission's review of the project and other projects where the Coastal Commission prepares CEQA-equivalent documents that are the functional equivalent of an EIR;
6. For an award of reasonable attorneys' fees to Petitioners as authorized by the Code of Civil Procedure and other applicable authority;
7. For an award of costs to Petitioners in this action; and
8. For such other and further relief that the Court deems just and proper.

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Dated: December 29, 2022

SHARTSIS FRIESE LLP

By: /s/ Paul P. Spaulding, III  
Paul P. Spaulding, III  
Larisa A. Meisenheimer  
Suzanne S. Orza

Attorneys for Petitioner and Plaintiff  
CITY OF MARINA

Dated: December 29, 2022

DE LAY & LAREDO

By: /s/ David C. Laredo  
David C. Laredo

Attorneys for Petitioner and Plaintiff  
MARINA PENINSULA WATER  
MANAGEMENT DISTRICT

Dated: December 29, 2022

REMY MOOSE MANLEY, LLP

By: /s/ Howard F. Wilkins III  
Howard F. Wilkins III  
Christina L. Berglund

Attorneys for Petitioners and Plaintiffs  
MARINA COAST WATER DISTRICT and  
MARINA COAST WATER DISTRICT  
GROUNDWATER SUSTAINABILITY AGENCY



PETITION FOR WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

**EXHIBIT A**



REMY | MOOSE | MANLEY  
LLP

Howard F. Wilkins III  
cwilkins@rmmenvirolaw.com

December 27, 2022

**Via E-Mail and Overnight Delivery**

Jack Ainsworth  
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**Re: Notice of Commencement of Action**

Dear Mr. Ainsworth and Ms. Warren:

Please take notice that City of Marina, Monterey Peninsula Water Management District, Marina Coast Water District, and Marina Coast Water District Groundwater Sustainability Agency intend to file a joint petition and complaint (“lawsuit”) against the California Coastal Commission challenging the approval of Coastal Development Permit (CDP) Nos. A-3-MRA-19-0034 and 9-20-0603 for the Monterey Peninsula Water Supply Project alleging without limitation violations of the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, §§ 21000 et seq.), the California Coastal Act (Pub. Resources Code, §§ 30000 et seq.), and Code of Civil Procedure Section 1094.5.

This letter provides the required notice under Public Resources Code Section 21167.5. If you have any questions regarding the foregoing or wish to discuss efforts to avoid litigating this matter, please contact me at (916) 443-2745 or [cwilkins@rmmenvirolaw.com](mailto:cwilkins@rmmenvirolaw.com).

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Howard F. Wilkins III', written over a light blue horizontal line.

Howard F. Wilkins III

Cc: Skip Spaulding ([sspaulding@sflaw.com](mailto:sspaulding@sflaw.com))  
David Laredo ([dave@laredolaw.com](mailto:dave@laredolaw.com))