

1 Lloyd W. Lowrey, Jr. (State Bar No. 51936)  
Myron E. Etienne, Jr. (State Bar No. 23977)  
2 NOLAND, HAMERLY, ETIENNE & HOSS  
A Professional Corporation  
3 333 Salinas Street  
Post Office Box 2510  
4 Salinas, California 93902-2510  
Telephone: (831) 424-1414  
5 Facsimile: (831) 424-1975

6 Attorneys for MONTEREY COUNTY  
HOSPITALITY ASSOCIATION  
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8 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD  
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11 In the Matter of Whether the Draft Cease  
and Desist Order Concerning California  
12 American Water's Diversion from the  
Carmel River Should be Issued.  
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**CLOSING BRIEF OF MONTEREY  
COUNTY HOSPITALITY ASSOCIATION**

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15 This Closing Brief is submitted on behalf of the Monterey County Hospitality  
16 Association.

17 **I. INTRODUCTION**  
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19 The State Water Board should not adopt the draft Cease and Desist Order ("CDO"). The  
20 considerations enumerated in paragraph 8.1 of Order No. WR 95-10, dated July 6, 1995 ("Order  
21 95-10") still apply. The draft CDO is inconsistent with the statement at page 37 of Order No. 95-  
22 10 that "The people and businesses on the Monterey Peninsula must continue to be served water  
23 from the Carmel River in order to protect public health and safety." The testimony in this matter  
24 establishes that the draft CDO would have an adverse impact on public health and safety on the  
25 Monterey Peninsula. Any modification of Order 95-10 should be consistent with public health  
26 and safety needs on the Monterey Peninsula and with the timeline of the alternative water supply  
27 projects currently being pursued by Cal Am with the California Public Utilities Commission.  
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1 **II. THE STATE WATER BOARD SHOULD NOT ADOPT THE DRAFT CDO**

2 A. **THE DRAFT CDO WOULD ADVERSELY IMPACT PUBLIC HEALTH AND**  
3 **SAFETY ON THE MONTEREY PENINSULA**

4 Paragraph 8.1 of Order 95-10, at pages 37-38, enumerates “Considerations Mitigating  
5 Against the Use of Punitive Enforcement Options.” One such consideration, quoted above, is that  
6 the public health and safety of the people and business on the Monterey Peninsula requires  
7 continuing use of water from the Carmel River. That consideration applies with equal force  
8 today. In designing the draft CDO, the Prosecution Team did not take into account any impacts  
9 on health and safety other than lack of water for firefighting. (T, Ph. 2, 117:20-118:15). Such a  
10 narrow interpretation of “public health and safety” of “people and businesses” is not only  
11 inconsistent with Order 95-10, it is at odds with the basic requirements of Water Code section  
12 106.

13 Because of past strong conservation efforts, there will be a strong correlation between  
14 further water reduction and reduced economic activity on the Peninsula in the important  
15 hospitality sector, adversely impacting public health and safety funding. The mayors of the  
16 Monterey Peninsula cities of Carmel-By-The-Sea, Monterey, and Sand City and the City  
17 Manager of Seaside all testified to adverse impacts to the public health and safety of their cities  
18 from implementation of the draft CDO. (Carmel-1, 2; Monterey-1, 2; Sand City-2, 2; Seaside-4,  
19 4). Mayor Della Salla testified that 27 percent of Monterey’s budget is generated from transient  
20 occupancy tax, or bed tax, and that close to 50 percent of the general fund budget is attributable to  
21 tourism, and that the City could not afford a major reduction in visitors. (T, Ph. 2, II, 324:1-8).  
22 Mayor McCloud testified that the three major revenue sources for Carmel are transient occupancy  
23 tax, sales tax and property tax. (*Id.*, 329:9-13)

24 Representatives from the MCHA testified that implementation of the draft CDO would be  
25 dire for the hospitality industry on the Monterey Peninsula and materially decrease revenue from  
26 the hospitality, which would in turn decrease the revenue used by the cities to support public  
27 health and safety. (MCHA-1, 4; MCHA-10, 3-5; MCHA-11, 3-4).

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1 Bob McKenzie, interpreting the exhibits he sponsored and submitted, testified that the  
2 Monterey Peninsula Hospitality Industry from about 1987 through the late 1990s dramatically  
3 reduced water use to conduct business. (T, Ph.2, IV, 1102:23 – 1103:7; MCHA-2, MCHA-3,  
4 MCHA-4, MCHA-5, MCHA-6, MCHA-7, MCHA-8). He further testified that there might be a  
5 few other water conservation activities under current technology that the hospitality industry  
6 could implement, but that they would not yield much water savings. (Id., 1104:16-23). Finally,  
7 he testified that the adoption of water conservation measures has made Monterey Peninsula  
8 hospitality facilities less competitive with alternative destinations. (Id, 1105:2-19).

9 Rene Boskoff testified that to accomplish a 10% savings in water use for his hotel would  
10 require a 10% decrease in business, leading to about \$200,000 lost Transient Occupancy Tax to  
11 the City of Monterey from his hotel alone. MCHA-11, 3; T, Ph. 2, IV, 1110:15 – 1111:14). He  
12 further testified that impact would be doubled with required water savings of 20% over current  
13 use. (MCHA-11, 3), and that devastating cuts in water supply would crush group business. (T, Ph.  
14 2, IV, 1116:4-5).

15 Mark Bastis testified to the belief in the hospitality industry that there is a one-to-one  
16 relationship with cuts in water use to decrease in available rooms, and a one-for one loss of  
17 revenue on a percentage basis. (T, Ph.2, IV, 1121:3-17). He further testified that the water use of  
18 the hospitality industry on the Monterey Peninsula has diminished considerably over the years, so  
19 it's going to be impossible in his view to obtain huge increases in water savings like they did in  
20 the past. (Id., 1122:7-11)

21 Under cross-examination, Mr. Boskoff testified that adoption of the draft CDO would not  
22 provide an additional incentive to the hospitality to conserve water. ( Id., 1179:4-13). Mark  
23 Bastis testified that Cal Am's water pricing provides the incentive for the industry to save water.  
24 (Id., 1179:3-11). Mr. Boskoff testified that a ten percent water reduction in water supply would  
25 result in a loss of about \$2 million for the Marriott Hotel, and a 15 percent reduction would result  
26 in a loss approaching \$3 million. (Id., 1133:19-33). He confirmed that the impacts to the  
27 Monterey area are likely to be as testified to by Mr. Bastis. ( Id., 1135:4-8). Mr. Boskoff also  
28 testified that, based on a survey obtained by the MCHA, every ten percent reduction in hospitality

1 occupancy would translate into a reduction of direct spending on the Monterey Peninsula of \$180  
2 million per year. (Id., 1129:6-13) Bob McKenzie testified that within the Cal Am service area  
3 there was a potential for a loss of 10,000 – 12,000 jobs from a 30 percent reduction in water use.  
4 (Id., 1133:3-6)

5 The testimony of the MCHA witnesses supports and confirms the testimony of the Cities  
6 about the strongly adverse impacts on the economy and the ability of the Cities to provide  
7 funding for public health and safety. For the hospitality industry and for the Monterey Peninsula,  
8 water reductions are not a viable option. The only viable alternative to continued reliance on the  
9 Carmel River is development of an alternative water supply.

10 B. THE STATE BOARD SHOULD ENCOURAGE AND SUPPORT  
11 ALTERNATIVE WATER SUPPLY PLANNING AND IMPLEMENTATION

12 Condition 2 of Order No. 95-10 provides that “Cal-Am shall diligently implement one or  
13 more of the following actions to terminate its unlawful diversions from the Carmel River: ....(2)  
14 obtain water from other sources of supply and make one for one reductions in unlawful diversions  
15 from the Carmel River, provided that water pumped from the Seaside aquifer shall be governed  
16 by Condition 4 of this Order...”

17 Cal Am is currently diligently pursuing the environmental planning for an alternative  
18 water supply project under the auspices of the California Public Utilities Commission, studying  
19 several alternatives. (CAW-032, 5:17-6:28; CAW-030, 7:12-8:2; T, Ph.1, II, 438:4-25). This  
20 planning process has been extensive, expensive, lengthy and has involved multiple agencies,  
21 interest groups and interested parties. (Id.) The Planning and Conservation League’s witness, Dr.  
22 Steven Kasower, testified about the alternative proposed by the Regional Plenary Oversight  
23 Group, one of the alternatives included in the CPUC’s environmental review process. (T, Ph. 2,  
24 233:3-263:16; PCL-3). Cal Am expects an alternative water supply project to be implemented by  
25 2015. (T, Ph.1, II, 376:8-12).

26 The State Board should support and encourage this process, consistent with condition 2 of  
27 Order 95-10.

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**III. CONCLUSION**

In Order 95-10, the Board acknowledged the necessity for Cal Am to continue to divert the necessary water, by acknowledging that the people and businesses of the Monterey Peninsula must continue to be served water from the Carmel River in order to protect public health and safety and by providing in condition 1 of the Order that Cal Am should cease and desist from diverting any water in excess of 14,106 acre feet from the Carmel River. The State Board should encourage and assist the people and businesses and jurisdictions of the Monterey Peninsula to work with Cal Am and the Public Utilities Commission to develop alternative supplies of water to serve the people and protect the environment.

Dated: October 9, 2008

Respectfully submitted,

NOLAND, HAMERLY, ETIENNE & HOSS  
A Professional Corporation

By   
Lloyd W. Lowrey, Jr.  
Attorneys for Plaintiff MONTEREY COUNTY  
HOSPITALITY ASSOCIATION

**PROOF OF SERVICE**  
(Code Civ. Proc. §§ 1013(a), 2015.5)

STATE OF CALIFORNIA        )  
  )  
COUNTY OF MONTEREY        )

I am a citizen of the United States and a resident of Monterey County. I am over the age of 18 years and not a party to the within entitled action; my business address is: 333 Salinas Street, Post Office Box 2510, Salinas, CA 93902-2510.

On the date below, I served the attached document(s) entitled: **CLOSING BRIEF OF MONTEREY COUNTY HOSPITALITY ASSOCIATION**, on the following named person(s) in said action at:

SEE ATTACHED SERVICE LIST

by personal service on the above-named person(s) at the above stated address(es).

by placing said copy(ies) in a sealed envelope(s), postage thereon fully prepaid, and placed for collection and processing for mailing following the business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Salinas, California, addressed as stated above.

by electronic mail in PDF format from my electronic mail address of canossett@nheh.com, a true and correct copy of the above-named document as follows: eau@cpuc.ca.gov, rbaiocchi@gotsky.com, bobmck@mbay.net, info@mcha.net, christopher.keifer@noaa.gov, dave@laredolaw.net, meurer@ci.monterey.ca.us, hbm@carmellaw.com, jrubin@diepenbrock.com, jminton@pcl.org, larrysilver@earthlink.net, jgwill@dcn.davis.ca.us, mjatty@sbcglobal.net, michael@rri.org, PMurphey@waterboards.ca.gov, rsato@waterboards.ca.gov, RMcGlothlin@BHFS.com, TJamison@FentonKeller.com, lflowrey@nheh.com.

by causing to be transmitted a true copy thereof to the above-named recipient via the following facsimile transmission telephone number ("Fax"): \_\_\_\_\_, and no interruption of transmission was reported.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 9, 2008, at Salinas, California.

  
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Charlena Nossett

NOLAND, HAMERLY, ETIENNE & HOSS  
ATTORNEYS AT LAW  
SALINAS, CALIFORNIA

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CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER  
JUNE 19, 2008 HEARING

SERVICE LIST OF PARTICIPANTS  
(March 14, 2008)

**(PARTICIPANTS TO BE SERVED WITH WRITTEN TESTIMONY, EXHIBITS  
AND OTHER DOCUMENTS.)**

(Note: The participants whose E-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the hearing notice.)

California American Water  
Jon D. Rubin  
Diepenbrock Harrison  
400 Capitol Mall, Suite 1800  
Sacramento, CA 95814  
[jrubin@diepenbrock.com](mailto:jrubin@diepenbrock.com)

State Water Resources Control Board  
Reed Sato  
Water Rights Prosecution Team  
1001 I Street  
Sacramento, CA 95814  
[rsato@waterboards.ca.gov](mailto:rsato@waterboards.ca.gov)

Public Trust Alliance  
Michael Warburton  
Resource Renewal Institute  
Room 290, Building D  
Fort Mason Center  
San Francisco, CA 94123  
[Michael@rri.org](mailto:Michael@rri.org)

Sierra Club – Ventana Chapter  
Laurens Silver  
California Environmental Law Project  
P.O. Box 667  
Mill Valley, CA 94942  
[larrysilver@earthlink.net](mailto:larrysilver@earthlink.net)  
[jwill@den.davis.ca.us](mailto:jwill@den.davis.ca.us)

Carmel River Steelhead Association  
Michael B. Jackson  
P.O. Box 207  
Quincy, CA 95971  
[mjatty@sbcglobal.net](mailto:mjatty@sbcglobal.net)

Monterey Peninsula Water Management District  
David C. Laredo  
De Lay & Laredo  
606 Forest Avenue  
Pacific Grove, CA 93950

City of Seaside  
Russell M. McGlothlin  
Brownstein, Hyatt, Farber, Schreck  
21 East Carrillo Street  
Santa Barbara, CA 93101  
[RMcGlothlin@BHFS.com](mailto:RMcGlothlin@BHFS.com)

City of Carmel-by-the-Sea  
Donald G. Freeman  
P.O. Box CC  
Carmel-by-the-Sea, CA 93921

City of Sand City  
James G. Heisinger, Jr.  
Heisinger, Buck & Morris  
P.O. Box 5427  
Carmel, CA 93921

Pebble Beach Company  
Thomas H. Jamison  
Fenton & Keller  
P.O. Box 791  
Monterey, CA 93942-0791  
[TJamison@FentonKeller.com](mailto:TJamison@FentonKeller.com)

Monterey County Hospitality Association  
Bob McKenzie  
P.O. Box 223542  
Carmel, CA 93922  
[info@mcha.net](mailto:info@mcha.net)  
[bobmck@mbay.net](mailto:bobmck@mbay.net)

California Salmon and Steelhead Association  
Bob Baiocchi  
P.O. Box 1790  
Graeagle, CA 96103  
[rbaiocchi@gotsky.com](mailto:rbaiocchi@gotsky.com)

Jonas Minton  
1107 9<sup>th</sup> Street, Suite 360  
Sacramento, CA 95814  
[jminton@pcl.org](mailto:jminton@pcl.org)

National Marine Fisheries Service  
Christopher Keifer  
501 W. Ocean Blvd., Suite 4470  
Long Beach, CA 90802  
[christopher.keifer@noaa.gov](mailto:christopher.keifer@noaa.gov)

California Public Utilities Commission  
Andrew Ulmer  
505 Van Ness Avenue  
San Francisco, CA 94102  
[eau@cpuc.ca.gov](mailto:eau@cpuc.ca.gov)

**LIST OF PARTICIPANTS MAKING POLICY STATEMENTS ONLY  
(DO NOT SERVE THE FOLLOWING PARTICIPANTS WITH WRITTEN TESTIMONY, EXHIBITS  
AND OTHER DOCUMENTS)**

City of Monterey  
Fred Meurer, City Manager  
Colton Hall  
Monterey, CA 93940  
[meurer@ci.monterey.ca.us](mailto:meurer@ci.monterey.ca.us)