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13 **BEFORE THE CALIFORNIA**
 14 **STATE WATER RESOURCES CONTROL BOARD**

15 In the Matter of:

**CLOSING BRIEF OF
 PEBBLE BEACH COMPANY**

**CALIFORNIA AMERICAN
 WATER COMPANY CEASE AND
 DESIST ORDER**

17
 18 **I. INTRODUCTION**

19 In these proceedings, the Enforcement Staff of the Division of Water Rights, State Water
 20 Resources Control Board, seeks to have the State Water Resources Control Board (the "State
 21 Water Board" or "SWRCB") adopt a proposed Cease and Desist Order ("CDO") ordering
 22 California American Water ("Cal-Am") to further reduce its diversions from the Carmel River in
 23 Monterey County. If adopted in its proposed form, the draft CDO would modify SWRCB Order
 24 WR 95-10 ("Order 95-10") by imposing progressively lower diversion limits than presently
 25 required by Order 95-10, until year 2014, at which time Cal-Am would be limited to 50% (5,642
 26 afa) of the diversion limit presently allowed by Order 95-10.

27 Pebble Beach Company ("PBC") has a decidedly pronounced interest in these
 28 proceedings, both on its own behalf and on behalf of approximately 500 other landowners who

1 are the owners and holders of what has been referred to as the “Pebble Beach Water
2 Entitlement.” The Pebble Beach Water Entitlement is a vested property right and interest to
3 potable water service from Cal-Am by and through diversions from the Carmel River, in the
4 aggregate amount of 380 acre feet per year (“afa”). Diversions by Cal-Am from the Carmel
5 River to serve the Pebble Beach Water Entitlement are not subject to the diversion limits of
6 Order 95-10. That is the position consistently taken by the State Water Board over many years,
7 which position has been relied on by PBC and such 500 other landowners in investing millions
8 of dollars to construct and operate what has been referred to as the “Pebble Beach Wastewater
9 Reclamation Project.”¹

10 While perhaps implicit, the draft CDO presented by staff (hereinafter the “Prosecution
11 Team”) does not specifically refer to or recognize the exception to the diversion limits for the
12 Pebble Beach Water Entitlement, in accordance with the position consistently taken by the State
13 Water Board. The CDO, if adopted, must be modified to expressly set forth the exception to the
14 diversion limits for the Pebble Beach Water Entitlement. Specific language is included at the
15 conclusion of this Closing Brief for that purpose.²

16 **II. SUMMARY OF ARGUMENT**

17 In 1989, the Monterey Peninsula Water Management District (“MPWMD”) granted to
18 Pebble Beach Company and two other “fiscal sponsors” a binding entitlement to potable water,
19 as a vested property right and interest, in the aggregate amount of 380 afa for use on certain
20 properties.³ This binding, vested property right to potable water, defined as the “Water
21 Entitlement,” has its genesis in the single most effective water conservation project on the
22 Monterey Peninsula and perhaps the most successful and renowned golf course recycled water
23 irrigation project in the world: the Carmel Area Wastewater District (“CAWD”)/Pebble Beach

24 ¹ Both the “Pebble Beach Water Entitlement” and the “Pebble Beach Wastewater Reclamation
Project” are described in greater detail below, including their more proper names.

25 ² PBC does not address in detail in this brief the question of whether the CDO should be issued
26 at all. As long as the exception to the diversion limits for the Pebble Beach Water Entitlement
27 are expressly recognized in any CDO that may be adopted, as has been recognized by the State
Water Board in connection with Order 95-10, then the interests of PBC and related holders of the
Water Entitlement are satisfied.

28 ³ Exhibit PBC-4 (Wastewater Reclamation Project Fiscal Sponsorship Agreement, section 1.38,
p. 8; section 4.1, p. 21; section 4.2(a), p. 21; and section 4.5, p. 24); Exhibit PBC-1 (Testimony
of Mark Stilwell).

1 Community Services District (“PBCSD”) Wastewater Reclamation Project (as used herein,
2 simply the “Reclamation Project”).

3 The Reclamation Project produces and supplies recycled water for irrigation of eight golf
4 courses and certain other recreational open space areas (collectively the “golf courses”) in the
5 Del Monte Forest area of Monterey County. Since commencement of operation in the fall of
6 1994, the Reclamation Project has conserved an average of over 700 afa of potable water from
7 the Cal-Am system – potable water previously used for irrigation of the golf courses - by
8 supplying that amount of recycled water in lieu thereof, meeting approximately 70% of the golf
9 courses’ irrigation needs.⁴ As of the upcoming year 2009, with completion of recent system
10 improvements, the Reclamation Project will supply 100% of the golf courses’ irrigation needs
11 with recycled water, or about 1000 afa, further conserving potable water from the Cal-Am
12 system previously required for irrigation.⁵

13 The Water Entitlement was, and remains, essential to the operation of the Reclamation
14 Project. The Reclamation Project has been made possible and continues operation only with
15 support of private funds; public funds were never available to construct and operate the project.⁶
16 The Water Entitlement was granted by MPWMD in exchange for PBC’s financial guarantees of
17 all of the costs of the Reclamation Project. The Reclamation Project would not exist without the
18 Water Entitlement.⁷

19 The great benefit of the arrangement for water conservation and reduced withdrawals
20 from the Carmel River is simple and easy to compute: the Reclamation Project has saved far
21 more water (700 afa, soon to be 1000 afa) than could ever be consumed through full use of the
22 Water Entitlement (380 afa). The State Water Board has on multiple occasions in multiple
23 forums recognized this benefit and has correspondingly recognized the Water Entitlement as a

24 ⁴ Exhibit PBC-2 and Hearing Transcript, Phase II, Volume II, Thursday, July 24, 2008, pp. 563-
565 (Testimony of Michael Niccum (misspelled as “Miccum” in the Hearing Transcript));
25 Exhibit PBC-3 (Summary of Water Year Usage).

26 ⁵ *Id.* As noted later in the discussion, these system improvements result in an additional 285 afa
of reduced withdrawals from the Carmel River which have not yet been fully realized, but will
be fully realized as of 2009 and beyond.

27 ⁶ Exhibit PBC-1, p.3; Hearing Transcript, Phase II, Volume II, July 24, 2008, pp. 553, 555
(Testimony of Mark Stilwell).

28 ⁷ Exhibit PBC-1, pp. 4-5; Hearing Transcript, Phase II, Volume II, July 24, 2008, pp. 558-559
(Testimony of Mark Stilwell).

1 right to potable water service from the Cal-Am system through withdrawals from the Carmel
2 River, over-and-above any limitations otherwise imposed on Cal-Am.

3 Evidence presented by the Prosecution Team itself establishes and confirms this.
4 Initially, Footnote 2 of Order 95-10 explicitly recognizes the 380 afa Water Entitlement, stating
5 it is “based upon issuance of an appropriative right permit issued to the District [MPWMD].”⁸
6 Similarly, Ms. Mrowka of the Prosecution Team, in explaining permissible exceptions to the
7 diversion limit of Order 95-10, testified that “the State Water Board...acted favorably regarding
8 development of the Pebble Beach Wastewater Reclamation Project.... Since the Pebble Beach
9 interests use treated wastewater in lieu of potable water from the Carmel River; the State Water
10 Board found that the net diversion from the Carmel River to serve project lands would be less
11 than the level that would have occurred if the wastewater reclamation project had not been
12 developed. Thus, on March 27, 1998, the State Water Board determined that Order WR 95-10
13 provided for development of this project. (PT 6.)”⁹ In that regard, the Prosecution Team
14 submitted in evidence a Prehearing Conference Statement filed by the State Water Board before
15 the PUC which clearly states the effect of this determination as increasing the diversion limit for
16 use of the Water Entitlement, stating “[t]his determination modified the 11,285 afa water
17 conservation goal by the amount of Carmel River water actually used for the Pebble Beach
18 project on a yearly basis.”¹⁰

19 The State Water Board’s confirmation of the status of the Water Entitlement is not
20 dependant on the terms of Order WR 95-10 or whether such terms are being complied with by
21 Cal-Am. Rather, the State Water Board has pronounced that “Cal-Am may distribute the new
22 potable water supply [i.e., the Water Entitlement] anywhere in its service area, subject to the
23 Carmel River diversion requirements of Order 95-10 (and any subsequent modifications

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27 ⁸ Exhibit PBC-6 (Excerpt of Order WR 95-10 (Footnote 2)).

⁹ Exhibit PT-2, pp. 5-6 (Testimony of Katherine Mrowka).

28 ¹⁰ Exhibit PT-8, p. 3 (July 1998 Public Utilities Commission filing by State Water Resources Control Board).

1 approved by the State Water Resources Control Board)....”¹¹

2 **III. RELEVANT FACTS**

3 **A. Facts Undisputed.**

4 The following is a summary of the salient facts with respect to the Water Entitlement.¹²
5 It is important to emphasize that these facts are undisputed and uncontested. According to
6 PBC’s review of the record, none of the parties supporting issuance of the CDO (or otherwise)
7 presented any contrary evidence or any evidence whatsoever disputing the facts which follow in
8 this Section III.

9 **B. Description of the Reclamation Project.**

10 The Reclamation Project provides reclaimed water for irrigation of the golf courses and
11 certain other recreational open spaces located in the unincorporated Del Monte Forest area of
12 Monterey County.¹³ The Reclamation Project was completed in September of 1994 and began
13 delivering reclaimed water at that time for irrigation in lieu of the potable water previously
14 supplied by Cal Am for irrigation. Since that time, the Reclamation Project has continuously to
15 the present date delivered reclaimed water to the golf courses and other open spaces for irrigation
16 in lieu of potable water previously used.

17 The Reclamation Project was originally designed to deliver at least 800 afa of reclaimed
18 water on average, freeing up at least 800 afa of potable water annually for other uses and for
19 conservation. On completion of the original Reclamation Project, however, it was discovered
20 that the salinity of the reclaimed water stressed the golf courses, requiring periodic flushing of
21 the golf courses with potable water, and further that there was insufficient storage capacity for
22 the project to meet peak demand, also requiring supplementation with potable water during peak

23 ¹¹ Exhibit PBC-8, emphasis added. This factual summary is taken from the written and oral
24 testimony of Mark Stilwell and Michael Niccum found in Exhibits PBC-1 and PBC-2 and in the
25 Hearing Transcript for Phase II, Volume II, July 24, 2008, at pages 551-585. Further citation to
the record for this Section III, Relevant facts, will not be included except to refer to evidence
supplementary to the testimony of Mr. Stilwell and Mr. Niccum noted above.

26 ¹² Exhibit p.1, PBC-8, emphasis added.

27 ¹³ The golf courses and recreational open spaces include Pebble Beach Golf Links, Cypress Point
28 Club, Spyglass Hill Golf Course, the Links at Spanish Bay, the Shore and Dunes Courses at
Monterey Peninsula Country Club, Peter Hay Golf Course, Collins Field, and the Robert Louis
Stevenson School Athletic Fields. The State Water Board may take official notice, we believe,
of the commonly known fact that some of these golf courses are considered among the greatest
in the world.

1 demand periods. As a consequence, until 2006, the Reclamation Project supplied an average of
2 681 afa of reclaimed water for irrigation, and required an average of 287 afa of potable water
3 supplementation to satisfy all irrigation demand, as shown and calculated in Exhibit PBC-3.

4 Starting in water year 2005/2006, however, two improvements were instituted to address
5 each of these issues of the project performance. First, the Forest Lake Reservoir was
6 rehabilitated and completed, providing currently 325 acre-feet of reclaimed water storage. This
7 has rectified the storage problem during peak demand, thereby eliminating approximately half of
8 the potable water previously required for supplementation during peak demand. Second,
9 improvements to the Carmel Area Wastewater District Treatment Plant have been constructed
10 and are scheduled to be operational this year which will reduce the salinity of the reclaimed
11 water through the addition of desalinization facilities. These improvements will eliminate the
12 salinity problem and the requirement for potable water to flush the golf courses. Once the Forest
13 Lake Reservoir is filled with desalinized reclaimed water during the winter of 2008/09, the
14 Reclamation Project is expected to satisfy all of the irrigation needs of the golf courses and open
15 spaces in Del Monte Forest with no potable water supplementation required, thus conserving an
16 additional 285+ afa of potable water from the amount of potable water deliveries existing until
17 2006.

18 **C. Description of the Water Entitlement.**

19 The Reclamation Project was made possible only with the guarantee of financing with
20 private funds. PBC guaranteed \$33.9 million dollars in the capital costs of the Reclamation
21 Project, and has guaranteed net operating deficiencies of the Reclamation Project.

22 In return for its financial guarantees, PBC and two other "fiscal sponsors" were granted a
23 380 afa "Water Entitlement" (365 afa to PBC, 10 afa to J. Lohr Properties, and 5 afa to the
24 Hester Hyde Griffin Trust), representing a vested right to potable water granted by the Monterey
25 Peninsula Water Management District ("MPWMD") for use on lands owned by PBC and the
26 other fiscal sponsors, pursuant to the Wastewater Reclamation Project Fiscal Sponsorship
27 Agreement between MPWMD and Pebble Beach Company dated as of October 3, 1989,
28 included as Exhibit PBC-4. The financing for the Reclamation Project, including the Water

1 Entitlement, was validated by a Judgment of Validation issued in a judicial action by the
2 Superior Court of California for the County of Monterey.¹⁴ The Judgment of Validation declared
3 that the actions of MPWMD in approving the Reclamation Project as described therein (which
4 included the granting of the Water Entitlement and its associated rights through the Resolution
5 and Sponsorship Agreement), were authorized and “valid, binding and enforceable in all
6 respects.”¹⁵

7 As the financing vehicle, MPWMD issued \$33.9 million in Certificates of Participation
8 in 1992, with PBC guaranteeing payment of principal and interest on the Certificates of
9 Participation. To date, PBC had paid \$7.1 million in principal and 3.8 million in interest on its
10 guarantee.

11 In order to finance the recent improvements to the Reclamation Project (Forest Lake
12 Reservoir for additional storage and desalinization improvements at the Carmel Area Wastewater
13 District plant, which will collectively cost almost \$34 million), PBC was authorized by
14 MPWMD Ordinance No. 109, adopted May 27, 1994, to sell to other landowners in Del Monte
15 Forest up to 175 acre feet of PBC’s 365 acre feet Water Entitlement for use by those landowners.
16 All proceeds of such sales are dedicated to paying for these Reclamation Project improvements.¹⁶
17 Sales of portions of the Water Entitlement have been made to approximately 500 other
18 landowners to date, totaling approximately 118 acre feet, and generating approximately \$24
19 million of the \$34 million additional cost of the project improvements. The balance of this cost
20 of the second phase of the Reclamation Project will be advanced by PBC.

21 **D. Water Savings from the Reclamation Project and Water Entitlement.**

22 The Reclamation Project has contributed substantially to water conservation efforts and
23 the reduction of withdrawals from the Carmel River system. To date the Reclamation Project
24 has delivered an average of 706 afa of reclaimed water for irrigation, saving an equivalent
25 amount of potable water within the Cal-Am system. Starting next year in 2009, the Reclamation
26 Project will supply 100% of the irrigation needs of the golf courses and recreational open spaces,

27 ¹⁴ Exhibit PBC-5 (Judgment of Validation).

28 ¹⁵ *Id.*, p.2.

¹⁶ Exhibit PBC-13 (Supplemental Financing Agreement).

1 saving at least 800 afa of potable water and likely considerably more. Even at full use of the 380
2 afa of the Water Entitlement, this will be a long-term savings of at least 420 acre feet each year.
3 And the savings are even greater in the near term because full use of the Water Entitlement may
4 take many years to occur; only approximately 46 afa of the Water Entitlement is currently
5 actually being used according to MPWMD records.

6 **IV. ARGUMENT**

7 **A. Status of the Water Entitlement under SWRCB Order WR 95-10.**

8 One of the water rights found to exist in Order 95-10 was the Water Entitlement.
9 Footnote 2 of Order 95-10 specifically states in pertinent part: “In return for financial
10 guarantees, the Pebble Beach Company and other sponsors, received a 380 af potable water
11 entitlement from the District, based upon issuance of an appropriative right permit to the District,
12 for development within Del Monte Forest.”¹⁷

13 In the present hearing, there was uncertainty raised concerning exactly what “appropriate
14 right permit to the District” was referred to in Footnote 2. Mr. Stilwell in response to questions
15 on cross-examination by the Prosecution Team and Carmel River Steelhead Association stated
16 that he did not know which appropriative permit it referred to or whether MPWMD had such a
17 permit;¹⁸ similarly, however, in response to questions by MPWMD, Mr. Stilwell stated that he
18 had no reason to believe that the reference in Footnote 2 did not refer to specific appropriative
19 rights permits held by MPWMD (identified as 7130B or 20808).¹⁹

20 Such uncertainty, however, to the extent it exists, is not relevant to the present
21 proceedings. The State Water Board made the finding in Order 95-10 that the appropriative
22 rights permit exists to support the Water Entitlement. It is not up to Mr. Stilwell to know which
23 appropriate rights permit is referred to or whether it even exists. The State Water Board made
24 the finding that it does exist, and it is presumed to be supported by the evidence. That finding
25 has never been set aside or even contested to PBC’s knowledge, and Order 95-10 is a final
26 decision. As such, the finding that the Water Entitlement is supported by an appropriative rights

27 ¹⁷ Exhibit PBC-6 (Excerpt of Order WR 95-10 (Footnote 2), excerpted from Order 95-10, p.6).

28 ¹⁸ Hearing Transcript, Phase II, Volume II, July 24, 2008, pp. 566-567 and p. 568.

¹⁹ *Id.*, p. 575-576.

1 permit issued to MPWMD is conclusive under principles of res judicata, collateral estoppel, and
2 law of the case.²⁰

3 Thus, as an initial position, PBC asserts that the Water Entitlement is supported as an
4 appropriative water right under Order 95-10. However, even if the finding of Footnote 2 was
5 determined to be incorrect, it is clear that the State Water Board in Order 95-10 treated the Water
6 Entitlement as the equivalent of a secure water right, and has recognized it as such for equally
7 compelling reasons as well.

8 **B. Status of the Water Entitlement as an Exception to Order 95-10 Diversion**

9 **Limit.**

10 Subsequent to promulgation of Order 95-10, in 1998 (in response to an inquiry from the
11 Del Monte Forest Property Owners), the State Water Board reiterated in greater detail that Order
12 95-10 allowed for service of the Water Entitlement by Cal-Am with withdrawals from the
13 Carmel River. In a letter dated March 27, 1998, to the General Managers of each of MPWMD
14 and Cal-Am, the State Water Board recited the facts and history with respect to the Water
15 Entitlement and the Reclamation Project and set forth the reasoning supporting the Water
16 Entitlement, stating: "As a result of the reclamation project and especially during the interim
17 period while the Del Monte Forest property is being developed, the net diversion from the
18 Carmel River to serve the Del Monte Forest properties will be less than the level that would have
19 occurred if the wastewater reclamation project had not been developed. Thus, under footnote 2
20 of Order WR 95-10, the 380 afa is available to serve these projects."²¹

21 This reasoning applies today, irrespective of any modifications to the diversion limits of
22 Order 95-10. The letter further expounds: "As you are aware, the SWRCB is requiring Cal-Am
23 to maintain the goal of limiting annual diversions from the Carmel River to 11,285 afa until full
24 compliance with Order 95-10 is achieved. While Cal-Am is exceeding the limit, it is not the
25 intent of the SWRCB to penalize the developers of the wastewater reclamation project for their

26 ²⁰ PBC incorporates the legal authority on these legal principles and doctrines set forth in the
27 briefs of Cal-Am, MPWMD, and the Seaside Basin Water Master rather than reiterate citations
28 here. It is noteworthy that the Prosecution Team presented no affirmative evidence (that PBC
can discern) that an appropriative rights permit does not exist or that Order 95-10 was incorrect
in this respect.

²¹ Exhibit PBC-7, p.2.

1 efforts to reduce reliance upon the potable water supply via utilization of treated wastewater.²²

2 And: "Thus, the SWRCB will use its enforcement discretion to not penalize Cal-Am for
3 excess diversions from the Carmel River as long as their diversions do not exceed 11,285 afa
4 plus the quantity of potable water provided to Pebble Beach Company and other sponsors under
5 this entitlement for use on these lands. This enforcement discretion will be exercised as long as
6 the wastewater reclamation project continues to produce as much as, or more than, the quantity of
7 potable water delivered to the Del Monte Forest property, and the reclaimed wastewater is
8 utilized on lands within the Cal-Am service area."²³

9 There is no time limit on this exercise of SWRCB's "enforcement discretion" and there is
10 nothing that ties it exclusively to Order 95-10. Indeed, the Prosecution Team in its own evidence
11 has presented examples of how the State Water Board has, in various forums, positively
12 presented its recognition of the Water Entitlement and the reasoning supporting it. As noted
13 above, in Ms. Mrowka's written testimony in Phase I, describing the 1998 SWRCB denial of a
14 request by MPWMD to increase the 11,285 afa diversion limit and in discussing the limited
15 exceptions to the diversion limit of Order 95-10, she states: "the State Water Board had already
16 acted favorably regarding development of the Pebble Beach Wastewater Reclamation Project....
17 Since the Pebble Beach interests use treated wastewater in lieu of potable water from the Carmel
18 River; the State Water Board found that the net diversion from the Carmel River to serve project
19 lands would be less than the level that would have occurred if the wastewater reclamation project
20 had not been developed. Thus, on March 27, 1998, the State Water Board determined that Order
21 WR 95-10 provided for development of this project. (PT 6.)"²⁴ This is stated in the June 5,
22 1998, letter to MPWMD.²⁵ Further, in Prehearing Conference Statement filed in July 1998 by
23 The State Water Board before the California Public Utilities Commission ("PUC"), the State
24 Water Board stated: "The SWRCB has allowed the developers of the Pebble Beach Wastewater
25 Reclamation Project to utilize 380 afa of Carmel River water made available as a result of
26 developing the wastewater reclamation project. Since the Pebble Beach interests use treated

27 ²² Ibid., p.2.

28 ²³ Ibid.

²⁴ Exhibit PT-2, pp. 5-6 (Testimony of Katherine Mrowka).

²⁵ Exhibit PT-6, p.3.

1 wastewater in lieu of potable water from the Carmel River; the SWRCB found that the net
2 diversion from the Carmel River to serve project lands will be less than the level that would have
3 occurred if the wastewater reclamation project had not been developed. This determination
4 modified the 11,285 afa water conservation goal by the amount of Carmel River water actually
5 used for the Pebble Beach project on a yearly basis.”²⁶ Also, in setting an administrative civil
6 liability complaint with Cal-Am in 1998, the State Water Board allowed that certain Cal-Am
7 actions (specifically including selling Forest Lake Reservoir to PBCSD to be used for recycled
8 water storage) were appropriate in lieu of a civil fine, stating it would “increase the amount of
9 potable water conserved within the PBCSD by approximately 400-500 af” and that the Cal-Am
10 proposal “makes additional water available from sources other than the Carmel River” and
11 “Serves to deter further violations of SWRCB Order WR 95-10 and to help reduce Cal-Am’s
12 unauthorized diversions from the Carmel River.”²⁷ In other words, the same reasoning
13 supporting the Water Entitlement – net reduction of diversions from the Carmel River –
14 supported foregoing civil fines in lieu of positive Cal-Am actions for the Reclamation Project.

15 The position of the State Water Board has thus been clear and consistent, and supported
16 by sound reasoning – that diversions from the Carmel River for Cal-Am to serve the 380 afa
17 Water Entitlement are permissible over and above the diversion limits of Order 95-10 because
18 the Water Entitlement through its support of the Reclamation Project results in a large net
19 reduction of diversions from the Carmel River. That reasoning applies equally to any lowering
20 of the diversion limits by the State Water Board through adoption of a CDO. Some may argue
21 that such recognition of the Water Entitlement was intended to exist or should exist only within
22 the context of Order 95-10, and now that Order 95-10 is being modified (if indeed it is), the
23 Water Entitlement is fair game to ignore. But that is a specious argument that ignores the
24 reasoning supporting the recognition of the Water Entitlement and the prior pronouncements of
25 the State Water Board. In its letter of October 18, 2001, to MPWMD responding to the inquiry
26 whether there was any impediment to using (transferring) a portion of the PBC Water
27 Entitlement to non-PBC owned lands (in order to facilitate financing the Phase II Reclamation

28 ²⁶ Exhibit PT-8, p.3.

²⁷ Exhibit PT-5, p. 6.

1 Project improvements), the State Water Board stated:

2 “Cal-Am may distribute the new potable water supply [the 380 afa Water
3 Entitlement] anywhere in its service area, subject to the Carmel River
4 diversion requirements of Order WR 95-10 (and any subsequent
5 modifications approved by the State Water Resources Control Board)....”²⁸

6 No one could reasonably argue that any CDO adopted by the State Water Board
7 lowering the diversion limits in these proceedings was not a “modification” of Order
8 95-10 to which the State Water Board position on the status of the Water Entitlement
9 will still apply.

10 V. CONCLUSION

11 A. Necessity to Expressly Clarify the Status of the Water Entitlement.

12 The consequences and repercussions of failing to carry through, in any CDO, the same
13 treatment as afforded the Water Entitlement in relation to Order 95-10 would be enormous.
14 Hundreds of landowners have relied on the State Water Board’s assurances that the Water
15 Entitlement can be served by Cal-Am through diversions from the Carmel River over-and-above
16 the diversion limits otherwise applicable to Cal-Am (i.e., as an exception to the diversion limit)
17 in purchasing a portion of the Water Entitlement which, in turn, have funded the improvements
18 to the Reclamation Project. PBC as well has relied on such assurances in funding the
19 Reclamation Project. The Water Entitlement has been the “lynchpin” and financial “backbone”
20 of the Reclamation Project; if the security of the Water Entitlement as a guaranteed right to water
21 service from Cal-Am with diversions from the Carmel River is in any way compromised or
22 jeopardized, the security of the continued operation of the Reclamation Project may be
23 jeopardized by insufficient funding.

24 But perhaps closest to home for the State Water Board, the integrity of the State Water
25 Board would be seriously compromised if it fails in these proceedings to continue to recognize
26 the Water Entitlement as an exception (by whatever name or by whatever reasoning) to the
27 diversion limits imposed on Cal-Am from the Carmel River. The Water Entitlement has resulted

28 ²⁸ Exhibit PBC-8 (emphasis added).

1 in, and continues to result in, tremendous public and environmental benefits to the Carmel River,
2 its habitat, and its inhabitant species through its fundamental and essential support of the
3 Reclamation Project. To the extent the Prosecution Team (or any other party) argues that the
4 State Water Board should now renege on its previous commitments with respect to the Water
5 Entitlement and declare the Water Entitlement now simply a part of the “pool” subject to the
6 overall generic diversion limits, it does a tremendous disservice to the State Water Board.

7 **B. Modifications to the Draft CDO.**

8 It is suggested that the draft CDO, if adopted with reduced diversion limits, be modified
9 as follows:

10 Additional Finding: The Pebble Beach Water Entitlement is a vested property right to
11 water of an aggregate amount of 380 afa. The granting of and authorization for use by the
12 owners thereof the Water Entitlement includes a right to service from Cal-Am. The Water
13 Entitlement has supported and continues to support the CAWD – PBCSD Wastewater
14 Reclamation Project which has conserved potable water and reduced withdrawals from the
15 Carmel River for in excess of the aggregate amount of the Water Entitlement and far in excess of
16 the amount that would have been withdrawn from the Carmel River in the absence of the
17 Reclamation Project. The Water Entitlement has historically been considered and treated by
18 SWRCB as a right to withdrawal and use of water from the Carmel River over-and-above other
19 diversion limitations applicable to Cal-Am. The Water Entitlement shall continue to be treated
20 as such in any Order issued in these proceedings. Specifically, the Water Entitlement shall not
21 be subject to limitations on Cal-Am withdrawals from the Carmel River and shall not be subject
22 to any other remedies that may be imposed including any moratorium on new hookups.

23 Additional Term of Order: Cal-Am may serve the holders of the Pebble Beach Water
24 Entitlement with up to an aggregate amount of 380 acre-feet annually with withdrawals from the
25 Carmel River system not subject to any of the limitations of this Order.

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Dated: October 9, 2008

FENTON & KELLER
THOMAS H. JAMISON

By: *Thomas H. Jamison*
Thomas H. Jamison
Attorneys for Pebble Beach Company

1 **PROOF OF SERVICE**

2 I, Jodi Horner, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a
4 party to the within action; my business address is 2801 Monterey-Salinas Highway, Post Office
5 Box 791, Monterey, CA 93942. On October 9, 2008, I served the within document(s):

6 **CLOSING BRIEF OF PEBBLE BEACH COMPANY**

7 by transmitting via email only the document(s) listed above to the email
8 addresses set forth below on this date from 2801 Monterey-Salinas Highway,
9 Monterey, California.

10 by placing the document(s) listed above in a sealed envelope with postage
11 thereon fully prepaid, in the United States mail at Monterey, California addressed
12 as set forth below.

13 by placing the document(s) listed above in a sealed _____ envelope
14 and affixing a pre-paid air bill, and causing the envelope to be delivered to a
15 _____ agent or deposited in a box or other facility regularly
16 maintained by _____ for delivery.

17 ***SERVED VIA EMAIL AND U.S. MAIL:***

18 Division of Water Rights
19 State Water Resources Control Board
20 Attention: Paul Murphey
21 P.O. Box 2000
22 Sacramento, CA 95812-2000
wrhearing@waterboards.ca.gov

23 ***SERVED VIA EMAIL ONLY:***

24 California American Water
25 Jon D. Rubin
26 Diepenbrock Harrison
27 400 Capitol Mall, Suite 1800
28 Sacramento, CA 95814
(916) 492-5000
jrubin@diepenbrock.com

State Water Resources Control Board
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Water Rights Prosecution Team
10011 I Street
Sacramento, CA 95814
(916) 341-5889
rsato@waterboards.ca.gov

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San Francisco, CA 94123
Michael@rri.org

Sierra Club -- Ventana Chapter
Laurens Silver
California Environmental Law Project
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larrysilver@earthlink.net
jgwill@dcn.davis.ca.us

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Carmel River Steelhead Association
Michael B. Jackson
P.O. Box 207
Quincy, CA 95971
(530) 283-1007
mjatty@sbcglobal.net

Calif. Sportfishing Protection Alliance
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City of Seaside
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(805) 963-7000
RMcGlothlin@BHFS.com

The Seaside Basin Watermaster
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Monterey Peninsula Water Management
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De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950
(831) 646-1502
dave@laredolaw.net

City of Sand City
James G. Heisinger, Jr.
Heisinger, Buck & Morris
P.O. Box 5427
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City of Monterey
Fred Meurer, City Manager
Colton Hall
Monterey, CA 93940
(831) 646-3886
meurer@ci.monterey.ca.us

Monterey County Hospitality Association
Bob McKenzie
P.O. Box 223542
Carmel, CA 93922
(831) 626-8636
info@mcha.net
bobmck@mbay.net

California Salmon and Steelhead
Association
Bob Baiocchi
P.O. Box 1790
Graeagle, CA 96103
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rbaiocchi@gotsky.com

Planning and Conservation League
Jonas Minton
1107 9th Street, Suite 360
Sacramento, Ca 95814
(916) 719-4049
jminton@pcl.org

National Marine Fisheries Service
Christopher Keifer
501 W. Ocean Blvd., Suite 4470
Long Beach, Ca 90802
(562) 950-4076
christopher.keifer@noaa.gov

Division of Ratepayer Advocates
Max Gomberg
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2002
mzx@cpuc.ca.gov

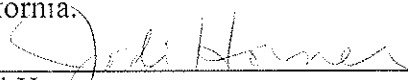
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VIA U.S. MAIL ONLY:
City of Carmel-by-the-Sea
Donald G. Freeman
P.O. Box CC
Carmel-by-the-Sea, CA 93921
(831) 624-5339 Ext. 11

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 9, 2008, at Monterey, California.



Jodi Horner