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10 Attorneys for California American
11 Water Company

2008 APR 22 PM 4:02

12 BEFORE THE CALIFORNIA

13 STATE WATER RESOURCES CONTROL BOARD

14 In the Matter of Draft Cease and Desist Order
15 No. 2008-00XX-DWR Against California
16 American Water Company

17 **DECLARATION OF JON D. RUBIN IN**
18 **SUPPORT OF MOTION TO STRIKE PRE-**
19 **HEARING BRIEFS, MOTION TO ENSURE**
20 **DUE PROCESS, AND OPPOSITION TO**
21 **PRE-HEARING BRIEFS**

22 I, JON D. RUBIN, hereby declare:

23 1. I am an attorney licensed to practice before all the courts of the State of California. I
24 am a partner at Diepenbrock Harrison, attorneys of record for California American Water Company
25 ("CAW") in this hearing. If called as a witness, I would and could competently testify to the
26 following facts that are within my personal knowledge.

27 2. Attached hereto and introduced by CAW as Exhibit CAW-020 is a true and correct
28 copy of an email I received, on or about April 3, 2008, from Charles L. Lindsay.

1 3. Attached hereto and introduced by CAW as Exhibit CAW-021 is a true and correct
2 copy of correspondence dated June 7, 2006, signed by Mr. James W. Kassel and obtained by
3 Diepenbrock Harrison from the files of the State Water Resources Control Board.

4 4. Attached hereto and introduced by CAW as Exhibit CAW-022 is a true and correct
5 copy of the pre-hearing brief I received from the California Salmon and Steelhead Association, with
6 highlights made by Diepenbrock Harrison. The orange-colored highlights identify those portions of

1 the brief, including the attachments thereto, CAW proposes to be stricken in its Motion to Strike,
2 filed concurrently herewith. The reasons CAW believes the State Water Board should strike the
3 highlighted text in Exhibit CAW-022 are set forth in the Motion to Strike. Exhibit CAW-022 is
4 being introduced for identification purposes only, in connection with CAW's Motion to Strike.
5 CAW is not requesting the State Water Board accept into evidence Exhibit CAW-022.

6 5. Attached hereto and introduced by CAW as Exhibit CAW-023 is a true and correct
7 copy of the pre-hearing brief I received from the Carmel River Steelhead Association and the
8 California Sportfishing Protection Alliance, with highlights made by Diepenbrock Harrison. The
9 orange-colored highlights identify those portions of the brief CAW proposes to be stricken in its
10 Motion to Strike, filed concurrently herewith. The reasons CAW believes the State Water Board
11 should strike the highlighted text in Exhibit CAW-023 are set forth in the Motion to Strike. Exhibit
12 CAW-023 is being introduced for identification purposes only in connection with CAW's Motion to
13 Strike. CAW is not requesting the State Water Board accept into evidence Exhibit CAW-023.

14 6. Attached hereto and introduced by CAW as Exhibit CAW-024 is a true and correct
15 copy of the pre-hearing brief I received from the Public Trust Alliance, with highlights made by
16 Diepenbrock Harrison. The orange-colored highlights identify those portions of the brief CAW
17 proposes to be stricken in its Motion to Strike, filed concurrently herewith. The reasons CAW
18 believes the State Water Board should strike the highlighted text in Exhibit CAW-024 are set forth
19 in the Motion to Strike. Exhibit CAW-024 is being introduced for identification purposes only in
20 connection with CAW's Motion to Strike. CAW is not requesting the State Water Board accept
21 into evidence Exhibit CAW-024.

22 7. Attached hereto and introduced by CAW as Exhibit CAW-025 is a true and correct
23 copy of the pre-hearing brief I received from the Division of Ratepayer Advocates, with highlights
24 made by Diepenbrock Harrison. The orange-colored highlights identify those portions of the brief
25 CAW proposes to be stricken in its Motion to Strike, filed concurrently herewith. The reasons
26 CAW believes the State Water Board should strike the highlighted text in Exhibit CAW-025 are set
27 forth in the Motion to Strike. Exhibit CAW-025 is being introduced for identification purposes only
28 in connection with CAW's Motion to Strike. CAW is not requesting the State Water Board accept

1 into evidence Exhibit CAW-025.

2 8. Attached hereto and introduced by CAW as Exhibit CAW-026 is a true and correct
3 copy of the pre-hearing brief I received from the Sierra Club, with highlights made by Diepenbrock
4 Harrison. The orange-colored highlights identify those portions of the brief, including the
5 attachments thereto, CAW proposes to be stricken in its Motion to Strike, filed concurrently
6 herewith. The reasons CAW believes the State Water Board should strike the highlighted text in
7 Exhibit CAW-026 are set forth in the Motion to Strike. Exhibit CAW-026 is being introduced for
8 identification purposes only in connection with CAW's Motion to Strike. CAW is not requesting
9 the State Water Board accept into evidence Exhibit CAW-026.

10 9. Attached hereto and introduced by CAW as Exhibit CAW-027 is a true and correct
11 copy of the pre-hearing brief I received from the National Marine Fisheries Service, with highlights
12 made by Diepenbrock Harrison. The orange-colored highlights identify those portions of the brief
13 CAW proposes to be stricken in its Motion to Strike, filed concurrently herewith. The reasons
14 CAW believes the State Water Board should strike the highlighted text in Exhibit CAW-027 are set
15 forth in the Motion to Strike. Exhibit CAW-027 is being introduced for identification purposes only
16 in connection with CAW's Motion to Strike. CAW is not requesting the State Water Board accept
17 into evidence Exhibit CAW-027.

18 10. Attached hereto and introduced by CAW as Exhibit CAW-028 is a true and correct
19 copy of the pre-hearing brief I received from the Monterey Peninsula Water Management District,
20 with highlights made by Diepenbrock Harrison. The orange-colored highlights identify those
21 portions of the brief CAW proposes to be stricken in its Motion to Strike, filed concurrently
22 herewith. The reasons CAW believes the State Water Board should strike the highlighted text in
23 Exhibit CAW-028 are set forth in the Motion to Strike. Exhibit CAW-028 is being introduced for
24 identification purposes only in connection with CAW's Motion to Strike. CAW is not requesting
25 the State Water Board accept into evidence Exhibit CAW-028.

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PROOF OF SERVICE

1 I declare as follows:

2 I am over 18 years of age and not a party to the within action; my business address is 400
3 Capitol Mall, Suite 1800, Sacramento, California, I am employed in Sacramento County, California.

4 On April 23, 2008, I served a copy of the foregoing document following document entitled

5 **DECLARATION OF JON D. RUBIN IN SUPPORT OF MOTION TO**
6 **STRIKE PRE-HEARING BRIEFS, MOTION TO ENSURE DUE PROCESS,**
7 **AND OPPOSITION TO PRE-HEARING BRIEFS**

7 on the following interested parties in the above-referenced case number to the following:

8 See Attached Service List of Participants

9 **BY MAIL**

10 By following ordinary business practice, placing a true copy thereof enclosed in a sealed
11 envelope, for collection and mailing with the United States Postal Service where it would
12 be deposited for first class delivery, postage fully prepaid, in the United States Postal
13 Service that same day in the ordinary course of business as indicated in the attached
14 Service List of Participants and noted as "Service by Mail."

13 **ELECTRONIC MAIL**

14 I caused a true and correct scanned image (.PDF file) copy to be transmitted via the
15 electronic mail transfer system in place at Diepenbrock Harrison, originating from the
16 undersigned at 400 Capitol Mall, Suite 1800, Sacramento, California, to the e-mail
17 address(es) indicated in the attached Service List of Participants and noted by "Service by
18 Electronic Mail."

16 **BY FACSIMILE** at _____ a.m./p.m. to the fax number(s) listed above. The
17 facsimile machine I used complied with California Rules of Court, rule 2003 and no error
18 was reported by the machine. Pursuant to California Rules of Court, rule 2006(d), I
19 caused the machine to print a transmission record of the transmission, a copy of which is
20 attached to this declaration.

18 A true and correct copy was also forwarded by regular U.S. Mail by following ordinary business
19 practice, placing a true copy thereof enclosed in a sealed envelope, for collection and mailing with the
20 United States Postal Service where it would be deposited for first-class delivery, postage fully prepaid, in
21 the United States Postal Service that same day in the ordinary course of business.

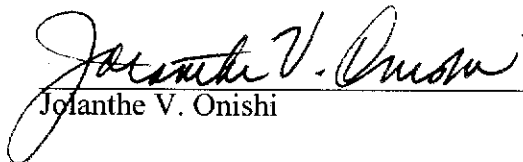
20 **BY OVERNIGHT DELIVERY**

21 Federal Express Golden State Overnight
22 Depositing copies of the above documents in a box or other facility regularly maintained
23 by Federal Express, or Golden State Overnight, in an envelope or package designated by
24 Federal Express or Golden State Overnight with delivery fees paid or provided for.

23 **PERSONAL SERVICE**

24 via process server
25 via hand by

25 I certify under penalty of perjury under the laws of the State of California that the foregoing
26 is true and correct and that this declaration was executed on April 23, 2008, at Sacramento,
27 California.


Jolanthe V. Onishi

**CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER
JUNE 19, 2008 HEARING
SERVICE LIST OF PARTICIPANTS**

Service by Electronic Mail:

Division of Ratepayer Advocates
Andrew Ulmer
Division of Ratepayer Advocates
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Public Trust Alliance
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Resource Renewal Institute
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State Water Resources Control Board
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National Marine Fisheries Service
Christopher Keifer
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1 Service by Electronic-Mail (Cont.):

2 **Monterey County Hospitality Association**
3 Bob McKenzie
4 P.O. Box 223542
5 Carmel, CA 93922
6 (831) 626-8636
7 info@mcha.net
8 bobmck@mbay.net

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

6 **Planning and Conservation League**

7 Jonas Minton
8 1107 9th Street, Suite 360
9 Sacramento, CA 95814
10 (916) 719-4049
11 jminton@pcl.org

11 Service By Mail:

12 **Monterey Peninsula Water Management
District**
13 David C. Laredo
14 De Lay & Laredo
15 606 Forest Avenue
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City of Sand City
James G. Reisinger, Jr.
Heisinger, Buck & Morris
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16 **City of Carmel-by-the-Sea**
17 Donald G. Freeman
18 P.O. Box CC
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