



**DRAFT**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
THE MONTEREY PENINSULA WATER SYSTEM  
LOCAL OWNERSHIP AND COST SAVINGS INITIATIVE**

The people of the Monterey Peninsula Water Management District do ordain as follows:

**Title: The Monterey Peninsula Water System Local Ownership and Cost Savings Initiative**

**Section I—Name**

This Measure shall be designated as the Monterey Peninsula Water System Local Ownership and Cost Savings Initiative.

**Section II—Purpose**

The purpose of the Measure is to ensure the long-term sustainability, reliability, cost-effectiveness and quality of water service within the Monterey Peninsula Water Management District as a whole, to lower the cost of monthly service to rate-payers, to promote sound water management measures, and to establish public ownership of water system assets, by establishing regulations requiring the District to take affirmative action, to the extent financially feasible, to acquire the water system assets owned and operated by the California American Water Company that currently provide water service to the District and its ratepayers.

**Section III—Findings**

1. Water service in the Monterey Peninsula is currently supplied by the California American Water Company (“Cal Am”), a private, investor-owned utility that acquired the current water system beginning in 1966.
2. Due in substantial part to Cal Am’s long history of failure in responsibly developing and competently managing the water resources under its control, the Monterey Peninsula currently suffers from an insufficient and unreliable supply of potable water. In 1995, for example, the State Water Resources Control Board ordered Cal Am to cease diverting water from the Carmel River after years of irresponsible over-pumping and unlawful diversions. Likewise, in 2007 a State Superior Court ordered Cal Am to restrict its pumping from the Seaside Groundwater Basin in an effort to protect the aquifer from over-drafting by Cal Am. Moreover, under Cal Am’s ownership and management, the

San Clemente Dam water storage facility has deteriorated to the extent that it is now useless and will be removed at the ratepayers' expense.

3. Cal Am has initiated three new water supply projects since the 1990s, all of which have failed, most recently in 2011. As a result, stranded costs in excess of \$35 million have been incurred and approved by the California Public Utilities Commission ("CPUC") to be passed on to current ratepayers. None of these stranded costs have been assumed by Cal Am or its investors.
4. Cal Am ratepayers have historically endured paying rates for water service that far exceed the state average. In fact, Cal Am's rates are among the highest in the state for service populations of comparable size. They are also extremely unpredictable: from mid-2010 to mid-2013 Cal Am added new water charges over 25 times, an average of once every 45 days. Over the same period, Tier 2 and Tier 3 residential rates increased 117 percent, or about 35 percent each year. Rapidly changing and increasing rates alarm ratepayers, with no relief in sight.
5. As a result of CPUC regulatory practices, Cal Am can only increase its profits based on how much money it invests. This investment return-based model inherently shortchanges ratepayers by giving Cal Am little or no incentive to pursue viable non-revenue generating alternatives to develop or enhance water supply in Monterey Peninsula.
6. Approximately 85 percent of the nation's water service consumers receive their water from public water providers. According to a national survey conducted by Food and Water Watch, customers of for-profit water companies pay on average 33 percent higher rates for service than customers of public providers.
7. The ratepayers' overriding urgent need for new reliable and affordable water sources is best met through the Monterey Peninsula Water Management District ("District"), whose primary duty is to benefit the citizens of the District, and not the profitability each project represents to the investors of a for-profit water monopoly.
8. The District was established in 1977 by the "Monterey Peninsula Water Management District Law" ("District Law"), which charges the District with the integrated management of the ground and surface water resources in the Monterey Peninsula area. The District retains broad powers under the District Law to do any and every lawful act necessary in order that sufficient water may be available for the present or future beneficial use or uses of the lands or inhabitants within the district.
9. The District Law likewise grants the District broad powers to acquire public or private water systems necessary or proper to carry out the purposes of the Law, and expressly grants the District the power of eminent domain to do so.
10. The voters of the District assert that the District should, as soon as practicable and to the extent permitted by law, pursue the acquisition of Cal Am's water system assets and infrastructure in order to deliver maximum value to ratepayers in perpetuity. Such public ownership of the water system not only will remove Cal Am's current for-profit,

investor-driven bias, but will also eliminate the excessive fees, costly procedures, and burdensome jurisdictional control of the CPUC over water service on the Monterey Peninsula.

**Section IV— An Ordinance of the Monterey Peninsula Water Management District.**

The following Rule 19.8 shall be added to the **Monterey Peninsula Water Management District, Rules and Regulations, Regulation I, General Provisions:**

**Rule 19.8. Policy of Pursuing Public Ownership of Monterey Peninsula Water System**

- A. It shall be the policy of the District to establish and maintain public ownership of all water delivery system assets and infrastructure within its territory, and therefore to acquire, if economically feasible, preferably through negotiation but through eminent domain if necessary, all assets of Cal Am, or any successor in interest to Cal Am, within the District’s territory, as soon as reasonably practicable for the benefit of the District as a whole.
  
- B. In furtherance of this policy the General Manager shall, within nine (9) months of the effective date of this Rule 19.8, complete and submit to the Board of Directors for acceptance, a Feasibility Analysis and Acquisition Plan for the acquisition, long-term ownership, and management by the Monterey Peninsula Water Management District of Cal Am’s assets that provide water service within the District that together develop, store, transmit and deliver potable water to all users within District, including but not limited to the following assets: extraction wells; injection wells; pump stations; piping; storage tanks and reservoirs; meters and other connections; administrative offices and support buildings; rolling vehicle stock; maintenance and operational equipment (hereafter collectively referred to as the “Water System Assets”).

The Feasibility Analysis and Acquisition Plan shall include, but not necessarily be limited to, the following components.

- i. An estimate of the costs of acquisition of the Water System Assets based on an appraisal of their fair market value, together with any associated legal and administrative costs.
  
- ii. A projection of the annual capital and operating costs, revenues, and savings to ratepayers that would result from the District’s ownership and management of the Water System Assets.
  
- iii. An identification of all potential sources of funds sufficient to acquire the Water System Assets at the estimated acquisition cost, including revenue bonds, notes, levies, fees, taxes, and any other source that the District is authorized by law to procure.
  
- iv. A statement, based on findings of fact set forth in the body of the Feasibility Analysis and Acquisition Plan, of whether the ratepayers within the District as a

whole will realize a long-term net benefit from the District's acquisition of the Water System Assets, both in terms of cost-effectiveness and in terms of long term service reliability.

- v. A determination, based on the appraised fair market value of the Water System Assets reported in the Feasibility Analysis and Acquisition Plan, of the total amount that would constitute just compensation for the Water System Assets if acquired by the District.
- vi. A list of tasks or steps that the District, acting through its Board, the General Manager or other staff or consultants, would be required by law to take in order to acquire the Water Systems Assets through the exercise of its eminent domain power or otherwise, together with an estimate of the amount of time required to carry out each task or step, as well as the associated administrative costs associated with the carrying out each task or step.

C. If the final accepted Feasibility Analysis and Acquisition Plan concludes that the acquisition and long-term management of the Water System Assets by the Monterey Peninsula Water Management District is both feasible and beneficial to ratepayers within the District as a whole, then the Board shall, as soon as practicable, take all necessary and proper actions consistent with its powers under the District Law, the Eminent Domain Law, and any other applicable law or regulation, for the Monterey Peninsula Water Management District to acquire the Water System Assets through a negotiated purchase and sale agreement if possible, or otherwise through eminent domain.

### **Section V – Modification Only By Vote of the People**

No provision of this Measure shall be changed, amended, or repealed except by a vote of the People.

### **Section VI — Effective Date; Application.**

The provisions of this Measure shall take effect immediately upon certification of its passage by the appropriate Election Official. Pending actions or proposals otherwise governed by this Initiative that have been initiated by the Board of Directors of the District, but that are not yet final as of the effective date, or that are the subject of pending legal challenge, shall be subject to the provisions of this Measure.

### **Section VII — Severability**

This Measure shall be broadly construed in order to achieve the purposes stated in this Measure. If any section, sub-section, sentence, clause, phrase, part, or portion of this Measure is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Measure. The voters of the Monterey Peninsula Water Management District hereby declare that this Measure, and each section, sub-section, sentence, clause, phrase, part, or portion thereof would have been adopted or passed even if one or more sections, sub-sections, sentences, clauses, phrases, parts, or

portions are declared invalid or unconstitutional. If any provision of this Measure is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Measure that can be given effect without the invalid application.

### **Section VIII — Conflicting Ballot Measures**

In the event that this Measure and another measure or measures relating to the same or similar subject matter shall appear on the same election ballot, the provisions of the other measures shall be deemed in conflict with this measure. In the event that this Measure shall receive a greater number of affirmative votes, the provisions of this Measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

U:\Arlene\word\2014\BoardMeetings\Ordinances\PWN\_A\PWN\_B.doc