



Community Hospital of the Monterey Peninsula®

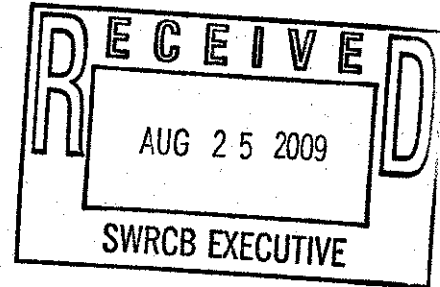
Innovative healthcare with a human touch

August 25, 2009

VIA PRIORITY OVERNIGHT MAIL

VIA ELECTRONIC MAIL TO:
commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Re: Comment Letter: Cal Am CDO Hearing Workshop

Dear Chair Hoppin and Members of the Board:

I am writing on behalf of Community Hospital of the Monterey Peninsula ("CHOMP") to comment on the proposed Cease and Desist Order ("Draft Order") in the matter of California American Water Company ("Cal-Am") and its diversions from the Carmel River. Given the effectiveness of the community's past and present water conservation efforts and the potential of future mandated reductions in water production and use to harm the economy and the health and safety of the Monterey Peninsula community, CHOMP urges the State Water Resources Control Board ("SWRCB") to reconsider the magnitude of the proposed reductions in water production from the Carmel River and to revise the Draft Order to reduce the potential harm to the residents of the Monterey Peninsula. In addition, CHOMP respectfully requests that the SWRCB expressly exempt CHOMP's proposed new and expanded medical and health care facilities and similar important public health and safety uses in the Cal-Am service area from any new water restrictions and prohibitions.

This exemption is critical for the protection of the health, safety and welfare of the residents of the Monterey Peninsula. Such an exemption is also essential to ensure CHOMP's competitiveness in challenging economic times and its adaptability in a rapidly changing and often unpredictable health care environment. If adopted, the Draft Order would prohibit all new and expanded medical and health care facilities on the Monterey Peninsula until new sources of water are available, an eventuality that is most likely 10 or more years away. Such a moratorium would prevent CHOMP from implementing several major projects that are currently in various stages of planning and development. Unless the SWRCB expressly exempts CHOMP's proposed medical and health care facilities, the Draft Order will freeze development of new medical care facilities on the Monterey Peninsula for a decade or more to the detriment of the public health, safety, and welfare, and could cause substantial economic harm to CHOMP.

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CHOMP is a nonprofit entity that is the sole provider of acute care hospital services on the Monterey Peninsula at its main hospital campus on Carmel Hill. In addition, CHOMP provides a wide variety of important medical, mental health, and health care diagnostic, treatment, and laboratory services at various locations in the Monterey Peninsula area, including its partially completed Ryan Ranch Outpatient Campus ("Ryan Ranch Campus"). A major part of CHOMP's mission is to develop health care infrastructure in the community so as to ensure the availability of all levels of medical care, from preventative and primary care to acute care services. In fulfilling its mission, CHOMP faces many of the same challenges faced by other hospitals throughout the State of California and the nation, including rising costs, declining revenues, a very difficult economy, and accelerating change in the health care industry. However, CHOMP faces another major challenge not faced by hospitals in most other areas of the United States - constraints on the supply of water.

A de facto moratorium has existed on the Monterey Peninsula for the past 15 years due to state and local regulatory actions with respect to the local water supply. This moratorium has presented major obstacles to CHOMP's development of essential medical facilities, including at its main hospital Campus. In the 1990's, CHOMP planned a phased modernization of its main hospital which included an expanded cancer treatment center and relocation and expansion of its intensive/coronary care unit, inpatient surgery rooms, emergency department, and various support facilities. The lack of available water threatened CHOMP's ability to implement this important project. Fortunately, SWRCB Order 95-10 afforded the necessary flexibility to allow CHOMP and the community to surmount this obstacle through a special community benefit water allocation approved by the Monterey Peninsula Water Management District ("MPWMD") in MPWMD Ordinance No. 87. Without that flexibility and extensive retrofitting and other water conservation measures implemented by CHOMP, modernization of the hospital and its inpatient and outpatient facilities that now provide state of the art medical care to the community would not have been possible.

More recently, plans for completion of CHOMP's Ryan Ranch Campus have been thwarted by legal restrictions on the water supply. This project, which has been years in planning at a cost to CHOMP of nearly \$35 million, consists of the phased development of five medical office buildings on four parcels and related improvements on a fifth common area parcel. The City of Monterey approved the Ryan Ranch Campus in November of 2002 and a final map for the project was recorded on November 1, 2004. (See recorded map for "Community Hospital Ryan Ranch Outpatient Campus, a Planned Unit Development" attached hereto as Exhibit "A.") Medical buildings have been built on two parcels, are fully occupied, and are currently serving the medical needs of the region's residents. Plans for a medical building on one of CHOMP's vacant parcels, currently proposed to include various ancillary hospital services, a community wellness center, and office space for medical and other health care practitioners and services, have been submitted to the City of Monterey. The medical

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building for CHOMP's second vacant parcel and a second building on one of CHOMP's developed parcels are in various stages of planning. On June 18, 2009, MPWMD took action to reduce pumping limits in the water system serving the Ryan Ranch Campus by approximately 60%. (See "Findings, Conclusions, and Decision of the Board" attached hereto as Exhibit "B.") In so doing, MPWMD imposed a moratorium that prohibits further development of CHOMP's Ryan Ranch Campus and burdens CHOMP with two undevelopable vacant parcels for the foreseeable future. Additional factual detail regarding the Ryan Ranch Campus and the potential adverse impacts that the unavailability of water for the Ryan Ranch Campus will have on CHOMP and the community it serves is contained in the "Proposed SWRCB Findings in Support of Exemption for Community Hospital of the Monterey Peninsula Ryan Ranch Outpatient Campus" attached hereto as Exhibit "C" ("Proposed Findings"). The factual discussion contained in the Proposed Findings is incorporated in its entirety in this letter by this reference.

It is anticipated that, with additional conservation in CHOMP's existing facilities on the Ryan Ranch Campus, CHOMP will require approximately 10 acre-feet of additional water annually to serve build-out of the Ryan Ranch Campus. Completion of development of the Ryan Ranch Campus is an important component of CHOMP's integrated plans to meet the present and future health care needs of the residents of the Monterey Peninsula. CHOMP's ability to complete, and thereby meet its economic goals for, the Ryan Ranch Campus are also essential to the financial success of the Ryan Ranch Campus and to CHOMP's overall fiscal health.

Stated simply, an increasing and aging population on the Monterey Peninsula creates the need for new and expanded medical and health care services and facilities, which will require an assured water supply for those facilities. For these reasons, CHOMP respectfully requests that the SWRCB include the following language in any final Cease and Desist Order it may adopt:

The provisions of this order shall not prevent the use of Carmel River water for new and expanded uses that are important to the public health, safety, and welfare. Such uses shall be limited to new and expanded medical and health care uses and facilities, police and fire facilities, senior and disabled citizen housing, and similar priority projects. Under this exemption, up to 10 AF of water shall be made available for completion of Community Hospital of the Monterey Peninsula's Ryan Ranch Outpatient Campus approved by the City of Monterey in 2002.

The proposed findings attached hereto as Exhibit "C" could be adapted and incorporated into any final Cease and Desist Order to support the requested exemption.


CHOMP appreciates the importance and value of protecting the natural and environmental resources of the Carmel River, but believes protection of those resources is not

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inconsistent with protection of the medical and health care environment on the Monterey Peninsula. Both considerations must be sensibly balanced with the goal of meeting the future medical and health care needs of the people of Monterey County. In order to be able to meet those needs in the face of rapid and sometimes unpredictable changes in the world of health care, CHOMP must be free of external regulatory constraints that interfere with its mission. The SWRCB should include the requested exemption or, in the alternative, otherwise ensure that its action in this matter will allow completion of the Ryan Ranch Campus.

We appreciate the SWRCB's consideration of CHOMP's concerns with respect to these extremely critical issues.

Very truly yours,


Steven J. Packer, M.D.
President and Chief Executive Officer

cc: Governor Arnold Schwarzenegger
Senator Dianne Feinstein
Senator Barbara Boxer
Congressman Sam Farr
Senator Abel Maldonado
Assemblyman Bill Monning
Linda S. Adams, Secretary for Environmental Protection
Mike Chrisman, Secretary for Natural Resources
Supervisor Dave Potter
Mayor Chuck Della Sala, City of Monterey
Darby Fuerst, MPWMD
Dan Limesand, CHOMP
David C. Sweigert, Fenton & Keller

EXHIBIT "B"

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BEFORE THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

In the Matter of the California-American Water Company Ryan Ranch Unit,)	FINDINGS, CONCLUSIONS
Hearing On Insufficient Physical Supplies In Accord with District Rule 40-B)	AND DECISION OF THE BOARD

The Board of Directors (Board) of the Monterey Peninsula Water Management District (District or MPWMD) convened this administrative hearing pursuant to District Rule 40 B to determine whether the Ryan Ranch Water Distribution System (WDS or System) has sufficient physical supplies of water to meet demand, and/or whether modifications to System Capacity and/or Expansion Capacity Limits should be made.

Parties to the hearing included the District staff prosecution team, represented by its attorney, Frances M. Farina, California-American Water Company (Cal-Am), represented by its attorneys Carrie L. Gleeson, Lori W. Girard and Timothy J. Miller, Wilson Street Investors, LLC and Ryan Court Investors, LLC, represented by their attorney, Sheri L. Damon, and Community Hospital of the Monterey Peninsula (CHOMP), represented by its attorney, David C. Sweigert.

District General Counsel David C. Laredo assisted the Board in this proceeding.

The administrative hearing was convened on January 21, 2009 and was continued to February 18, 2009. Statements were received, sworn testimony was taken and exhibits were admitted into evidence. Post hearing briefs and summary statements of the Parties were allowed. Board deliberation was held on May 20, 2009.

1 Based on the record, and for good cause, the Board makes the following Findings,
2 Conclusions and Decision.

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4 **BACKGROUND**

5 1. The District is an independent special district and holds power granted to it by
6 the state legislature. **EVIDENCE:** Statutes of 1977, Chapter 527, as amended, found at
7 West's Water Code Appendix, Sec. 118-1, *et. seq* (Water District Law).

8 2. The District regulates water distribution systems within its boundaries, adopts
9 regulations, establishes rules to protect public health and has the power to do any act necessary
10 to ensure sufficient water is available for present or future beneficial use of inhabitants within
11 the District. **EVIDENCE:** Water District Law, §118-363, §118-308, §118-326 (c), §118-325.

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13 **REGULATORY FRAMEWORK**

14 3. The District has established a permit system for operation of Water Distribution
15 Systems within its boundaries. **EVIDENCE:** MPWMD Rules and Regulations (Rules &
16 Regs), Regulation II, Rules 20 – 29.

17 4. Each Water Distribution System within the District is required to operate within
18 an established Expansion Capacity Limit and System Capacity Limit. **EVIDENCE:** MPWMD
19 Rules & Regs, Rule 20 and Rule 22.

20 5. The District defines the term Expansion Capacity Limit to mean "the maximum
21 number of connections beyond which a Water Distribution System is not authorized to
22 Expand." **EVIDENCE:** MPWMD Rules & Regs, Rule 11.

23 6. The District defines the term System Capacity to mean "the amount of water in
24 gallons, cubic feet or Acre Feet that can be produced for delivery to a Water Distribution
25 System based upon the cumulative Sustained Yield of Wells adjusted for periodic lowering of
26 the water table and the projected yield of other Sources of Supply." **EVIDENCE:** MPWMD
27 Rules & Regs, Rule 11.

1 7. The MPWMD General Manager is required to monitor the physical ability of
2 Water Distribution Systems having more than ten connections to supply water within the
3 System Capacity and/or the Expansion Capacity for that System. EVIDENCE: MPWMD
4 Rules & Regs, Rule 40 B 1.

5 8. Where physical water supplies do not appear sufficient to support either the
6 System Capacity or the Expansion Capacity for that WDS, the General Manager shall rely on
7 credible information presented by a certified hydrogeologist, a registered geologist with a
8 specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or
9 a registered civil engineer with a specialty in hydrogeology. EVIDENCE: MPWMD Rules &
10 Regs, Rule 40 B 1.

11 9. Based upon expert opinion, the General Manager is required to convene a hearing
12 before the District Board to review the System Capacity or the Expansion Capacity, or both, for
13 such WDS. The instant proceeding constitutes such a hearing. EVIDENCE: MPWMD Rules
14 & Regs, Rule 40 B 2.

15 10. The District provided Notice to Cal-Am that its Ryan Ranch WDS did not appear
16 to have sufficient water supplies to support its System Capacity. Notice of this proceeding was
17 provided to Cal-Am on September 19, 2008 and November 4, 2008. Notice to property owners
18 and tenants in the Ryan Ranch service area was provided on January 9, 2009. EVIDENCE:
19 Exhibits A, C, F-8, and F-10.

20 11. The purpose of this hearing is to determine whether or not physical water
21 supplies are sufficient to support either the System Capacity or the Expansion Capacity, or both,
22 for the Ryan Ranch WDS, and whether, and to what extent, modifications shall be made to
23 either the System Capacity or Expansion Capacity, or both, for that WDS. EVIDENCE:
24 MPWMD Rules & Regs, Rule 40 B 3.

25 12. The Board's determination is based upon substantial evidence, including credible
26 expert evidence. EVIDENCE: MPWMD Rules & Regs, Rule 40 B 3.

1 PRELIMINARY ISSUES

2 13. Cal-Am and others argue this proceeding is not fair, and that the Board cannot be
3 impartial, because the District participates in matters before the California Public Utilities
4 Commission (CPUC) in which Cal-Am is also a party. Cal-Am cites circumstances where the
5 District filed a protest in CPUC proceedings, but the only way to fully participate in a CPUC
6 proceeding is by filing a protest. These assertions fail for lack of evidence that an unacceptable
7 probability of actual bias exists. **EVIDENCE:** No evidence to sustain the argument. *Nasha*
8 *LLC v. City of Los Angeles* (2004) 125 Cal. App.4th 470 citing *BreakZone Billiards v. City of*
9 *Torrance* (2000) 81 Cal. App.4th 1205.

10 14. Cal-Am and others also argue this proceeding is not fair because the prosecuting
11 attorney, Frances M. Farina, simultaneously served as an advisor to the Board on unrelated
12 matters, including but not limited to CPUC matters in which Cal-Am is involved. No evidence
13 was produced to show improper conduct. The presumption of impartiality was not refuted by
14 any evidence. Absent such evidence, there is no violation of due process for a prosecuting
15 attorney to simultaneously serve as an advisor to the Board on unrelated matters. **EVIDENCE:**
16 No evidence to sustain the argument. *Morongo Band of Mission Indians v. State Water*
17 *Resources Control Board* (2009) 45 Cal.4th 731, 88 Cal. Rptr.3d 610.

18 15. Cal-Am and others also argue this proceeding is not fair because the prosecuting
19 attorney, Frances M. Farina, serves in an "of counsel" role to the firm of De Lay & Laredo,
20 while a named partner of that firm, David C. Laredo, represents the District as General Counsel
21 and has been the legal advisor to the Board for this proceeding to provide general advice and
22 consultation to the Chair and Board. Frances M. Farina assisted District staff in this hearing as
23 an independent attorney, and had no contact or direction from District General Counsel. Ms.
24 Farina's office is located in Santa Barbara, while Mr. Laredo's office is located in Pacific
25 Grove. No evidence was produced to show Ms. Farina had access or used confidential
26 information related to this matter, or that Mr. Laredo exercised authority or control over Ms.
27 Farina. No evidence was shown that the ethical wall established to ensure separation of

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1 functions had been breached or was capable of being breached. EVIDENCE: Exhibit E;
2 Following the guidance of *Howitt v. Superior Court*, (1992) 3 Cal. App. 4th 1575, 5 Cal. Rptr.
3 2d 196 and *Nightlife Partners, Ltd. v. City of Beverly Hills*, (2003) 108 Cal. App. 4th 81, 133
4 Cal. Rptr. 2d. 234. No evidence to sustain the argument.

5 16. Cal-Am and others argue the District lacks regulatory authority over Cal-Am's
6 Ryan Ranch WDS because the CPUC has exclusive jurisdiction. However, the District Law
7 authorizes MPWMD to regulate water distributions systems, including those operated by Cal-
8 Am. EVIDENCE: Statutes of 1977, Chapter 527, as amended, found at West's Water Code
9 Appendix, Sec. 118-1, *et seq.*

10 17. Section 118-363 the District Law provides, "No person, owner, or operator shall
11 establish, extend, expand, or create a water distribution system unless and until the approval of
12 the board is first obtained in writing." The section also provides the Board may "adopt such
13 rules and regulations and establish such forms for such applications as are necessary and
14 proper." EVIDENCE: Statutes of 1977, Chapter 527, as amended, found at West's Water
15 Code Appendix, Sec. 118-363.

16 18. Cal-Am and others argue the District must complete an environmental impact
17 report (EIR) under the California Environmental Quality Act (CEQA) before it can make any
18 order pursuant to the MPWMD Rule 40 B hearing process. The District's action, however, is in
19 the nature of an enforcement action by a regulatory agency and qualifies for an exemption under
20 CEQA. EVIDENCE: CEQA Guidelines, section 15321.

21 19. CHOMP argues it has a vested right to proceed to construct additional buildings
22 on its Ryan Ranch property and that any interference in its planned development constitutes an
23 unconstitutional taking. CHOMP, however, lacks a building permit for its property and cannot
24 show that it has a vested right to complete its phased development. EVIDENCE: Exhibit 4,
25 Exhibits L, M and N. *Congregation Etz Chaim v. City of Los Angeles* (2004) 371 F.3d 1122,
26 1125 citing *Toigo v. Town of Ross* (1998) 70 Cal. App.4th 309, 321.

27 20. CHOMP argues District regulatory action regarding the Ryan Ranch WDS
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1 deprives it of all economically beneficial use and interferes with its investment-backed
2 expectations. CHOMP fails to present evidence of specific diminution in property values. To
3 the contrary, action under District Rule 40B has general application, is not aimed at any
4 individual landowner, and is taken to ensure sufficient water supplies are available to satisfy the
5 needs of current water users, including CHOMP's already-constructed office campus. Rule 40
6 B provides a rational response to water shortage and long-term water availability problems.
7 **EVIDENCE:** Exhibit 4; Exhibits L, M and N, *Penn Central Transp. Co. v. New York City*
8 (1978) 438 U.S. 104; *Kawaoka v. City of Arroyo Grande* (1994) 17 F.3d 1227, 1238, fn. 10;
9 *Swanson v. Marin Municipal Water District* (1976) 56 Cal. App.3d 512

10 21. CHOMP requests special consideration, perhaps in the nature of a special
11 allocation of Ryan Ranch WDS System Capacity, and points to the process enabled by District
12 Ordinance No. 87. **EVIDENCE:** Exhibits 4 and 13, Policy Statement by David C. Sweigert.

13 22. The allocation of water is established by ordinance, as an exercise of District
14 legislative discretion, and a discrete allocation of water cannot properly be created as a result of
15 a quasi-judicial administrative proceeding such as this hearing. **EVIDENCE:** Water District
16 Law; MPWMD Rules & Regs, District Ordinance No. 87.

17 18 RYAN RANCH WDS SUPPLY ISSUES

19 23. The Ryan Ranch WDS was formerly known as the Ryan Ranch Mutual Water
20 Company. The term Ryan Ranch WDS as used in these findings refers to both the Ryan Ranch
21 Mutual Water Company and its later operation as by Cal-Am as the Ryan Ranch WDS.
22 **EVIDENCE:** Exhibits F-6 and Exhibit F-7; Testimony of Darby W. Fuerst.

23 24. Cal-Am holds a District permit to operate the Ryan Ranch WDS, and operates
24 that WDS as a separate unit, distinct from Cal-Am's main system. **EVIDENCE:** Exhibits F-6
25 and Exhibit F-7; Testimony of Darby W. Fuerst.

26 25. When the Ryan Ranch WDS was formed on December 13, 1982, the District
27 approved its operation and granted it a System Capacity of 60 Acre Feet/Year (AFY). The

1 WDS was to receive its water supply from three (3) wells. EVIDENCE: Exhibit F-1;
2 Testimony of Darby W. Fuerst.

3 26. The District amended the Ryan Ranch WDS permit on September 24, 1984. The
4 permitted System Capacity was increased to 100.5 AFY. The Ryan Ranch WDS was required
5 to develop two (2) additional production wells. EVIDENCE: Exhibit F-1; Testimony of Darby
6 W. Fuerst.

7 27. The District further amended the Ryan Ranch WDS permit on April 10, 1989.
8 The permitted System Capacity was increased to 175 AFY. The WDS was required to have
9 five (5) production wells designed to deliver 250 gallons per minute (GPM). EVIDENCE:
10 Exhibits F-1 and F-5; Testimony of Darby W. Fuerst.

11 28. At present, the Ryan Ranch WDS has only two (2) operational production wells.
12 EVIDENCE: Exhibits F-1; Testimony of Darby W. Fuerst; Testimony of Joseph W. Oliver.

13 29. The current Ryan Ranch WDS permit limits water deliveries though any
14 interconnection between the main Cal-Am service area and the Ryan Ranch WDS area.
15 Transfers of water through this interconnection are limited to emergency use, and must be
16 metered and reported to the District within one week of occurrence. EVIDENCE: Exhibit F-6.

17 30. Water demand requirements of Ryan Ranch WDS users are required to be met
18 solely by Ryan Ranch WDS production facilities. As such, it is "stand-alone" water system
19 served by separate and distinct supplies and not reliant upon Cal-Am's main Monterey water
20 system. EVIDENCE: Exhibits F-6, F-7, and G-10; Testimony of Darby W. Fuerst.

21 31. The current Ryan Ranch WDS System Capacity limits production to 175 AFY.
22 EVIDENCE: Exhibit F-6.

23 32. The current Ryan Ranch WDS Expansion Capacity limits the system to 190
24 connections. EVIDENCE: Exhibit F-6.

25 33. Joseph W. Oliver, a certified hydrogeologist with requisite credentials under Rule
26 40 B, provided testimony on the System Capacity of the Ryan Ranch WDS and the history of its
27 production wells. EVIDENCE: Exhibits G-2, G-7, and G-11; Testimony of Joseph W. Oliver.

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1 34. Aside from Joseph W. Oliver, no other witness provided testimony or
2 declarations holding credentials as a certified hydrogeologist, a registered geologist with a
3 specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or
4 a registered civil engineer with a specialty in hydrogeology in this proceeding. **EVIDENCE:**
5 Entire Hearing Record.

6 35. Cal-Am reports show declining capacity in the Ryan Ranch WDS wells.
7 **EVIDENCE:** Exhibits G-4 and G-9; Testimony of Joseph W. Oliver.

8 36. Testimony of John Kilpatrick, a senior planning engineer for Cal-Am, before the
9 CPUC in General Rate Case Application 08-01-027, showed the Ryan Ranch WDS total well
10 capacity to be 101 GPM. **EVIDENCE:** Exhibit J.

11 37. Annual production for the Ryan Ranch WDS has varied from 26 AFY to 91 AFY
12 during the period 1990 to 2008; annual production in the most recent reporting year, Water
13 Year 2008, was 82 AFY. **EVIDENCE:** Exhibit G-5; Testimony of Joseph W. Oliver.

14 38. The existing well production capacity of the Ryan Ranch WDS, with both
15 primary wells in operation, is 101 GPM. A firm operating capacity of 101 GPM equates to an
16 annual production volume of 72 AFY. **EVIDENCE:** Exhibits G-1 and G-11; Testimony of
17 Joseph W. Oliver.

18 39. The Ryan Ranch WDS has an existing Maximum Day Demand of 115 GPM, a
19 permitted Average Day Demand of 108 GPM, and a permitted Maximum Day Demand of 244
20 GPM. **EVIDENCE:** Exhibit G-11; Testimony of Joseph W. Oliver.

21 40. The existing production capacity of the Ryan Ranch WDS of 101 GPM is
22 sufficient to meet an existing Average Day Demand of only 51 GPM. **EVIDENCE:** Exhibit
23 G-11; Testimony of Joseph W. Oliver.

24 41. The existing well production capacity of the Ryan Ranch WDS of 101 GPM is
25 not sufficient to meet existing Maximum Day Demand (115 GPM). **EVIDENCE:** Exhibit G-
26 11; Testimony of Joseph W. Oliver.

27 42. The existing well production capacity of the Ryan Ranch WDS of 101 GPM is

1 not sufficient to meet permitted Average Day Demand (108 GPM). EVIDENCE: Exhibit G-
2 11; Testimony of Joseph W. Oliver.

3 43. The existing well production capacity of the Ryan Ranch WDS of 101 GPM is
4 not sufficient to meet permitted Maximum Day Demand (244 GPM). EVIDENCE: Exhibit G-
5 11; Testimony of Joseph W. Oliver.

6 44. Cal-Am has not been able to produce sufficient water from its Ryan Ranch WDS
7 sources of supply, and has had to transfer water from its main service area to the Ryan Ranch
8 WDS during six (6) reporting years during the period from Water Year 2003 to Water Year
9 2008. EVIDENCE: Exhibit G-5; Testimony of Joseph W. Oliver.

10 45. Cal-Am has raised questions about the adequacy of long-term water production
11 facilities at its Ryan Ranch WDS, is in the process of identifying other well sites and conducting
12 ground water studies to develop future water supply reliability, but has had limited success in
13 increasing long-term water production for Ryan Ranch WDS to date. EVIDENCE: Exhibit,
14 F-13, G-1 and G-10; Testimony of Joseph W. Oliver; Testimony of Darby W. Fuerst.

15 46. Ryan Ranch WDS does not comply with Monterey County permit conditions
16 because the system relies on supplemental domestic water supplied from Carmel Valley.
17 EVIDENCE: Exhibit F-12.

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19 **CONCLUSIONS**

20 47. The ability of the Ryan Ranch WDS to take on new consumers is limited by the
21 amount of its supply. When demand reaches this limit, it has no right to take on new
22 consumers. *Butte Co. W.U. Assn. v. Railroad Com.* (1921) 185 Cal. 218.

23 48. The District may restrict new connections to the Ryan Ranch WDS to ensure the
24 system does not exceed the existing safe yield of its water supply, and continue the restrictions
25 until the water supply is augmented.

26 49. Substantial evidence, including credible expert analysis, establishes the physical
27 water supply available to the Ryan Ranch WDS is not sufficient to meet either the permitted

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1 System Capacity or Maximum Day conditions.

2 50. Since the Ryan Ranch WDS wells are no longer capable of producing water at
3 the rates required in the MPWMD permit, or to meet Maximum Day conditions, the System
4 Capacity must be adjusted downward to reflect current production capacity.

5 51. The System Capacity for the Ryan Ranch WDS should be limited to 72 AFY.
6 This is consistent with the firm well production capacity of 101 GPM that is available to that
7 system.

8 52. The District shall not accept an application for a water permit to expand water
9 use in the Ryan Ranch WDS service area until Cal-Am develops additional well production
10 capacity to sustain a higher System Capacity and has its System Capacity modified.

11 53. Upon development of additional well production capacity, or based upon credible
12 expert analysis that the Ryan Ranch WDS can sustain operations in excess of the System
13 Capacity limit set by this order, Cal-Am may apply for amendment of its Ryan Ranch WDS
14 System Capacity. The Board shall at that time set an amended System Capacity for the Water
15 Distribution System, based upon such credible expert analysis in accord with its Rule 40 B 4.

16 54. Any decision to create an exception to the Ryan Ranch WDS capacity limits set
17 by this decision for CHOMP or others, similar to the water allocation set by District Ordinance
18 No. 87, is not limited by this decision. Such an exception could result from an exercise of
19 legislative prerogative beyond the scope of this proceeding.

20 55. The decision of the board is subject to judicial review within ninety (90) days of
21 its adoption pursuant to the provisions of the Code of Civil Procedure, section 1094.6, and in
22 accord with District Rule 16.

23 **ORDER**

24 Based on the record, and for good cause, the Board makes the following Order:

25 1. Physical water supplies are not sufficient to support the System Capacity for the
26 Ryan Ranch WDS.

27 2. Modification of the System Capacity for the Ryan Ranch WDS is required.

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EXHIBIT "C"

**PROPOSED SWRCB FINDINGS IN SUPPORT OF EXEMPTION
FOR COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA
RYAN RANCH OUTPATIENT CAMPUS**

- I. Community Hospital of the Monterey Peninsula ("CHOMP"), a non-profit public benefit corporation, is the sole provider of acute care hospital services on the Monterey Peninsula and provides important medical care services to the community and to residents of the Monterey Peninsula. On November 5, 2002, the City of Monterey granted various land use approvals to CHOMP for the development of CHOMP's Ryan Ranch Outpatient Campus ("Campus"), including a Planned Unit Development, vesting tentative subdivision map, and design approval of certain buildings ("Ryan Ranch Campus Plan"). The Ryan Ranch Campus Plan called for subdivision of CHOMP's 21.2 acre parcel in Ryan Ranch into 4 parcels (Parcels 1 through 4) plus a fifth common area/open space parcel (Parcel 5), construction of medical office buildings of various specified sizes on Parcels 1 through 4, and parking and related infrastructure on Parcel 5. A final subdivision map for the Ryan Ranch Campus Plan was recorded on November 1, 2004, in Volume 22 Cities and Towns at Page 65, Official Records of Monterey County, California.
- II. CHOMP is implementing the Ryan Ranch Campus Plan in phases. CHOMP has completed the first phase, which includes development on Parcel 1 of a medical office building consisting of approximately 40,000 square feet of office space. A second medical office building consisting of approximately 41,000 square feet of office space has been completed on Parcel 3. Water Management District ("MPWMD") MPWMD has issued water permits for both buildings (Permit Nos. 20934 & 20935) and a separate water permit for irrigation (Permit No. 20936). The buildings on Parcels 1 and 3 are fully occupied and operational. In addition, certain infrastructure and common area improvements necessary to ultimately serve full build-out of Parcels 1 through 4 have been completed. Parcels 2 and 4 are currently vacant. The approved Ryan Ranch Campus Plan calls for development of three additional medical office buildings on the Campus: a 21,000 square foot 2-story building on Parcel 2, a 60,000 square foot 2-story building on Parcel 4, and a second 2-story building of approximately 57,850 square feet of office space on Parcel 1. While the City of Monterey has already approved these buildings as part of the Ryan Ranch Campus Plan, additional approvals, including but not limited to design approval, will be required or may be voluntarily sought by CHOMP. CHOMP has submitted an application to the City of Monterey for the development of a medical office building on Parcel 4, which application is currently pending.
- III. The Ryan Ranch Campus Plan is the result of CHOMP's long range planning effort for the development of additional medical and health care facilities to complement the acute care facilities and other services provided at CHOMP's main hospital campus. The goals of this process were to allow CHOMP to meet the changing healthcare needs of the people of the Monterey Peninsula and surrounding communities, to enhance the health of the community and the competence of those providing medical and health care services through educational and public service programs, and to consolidate certain CHOMP

services in a single accessible location with adequate available parking. The Campus opened in July of 2004. Existing facilities and services include CHOMP's Sleep Disorders Center, Diabetes & Nutrition Therapy programs, Community Imaging Center, a satellite lab, the Community Health and Hospice Resource Center, doctor's offices, ambulatory surgery center, health education classrooms, and administrative offices for CHOMP's hospice programs. To date, CHOMP has spent over \$30 million on planning, property acquisition, design, permitting, and construction related to implementation of the Ryan Ranch Campus Plan.

- IV. The Campus is located within the California American Water Company ("Cal-Am") service area and is served by the Ryan Ranch Water System. The Ryan Ranch Water System is owned and operated by Cal-Am and has an emergency intertie with the main Cal-Am water system.
- V. In 1989, MPWMD determined that sufficient water was available to serve anticipated development at Ryan Ranch and set the annual production limit for the Ryan Ranch Water System at 175 acre-feet per year ("AFY"). This annual production limit was sufficiently high to allow service of all anticipated development in Ryan Ranch for the foreseeable future, including all development pursuant to the Ryan Ranch Campus Plan. This annual production limit had been in effect for approximately 12 years when CHOMP acquired the property for development of the Ryan Ranch Campus Plan in 2001 and has remained in effect until 2009.
- VI. On June 18, 2009, the MPWMD Board, by a 4 to 1 vote (with two Board members absent), approved Findings, Conclusions, and Decision of the Board which reduced the annual production limit for the Ryan Ranch Water System from 175 AFA to 72 AFA. This action has the potential to prevent CHOMP from completing development of important medical facilities on the Campus pursuant to its Ryan Ranch Campus Plan.
- VII. In the context of this proceeding, CHOMP has requested that the SWRCB ensure that sufficient water is available for the full implementation and completion of the Ryan Ranch Campus Plan and that the terms of the Cease and Desist Order not prohibit or otherwise interfere with development pursuant to the approved Ryan Ranch Campus Plan. Based on the MPWMD's water use factors contained in Table 2 of MPWMD Rule 24, CHOMP will require approximately 10 AFY (139,000 square feet x 0.00007 AF/SF) to complete build out of the additional approved structures on Parcels 1, 2 and 4 pursuant to the Ryan Ranch Campus Plan will result in an increase in water use of approximately 10 acre feet ("AF").
- VIII. The implementation of the Ryan Ranch Campus Plan is essential to allow CHOMP to fulfill its mission of meeting the changing health care needs of the community in a manner consistent with current technology, to improve the level of regional medical services available in the coming years, to enhance the efficiency of CHOMP's operations, and to enhance the health of the community and the competence of those providing medical and health care services through educational and public service programs.

- IX. The Ryan Ranch Campus Plan was planned by CHOMP and approved by the City of Monterey as a single integrated project. The Planned Unit Development for the Campus approved by the City identified the number, size, use, and location of all buildings proposed for the Campus. The viability and success of existing phases are dependent on build out of future phases. Timing of the implementation of the Ryan Ranch Campus Plan is critical to successful implementation of CHOMP's mission and should not be based on external regulatory constraints unrelated to meeting the changing health care needs of the community. Instead, that timing must be based on considerations related to meeting those changing needs, including new developments in medical treatments and technologies, increasing population, changing demographics, and on the fiscally prudent use of CHOMP's resources. CHOMP has submitted an application to the City of Monterey for the development of a medical office building on Parcel 4. CHOMP requires certainty of the availability of water before further processing of the necessary permits and approvals for development of Parcel 4 and other approved development under the Ryan Ranch Campus Plan can occur and so the goals of the Ryan Ranch Campus Plan can be achieved.
- X. The timely implementation of the Ryan Ranch Campus Plan will provide a substantial public benefit to the community and is necessary for the protection of the public health, safety, and welfare of the residents of the Monterey Peninsula. Delays in the implementation of the Ryan Ranch Campus Plan will result in the wasteful use of community health care resources by imposing additional costs on CHOMP, will postpone or prevent the development of essential medical and health care facilities, will postpone or prevent improvements in the level of health care service provided in the community, and will adversely affect the public health and safety of the residents of the Monterey Peninsula.
- XI. As a nonprofit entity, CHOMP serves as a steward of the community's fiscal resources for the goal of providing acute care and ancillary medical and health care services to residents of the Monterey Peninsula. If the Cease and Desist Order prevents the availability of sufficient water for completion of the Ryan Ranch Campus Plan, implementation of the Ryan Ranch Campus Plan will not occur in a timely manner and completion of the Ryan Ranch Campus Plan would be seriously jeopardized for the foreseeable future. Important new medical and health care facilities and services that have been years in the planning and the resulting improvements in the level of medical care that would be available to the community in the future may never occur or may be delayed indefinitely. If the SWRCB were to adopt a Cease and Desist Order that precludes the availability of water in an amount sufficient to allow for CHOMP's completion of the Ryan Ranch Campus Plan, the foregoing circumstances would adversely affect CHOMP and the community it serves and would result in the following:
- A. A waste of CHOMP's fiscal resources;
 - B. Prevention of CHOMP from achieving its planning goals of providing new, modernized medical and health care services;

C. Prevention of the planned and approved build-out of Parcel 1, thereby significantly reducing the economic value of Parcel 1, an important CHOMP asset;

D. Prevention of any development on Parcels 2 and 4, thereby reducing or eliminating the economic value of those parcels either permanently or for the foreseeable future;

E. A significant diminution in value of the community's investment, through CHOMP, in the Ryan Ranch Campus Plan and in the real property assets of the Campus;

F. A significant adverse economic impact on CHOMP; and

G. Harm to the public health, safety, and welfare

XII. Assurance of the availability of 10 AFY of water for the implementation of the Ryan Ranch Campus Plan is necessary and desirable to prevent the aforementioned harms, to allow the timely implementation of the Ryan Ranch Campus Plan, to prevent the wasteful use of community health care resources, to preserve and protect the public health, safety, and welfare of the residents of the Monterey Peninsula, and to prevent the loss to the residents of the Monterey Peninsula of a substantial community benefit.

XIII. As part of its voluntary water conservation program, CHOMP has implemented or is considering implementation of measures to lower water use at CHOMP's main hospital campus and at the Campus. CHOMP has obtained and/or will seek water credits from MPWMD for these past and future retrofit and water conservation measures. These projects have resulted and are expected to result in significant water savings. These measures would enable CHOMP to offset a portion of the water available to CHOMP under the Cease and Desist Order, though the extent of these conservation savings at the Campus is not yet certain.

XIV. Assuring an available supply of water in the amount of 10 AFY for CHOMP to complete development of the Campus pursuant to the approved Ryan Ranch Campus Plan achieves an acceptable and appropriate balance between the competing goals of protecting the health and safety interests of the Monterey Peninsula community and of protecting the environmental resources of the Carmel River and will have a de minimis effect on the resources of the Carmel River.