

EXHIBIT 20-A

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**SETTLING PARTIES' MOTION TO APPROVE
BRINE DISCHARGE SETTLEMENT AGREEMENT**

[SETTLEMENT AGREEMENT ATTACHED]

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I. INTRODUCTION

Pursuant to Rule 12.1(a) of the Rules of Practice and Procedure of the California Public Utilities Commission, California-American Water Company ("Cal-Am"), Monterey Peninsula Regional Water Authority ("MPRWA"), Monterey Regional Water Pollution Control Agency ("MRWPCA"), the Coalition of Peninsula Businesses, the Monterey Peninsula Water Management District,¹ Surfrider Foundation ("Surfrider"), and the Planning and Conservation League, (collectively, "the Parties") submit this motion requesting that the Commission adopt and approve the accompanying Brine Discharge Settlement Agreement, included as "Attachment A."

The Parties jointly support the proposed Settlement Agreement as reasonable, consistent with the law, and in the public interest. The Settlement Agreement provides for monitoring and, if necessary, mitigation of brine discharge from the Monterey Peninsula Water Supply Project

¹ Due to its board's meeting schedule, the Monterey Peninsula Water Management District proposes to sign the Settlement Agreement after the submission of this Motion.

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(“Project”) into Monterey Bay. The Agreement resolves a key contested issues in this proceeding and enjoys the support of a broad coalition of parties representing diverse interests. The Parties request that the Commission approve the Settlement Agreement without modification as part of any decision to grant California American Water a certificate of public convenience and necessity for the Project.

II. BACKGROUND

On April 23, 2012, California American Water initiated Commission proceeding A.12.04.019 (the “Proceeding”) by filing an application for a Certificate of Public Convenience and Necessity (“CPCN”) for the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates. The purpose of the Project is to replace a significant portion of the existing water supply from the Carmel River, as directed by the State Water Resources Control Board.² The Project includes, inter alia, a desalination plant and related facilities including slant intake wells, brackish water pipelines, the desalination plant, product water pipelines, brine disposal facilities, and other appurtenant facilities.

The proposed brine disposal facilities would consist of a 3 million gallon brine storage basin and a brine discharge pipeline, which would connect to a new brine mixing structure that will connect in turn to the existing MRWPCA outfall. The outfall rests on the ocean floor and terminates in a diffuser with 171 2-inch ports, 129 of which are open, spaced 8 feet apart. During the non-irrigation season (approximately November through March), Project brine would be diluted prior to discharge with treated wastewater from the MRWPCA Regional Wastewater Treatment Plant. During the irrigation season (approximately April through October), that

² State Water Resources Control Board Order Nos. WR 95-10 (July 6, 1995) and WR 2009-0060 (Oct. 20, 2009).

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wastewater is diverted for irrigation and undiluted Project brine would be discharged into boundaries of the Monterey Bay National Marine Sanctuary (“Sanctuary”).

On February 22, 2013, Surfrider served its opening testimony, which addressed potential impacts from brine discharges into the marine environment, as well as pending amendments to California’s Ocean Plan addressing such discharges, specifically from desalination plants.³ On May 6, 2015, the State Water Resources Control Board adopted the final Ocean Plan amendment.⁴ The Commission released the Draft Environmental Impact Report for the Project in spring 2015 (“DEIR”). Both Surfrider and MPRWA submitted comments on the DEIR’s analysis of environmental impacts from the Project’s brine discharge.

In late 2015 and early 2016, Surfrider, MPRWA, and Cal-Am engaged in discussions to develop terms of a potential settlement of contested issues related to the Project’s brine discharge. ALJ Weatherford meanwhile included brine discharge among the topics to be covered in additional testimony.⁵ These parties reached consensus on terms, which MPRWA included in its January 22, 2016 testimony.⁶

Cal-Am served notice of an all-party settlement meeting on April 29, 2016. The all-party settlement meeting was held telephonically on May 6, 2016. Settlement discussions continued through May and early June 2016.

³ See generally SF-1 (Geever Testimony); SF-2 (Letter from Victoria Whitney, Deputy Director, Division of Water Quality, State Water Resources Control Board, dated November 13, 2012); SF-3 (Jones Testimony); SF-4 (Management of Brine Discharges to Coastal Waters Recommendations of a Science Advisory Panel); SF-5 (Damitz Testimony); SF-6 (Guidelines for Desalination Plants of the Monterey Bay National Marine Sanctuary).

⁴ See Amendment to the Water Quality Control Plan for Ocean Waters of California, addressing Desalination Facility Intakes, Brine Discharges, and the Incorporation of other Non-Substantive Changes (May 6, 2015) (Ocean Plan Amendment), available at http://www.waterboards.ca.gov/water_issues/programs/ocean/desalination/.

⁵ Administrative Law Judge’s Ruling Setting Evidentiary Issues and Schedule to Complete the Record for Phases 1 and 2 (November 17, 2015).

⁶ RWA-22 (Preston Testimony, Exhibit A).

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III. THE SETTLEMENT AGREEMENT IS REASONABLE IN LIGHT OF THE WHOLE RECORD, CONSISTENT WITH THE LAW, AND IN THE PUBLIC INTEREST

Pursuant to Rule 12.1(d), the Commission will approve settlements if the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The Commission has a well-established policy of settling disputes if they are fair and reasonable in light of the whole record.⁷ This policy reduces the expense of litigation, conserves scarce Commission resources, and allows parties to “reduce the risk that litigation will produce unacceptable results.”⁸ In the *Southern California Gas Co.* decision, the Commission held that the Parties’ evaluation should carry material weight in the Commission’s review of a settlement.⁹

The record in this proceeding demonstrates that the terms of the Settlement Agreement are reasonable. The brine discharged from the project will be denser than ambient sea water. Without sufficient dilution, it could pool on the ocean floor and harm marine life in the Sanctuary.¹⁰ The Settlement Agreement establishes a monitoring program to evaluate the effect of these discharges.¹¹ Experts from Surfrider, MPRWA, and Cal-Am have developed a program to monitor salinity of the waters that will receive the Project’s discharge, which will indicate whether brine has been effectively dispersed and diluted to safe levels in those waters.¹² These experts identified preferred monitoring locations, technology, and procedures for monitoring the anticipated brine discharge.

⁷ See, e.g., *Application of Golden State Water Company on Behalf of its Bear Valley Electric Service Division (U913E), for Approval of RPS Contract with BioEnergy Solutions, LLC, and for Authority to Recover the Costs of the Contract in Rates*, Decision 11-06-023, 2011 Cal. PUC LEXIS 330, **17-18.

⁸ *Id.*

⁹ *Order Instituting Investigation into the operations and practices of the Southern California Gas Company, concerning the accuracy of information supplied to the Commission in connection with its Montebello Gas Storage Facility*, D.00-09-034, 2000 Cal. PUC LEXIS 694, **29, 31.

¹⁰ SF-3 at 4 (Jones Testimony).

¹¹ See Attachment A, § 3.

¹² RWA-21 at 2, 4-5 (Preston Testimony).

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To determine whether brine discharge is sufficiently diluted in the receiving waters, the Settlement Agreement applies the standard proposed by the Ocean Plan Amendment: in general, the Project will be in compliance with the Settlement Agreement if salinity in the area of the outfall is not more than 2 parts per thousand (“ppt”) more saline than ambient ocean water as measured at a similar location unaffected by the Project.¹³ In the event salinity exceeds this standard, the Settlement Agreement requires mitigation to bring the Project into compliance. The Parties will jointly select a mitigation approach to increase brine dilution and decrease salinity levels below the 2 ppt threshold.¹⁴ The record supports use of such mitigation techniques, including outfall modifications to increase discharge pressure and brine dilution.¹⁵

The Settlement Agreement is consistent with applicable law concerning both environmental review in general and brine discharges into the marine environment. Both Public Utilities Code section 1002(a) and the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*, require the Commission to consider the potential effect of the Project on the environment before issuing a CPCN. In particular, CEQA sets out California’s overarching environmental policy: “The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern,” and “[t]here is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state.”¹⁶ To this end, CEQA requires agencies to analyze a project’s significant

¹³ See Attachment A, § 4; Ocean Plan Amendment at 43.

¹⁴ See Attachment A, § 4.4(a).

¹⁵ SF-1 at 5-6 (Geever Testimony); Transcript, Vol. 8 at 1259 (Svindland, Cal-Am); CA-12, Attachment 9 at 11-13 (Svindland Testimony).

¹⁶ Pub. Res. C. § 21000(a), (c).

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environmental impacts prior to approval.¹⁷ When that analysis reveals such impacts will be significant, agencies must identify mitigation to reduce or avoid them.¹⁸ The Settlement Agreement will carry that commitment forward, past approval. It will require the continued monitoring and analysis of potential impacts and impose mitigation if they arise.

The Settlement Agreement also supports the purposes of the recent Ocean Plan Amendment. It applies the Amendment's 2 ppt receiving water standard and its requirement of continuous monitoring of brine discharges to ensure that standard is met.¹⁹ Federal guidelines for desalination plant operations in the Sanctuary similarly state that dischargers should dilute brine discharges and adopt a "continuous monitoring program" to evaluate impacts of such discharges.²⁰

By establishing a continuous monitoring program and contingent mitigation options, the Settlement Agreement is consistent with and promotes the purposes of each of these applicable laws and regulations. The Settlement Agreement further ensures the consistency of its terms with brine discharge regulations by allowing the Parties to modify the monitoring program to ensure compliance with any additional monitoring requirements imposed on Cal-Am and MRWPCA by other regulatory agencies.²¹

Finally, the Settlement Agreement is in the public interest. First, it reflects compromise and consensus between the Parties on a critical outstanding component of the Project. This compromise will advance the Project while conserving Commission and the Parties' resources by avoiding further adjudication of this issue. Moreover, the Settlement Agreement protects both the

¹⁷ Pub. Res. C. § 21083; Cal. C. of Regs, title 14 (CEQA Guidelines) §§ 15091, 15092.

¹⁸ Pub. Res C. § 21081.

¹⁹ Ocean Plan Amendment at 46-47.

²⁰ NOAA, Guidelines for Desalination Plants of the Monterey Bay National Marine Sanctuary (May 2010) at 6-7 (marked as exhibit SF-6).

²¹ See Attachment A, § 3.2 (discuss alternative monitoring programs).

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ratepayers and the environment. It protects the ratepayers from unnecessary costs by avoiding construction of expensive and potentially unnecessary mitigation technology and allowing Cal-Am to pursue cost-effective mitigation, if and when needed.²² At the same time, it is undisputed that brine discharge into the marine environment is one of the primary environmental impacts from desalination plants.²³ Through monitoring and contingent mitigation, the Settlement Agreement pursues environmentally-protective adaptive management, thus safeguarding the public interest in California's environment.²⁴

Finally, the Settlement Agreement sets valuable policy precedent in California. To the Parties' knowledge, it will be the first investor-owned utility program to implement the Ocean Plan's monitoring standards for desalination plants. It will additionally provide the opportunity to validate the EIR's modeling and analysis of brine dilution, which may offer projects interesting and important insights for the analysis of future such projects.

For all of these reasons this Settlement Agreement is reasonable in light of the entire record, is consistent with the law, and is in the public interest.

IV. CONCLUSION

The Parties respectfully request that the Commission adopt and approve the attached Brine Discharge Settlement Agreement as part of any decision granting Cal-Am a CPCN authorizing it to construct the Project.

²² CA-12, Attachment 9 at 11-13 (Svindland Testimony); Attachment A, § 4.4(b)..

²³ SF-1 (Geever Testimony); SF-3 (Jones Testimony); SF-4 (Management of Brine Discharges to Coastal Waters Recommendations of a Science Advisory Panel); SF-5 (Damitz Testimony); SF-6; RWA-17 at 5-6 (Burnett Testimony).

²⁴ SF-6 at 13 (noting that such program is recommended for the Sanctuary by its administrator, the National Oceanographic and Atmospheric Administration).

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