

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

3
4 In the Matter of the Application of California-American
5 Water Company (U 210 W) for an Order Authorizing the
6 Continuance of MPWMD User Fee as Adopted by the
7 MPWMD Board of Directors, the Provision of Annual
Reconciliations, and the Recovery of the Costs
Accumulated in the Approved MPWMD User Fee
Memorandum Account

Application No. 010-00-000

(Filed January 5, 2010)

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9
10 **DIRECT TESTIMONY OF**
11 **DARBY W. FUERST**

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28 **MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT**

Date: January 5, 2010

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9 **DIRECT TESTIMONY OF**
10 **DARRY W. FUERST**

11 Q1. Please state your name, business address, and telephone number.

12 A1. My name is Darby W. Fuerst. My business address is 5 Harris Court, Building G,
13 Monterey, California 93940. My telephone number is (831) 658-5651.

14
15 Q2. By whom are you employed and in what capacity?

16 A2. I am employed by the Monterey Peninsula Water Management District (MPWMD or
17 Water Management District) as General Manager.

18
19 Q3. Please give a summary of your professional qualifications.

20 A3. My education includes a M.S. degree in water resources administration from the University of
21 Arizona, a B.S. degree in geological sciences from the University of Washington, a B.A. degree in
22 English literature from Occidental College, and an A.A. degree in mathematics from Cañada College.
23 I am a Certified Professional Hydrologist (No. 1658) with the American Institute of Hydrology. I
24 have more than 29 years of professional experience in the field of surface water hydrology and water
25 resources administration working for local, state, and federal agencies. Except for a one-year period
26 (October 1988 through September 1989), I have worked for the Monterey Peninsula Water

1 Management District for the past 25 years. I have been employed by the Water Management District
2 as General Manager since March 2008.

3
4 Q4. Please briefly outline your current responsibilities.

5 A4 As General Manager, I am responsible for all activities of the Water Management District,
6 including operations of the administrative services, planning and engineering, water resources, and
7 water demand divisions. I previously served as the General Manager of the Water Management
8 District for five years between December 1995 and June 2001.

9 In addition to serving as General Manager, I have also served as the Water Resources
10 Manager and Senior Hydrologist with the Water Management District. In this first position, I have
11 been responsible for the management of the programs, services, and staff of the Water Resources
12 Division including surface and ground water data collection programs, development and application
13 of computer simulations models, administration of the fishery protection activities in the Carmel
14 River basin, development of quarterly water supply strategies and budgets for California American
15 Water's (CAW's) main water distribution system, and negotiation of the annual Carmel River
16 Memorandum of Agreement (MOA) among CAW, California Department of Fish and Game
17 (CDFG), and the Water Management District that governs reservoir releases to the lower Carmel
18 River during the low-flow season. In this second position, I have been responsible for the
19 development, maintenance, and application of the Water Management District's computer simulation
20 model of the water resources of the Monterey Peninsula area. This model, the Carmel Valley
21 Simulation Model (CVSIM), is the Water Management District's principal analytical tool for
22 assessing the performance of the water resources system under varying physical, structural, and
23 operational conditions.

24
25 Q5. Have you previously testified before the California Public Utilities Commission?

26 A5. Yes. Most recently, I provided testimony on CAW's 2008 General Rate Case Application
27 (A.08-01-027).

1 Q6. What is the purpose of your testimony in this proceeding?

2 A6. The purpose of my testimony is to provide an overview of the Monterey Peninsula Water
3 Management District, its Water Allocation Program, and its Comprehensive Mitigation Program.
4 My testimony will also describe the funding sources for the Mitigation Program, including the
5 District's user fee. Additional testimony will be provided by the District Water Resources
6 Manager, Joe Oliver, and the District's Administrative Services Manager, Rick Dickhaut,
7 regarding the District's Aquifer Storage and Recovery (ASR) Project and budget process,
8 respectively.

9
10 Q7. Please provide an overview of the Monterey Peninsula Water Management District, its
11 legislated functions, and its powers.

12 A7. The Monterey Peninsula Water Management District is an independent special district¹
13 created by the California Legislature in 1977, and ratified by local voters in 1978. As indicated in
14 the legislative findings that enabled the MPWMD, the Water Management District was created to
15 provide integrated management of ground and surface water supplies and conserve and foster the
16 scenic values, environmental quality, and native vegetation, fish, and wildlife in the Monterey
17 Peninsula area and Carmel River basin (Water Code Appendix § 118-2). MPWMD boundaries
18 encompass the six cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand
19 City, and Seaside, the Monterey Peninsula Airport District, and portions of the unincorporated
20 Monterey County, primarily in Carmel Valley. With minor exception, the entire CAW Monterey
21 Division distribution system lies within the jurisdictional boundary of the MPWMD. CAW is the
22 largest water utility within the Water Management District and produces approximately 75 percent
23 (14,510 acre-feet) of the water produced in the District and serves almost 95 percent (38,385

24
25 ¹ A special district is defined by state law as "any agency of the state for the local performance of governmental or
26 proprietary functions within limited boundaries" (Government Code § 16271 [d]). An independent special district is
27 one in which the governing body is either directly elected by the voters or appointed for a fixed term of service.

1 connections) of the connections in the District. The MPWMD covers an area of approximately
2 170 square miles. Based on recent census values, approximately 112,000 people reside within the
3 MPWMD boundaries

4 When the Legislature created the MPWMD, the District was given the power, both
5 express and implied, necessary to carry out the objects and purposes of its mandate (§ 118-301).
6 This includes the power to enact ordinances and resolutions, adopt regulations to carry out its
7 purposes, and fix charges (§ 118-308). The District’s broadest power is provided in § 118-325,
8 i.e., “The district shall have the power as limited in this law to do any and every lawful act
9 necessary in order that sufficient water may be available for any present or future beneficial use or
10 uses of the lands of inhabitants within the district ...”

11 As a special district, the Water Management District is primarily accountable to the
12 voters who elect its Board of Directors and the customers who benefit from the services the
13 District provides. MPWMD is governed by a seven member Board of Directors: five Directors
14 are elected by voter divisions created within the District; one Director is a member of the
15 Monterey County Board of Supervisors and is appointed by the Board of Supervisors; and one
16 Director is a mayor, or member of the governing body, or chief executive officer of a city that is
17 wholly within the MPWMD boundary, and is appointed by the City Selection Committee of
18 Monterey County.

19 As a public agency, the Water Management District must comply with the Brown Act,
20 the Public Records Act, the Political Reform Act, and the Initiative, Referendum/Recall
21 Procedures. In addition, the MPWMD holds monthly public Board meetings during which time
22 residents are given an opportunity to comment on the District’s proceedings. The District is also
23 required to prepare an annual financial report, including an annual financial audit and adopted
24 budget.

1 Q8. Please provide an overview of the Water Management District's Water Allocation
2 Program, its related Final Environmental Impact Report (EIR), and associated Mitigation
3 Program?

4 A8. The Water Management District's established its Water Allocation Program in 1981 to
5 manage the limited water supplies available to Monterey Peninsula water users. Under the Water
6 Allocation Program, the District regulates the amount of water that can be produced and delivered
7 by public and private water distribution systems within the District. Presently, all water delivered
8 within the District is produced from sources within the District. These sources include surface
9 water from the Carmel River and groundwater from the Carmel Valley Alluvial Aquifer and
10 Seaside Groundwater Basin. Collectively, these sources are referred to as the Monterey Peninsula
11 Water Resource System (MPWRS). In 1981, the annual production limit from the MPWRS for
12 CAW's main distribution system was set at 20,000 acre-feet per year (afy) and a formula for
13 distributing water among the jurisdictions within CAW's service area was specified.

14 The District's Water Allocation Program was updated in 1990 to reflect dry-year rather
15 than average-year conditions and account for environmental flow needs. Based on the revised
16 analysis that was conducted as part of the EIR for the Water Allocation Program, the annual
17 production limit from the MPWRS for CAW's main distribution system was reduced to 16,744
18 afy and a moratorium on new or expanded water uses was imposed.

19 On November 5, 1990, the Water Management District Board certified the Final EIR for
20 the Water Allocation Program and adopted findings that included a Five-Year Mitigation Program
21 for the selected production limits. The Mitigation Program was necessary because the production
22 level that was analyzed and selected for CAW's main system, i.e., Water Supply Option V or
23 16,744 afy, resulted in significant, adverse environmental impacts that must be mitigated. The
24 California Environmental Quality Act (CEQA) requires that, for each significant impact identified
25 in an EIR, the EIR must discuss feasible measures to avoid or substantially reduce the program's
26 significant environmental effect.

27
28

1 Each of the five water supply options that were analyzed in the EIR, associated impacts,
2 and possible mitigations are described in the Executive Summary of the Final EIR, which is
3 included as **Exhibit MPWMD-DF-01**. As shown on page 18 of Volume I, impacts to riparian
4 vegetation, riparian wildlife, special-status wildlife, fisheries, and aesthetics from Supply Option
5 V “Without Full Mitigation Measures” were projected to be significant adverse impacts.
6 Similarly, impacts to lagoon vegetation and wildlife from Supply Option V “Without Full
7 Mitigation Measures” were projected to be potentially significant adverse impacts. However, as
8 shown on page 19 of Volume I, the significant adverse impacts to riparian vegetation, riparian
9 wildlife, special-status wildlife, fisheries, and aesthetics from Supply Option V “With Full
10 Mitigation Measures” were reduced to potentially significant or less than significant adverse
11 impacts.

12 The Five-Year Mitigation Program formally began in July 1991 and ran through June
13 1996. Following public hearings in May 1996, the District Board authorized continuation of the
14 Five-Year Mitigation Program through 2001. Since 2001, the District Board has voted to continue
15 the Comprehensive Mitigation Program as part of the District’s annual budget approval process.
16 Continuation of the Mitigation Program is necessary for implementation of the District’s Water
17 Allocation Program. Implementation of the Water Allocation Program is necessary, in turn, to
18 ensure that sufficient water is available to reliably serve CAW’s customers. In its Order No. WR
19 95-10, the State Water Resources Control Board directed CAW to carry out any aspect of the
20 Five-Year Mitigation Program that the District does not continue after June 1996. A copy of the
21 initial Five-Year Mitigation program for Water Supply Option V that was adopted by the District
22 Board is included as **Exhibit MPWMD-DF-02**.

23
24 Q9. Please summarize the key components of the District’s Mitigation Program.

25 A9. The key components of the Water Management District’s Mitigation Program include
26 general mitigations relating to water supply and demand management and specific measures
27 relating to select environmental resources such as steelhead and riparian vegetation. General
28

1 mitigation measures include hydrologic monitoring (precipitation, streamflow, groundwater levels,
2 and water quality), water production management (operations agreements, quarterly water supply
3 budgets, and well registration and reporting), water demand management (conservation,
4 permitting, and monitoring), and water supply planning. Specific mitigation measures include
5 steelhead protection (spring smolt rescues, fall/winter juvenile rescues, summer juvenile rescues
6 and rearing, and adult and juvenile population monitoring), riparian habitat protection (vegetation
7 monitoring, plantings and irrigation, erosion control, and channel clearing) and lagoon habitat
8 protection (vegetation surveys, topographic measurements, and wildlife monitoring).

9 Each of the components is described in the Annual Mitigation Program Reports that are
10 required by CEQA. The 2008 Annual Report is included as **Exhibit MPWMD-DF-03** and is the
11 seventeenth report prepared by the District since the program began.

12
13 Q10. Please describe the funding sources for the District's Comprehensive Mitigation Program?

14 A10. The District's Mitigation Program, including its ASR Project, is funded from six sources.
15 These include revenues from the District's user fee, tax revenues, grant receipts, reimbursements,
16 interest revenues, and miscellaneous payments. For Fiscal Year (FY) 2008 (July 1, 2007 through
17 June 30, 2008), the District received \$2,552,117 in user fee revenue, \$1,229,791 in tax revenues,
18 \$299,870 in grant receipts, \$118,295 in reimbursements, \$36,164 in interest revenues, and \$4,039
19 in miscellaneous payments. In FY 2008, 60 percent of the total revenue for the Mitigation
20 Program was derived from the District's user fee. Of the user fee total, \$2,485,833 or 97 percent
21 was generated by CAW's customers.

22
23 Q11. Please provide an overview of the District's user fee.

24 A11. The Water Management District has assessed a user fee since 1983. This fee, which is
25 based on actual water use, is included on the water bills for CAW and the Seaside Municipal
26 Water System. The user fee, which is expressed as a percentage of the meter and water charges, is
27 presently set at 8.325 percent. The fee is included on the CAW water bill with other fees such as

1 city franchise and license fees and the PUC surcharge. Revenues from the user fee are used to
2 support the District's Mitigation Program, including funding for the District's Aquifer ASR
3 Project.

4
5 Q12. Has the California Public Utilities Commission Previously Recognized the Water
6 Management District's authority?

7 A12. Yes, as early as 1978, the Commission in Decision No. 89195 acknowledged the creation
8 of the Water Management District with several important findings:

9
10 *16. The use of Monterey Peninsula water resources affects the entire Peninsula and not*
11 *just that portion served by Cal-Am. The determination and implementation of*
12 *restrictions or limitations on the use and management of such resources can best*
13 *be accomplished by the responsible local government agencies, coordinated when*
14 *necessary with Cal-Am and the Public Utilities Commission.*

15
16 *18. As a result of Assembly Bill 1329 (Chapter 527) and a vote of the electorate in the*
17 *area served by Cal-Am's Monterey District, there is now in existence the Monterey*
18 *Peninsula Water Management District, having very broad powers, including taxing*
19 *powers. That District is, by the terms of its own enabling legislation, the*
20 *appropriate public agency to be concerned with such matters as the solution to the*
21 *development of a supplemental long-term water supply if needed, and*
22 *administration of water rationing programs in the event of future droughts.*

23
24 In Decision No. 98-06-025, the Commission recognized that CAW is subject to regulatory
25 scrutiny by many agencies, including MPWMD. The scoping memo by the Commissioner and
26 Administrative Law Judge for that proceeding stated their intention to avoid duplicating the
27 District's work.

1 In Decision No. 98-08-036, while discussing CAW's applications for approval of a water
2 rationing plan, the Commission agreed that any rationing or moratorium measures should be
3 developed and administered by MPWMD. The District committed to adopting such a plan by
4 December 1, 1998, and did so with passage of Ordinance No. 92 which created Regulation XV,
5 the *Expanded Water Conservation and Standby Rationing Plan*. The Commission stated, "Indeed,
6 the WMD has broad powers regarding use of water within the district, including the ability to
7 restrict use during drought or other threatened or existing water shortage." The Commission
8 concluded by stating, "Assuming the WMD follows the schedule it has announced, these issues
9 will be resolved at the WMD, and Cal-Am's rationing plan should reflect the WMD's
10 determinations." Finding of Fact 8 stated:

11
12 *Rationing and a moratorium are extreme measures with deep and disturbing ramifications*
13 *for the people and communities of the Monterey peninsula. Accordingly, we recognize the*
14 *desirability of having such measures complement the WMD's planning and allocation.*

15
16 Conclusion of Law 5 in Decision No. 98-08-036 made the order effective immediately "to permit
17 prompt coordination between Cal-Am and the WMD." MPWMD adopted the comprehensive
18 conservation and rationing plan which has been reviewed in multiple Commission decisions since
19 its enactment. For example, Decision No. 00-03-053 authorized CAW to adopt and rely on
20 MPWMD's Regulation XV in developing its Conservation and Rationing Plan for its Monterey
21 District.

22
23 Q13. Has the California Public Utilities Commission Previously Recognized the Water
24 Management District's User Fee?

25 A13. Yes, since 1990, by Decision 90-08-055, the Commission has recognized MPWMD's
26 authority to assess and collect fees from Cal-Am customers.

1 In 1994, by Decision 94-08-055, the Commission reviewed a complaint by a CAW
2 customer who objected to certain surcharges and administrative fees. The non-CPUC
3 administrative fee in question was MPWMD's user fee, then set at 7.125 percent. The
4 Commission reviewed MPWMD Ordinance No. 61, passed in July 1992, amending the user fee to
5 7.125 percent and noted that Cal-Am "assesses on each bill a MPWMD fee of 7.125%, which it
6 remits to MPWMD." The Commission deferred interpretation of the ordinance to MPWMD.

7 Thus, the Commission has previously reviewed the MPWMD user fee, recognized
8 MPWMD's authority to enact it, and for CAW to collect it.

9
10 Q14. Does the Water Management District support CAW's request that the Commission
11 authorize CAW to reinstate its prior practice of collecting the MPWMD user fee from CAW's
12 Monterey District customers at the rate set by the MPWMD Board of Directors and remit that sum
13 to the MPWMD?

14 A14. Yes.

15
16 Q15. What are the consequences if the Commission does not authorize CAW to reinstate its
17 prior practice of collecting the MPWMD user fee and remitting it to the Water Management
18 District?

19 A15. If the Commission does not authorize CAW's collection and remittance of the MPWMD
20 user fee, the Water Management District would need to consider alternative funding sources or
21 discontinuation of the mitigation measures. It would be impractical for the District to set up a
22 separate billing system. Similarly, the District's other revenue sources would not be sufficient to
23 continue the Mitigation Program at its current level. The District could consider assessing the user
24 fee directly against CAW, rather than its customers.

25 In the short-term, if the prior collection practice is not reinstated, it is likely that the
26 District's mitigation activities will be interrupted. In terms of data collection, this interruption will
27 create gaps in the long-term records. In terms of more direct mitigation measures such as
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1 steelhead rescues and riparian vegetation irrigation, significant mortalities of steelhead juveniles
2 and riparian vegetation may result. Loss of riparian vegetation could, in turn, result in increased
3 bank erosion, sedimentation, and channel instability. Any interruption in the Mitigation Program
4 would undermine our understanding of the Carmel River ecosystem and jeopardize ongoing
5 efforts to protect and restore the environmental quality of the MPWRS.

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Q16. Does this complete your testimony?

A16. Yes.

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