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

In the Matter of the Application of California-American Water Company (U 210 W) for an Order Authorizing the Transfer of Costs Incurred in 2008 for its Long-Term Water Supply Solution for the Monterey District to its Special Request 1 Surcharge Balancing Account.

Application 09-04-015  
(Filed April 16, 2009)

**JOINT MOTION OF CALIFORNIA-AMERICAN WATER COMPANY,  
MARINA COAST WATER DISTRICT AND MONTEREY COUNTY  
WATER RESOURCES AGENCY FOR EXPEDITED APPROVAL OF  
REIMBURSEMENT AGREEMENT AND FOR AN ORDER  
SHORTENING TIME TO RESPOND**

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Attorneys for  
MONTEREY COUNTY WATER RESOURCES  
AGENCY

February 26, 2010

1 In accordance with Rule 11.1 of the Commission's Rules of Practice and  
2 Procedure, California-American Water Company ("CAW") (U 210 W), Marina Coast  
3 Water District ("MCWD"), and Monterey County Water Resources Agency ("MCWRA")  
4 (collectively, the "Parties") respectfully move the Assigned Commissioner and Assigned  
5 Administrative Law Judge for an expedited ruling approving the Reimbursement  
6 Agreement, a true copy of which is attached hereto as Exhibit A (the "Agreement").<sup>1</sup>  
7 Such approval would authorize CAW to record the costs advanced to the agencies under  
8 the Agreement and the revenues repaid by the agencies with interest in the Special  
9 Request 1 Surcharge Memorandum Account. In addition, as noted below, the Parties  
10 request that the Assigned Administrative Law Judge shorten the time period for response  
11 to this motion to no more than five calendar days under Rule 11.1(e), and issue a ruling on  
12 this motion at the earliest possible time.

13 MCWD and MCWRA are also simultaneously filing a joint motion for leave to  
14 intervene as parties in this proceeding. In addition, the Parties represent that they are  
15 serving both of the motions on the service list for this proceeding and the service list for  
16 A.04-09-019.

17 **REQUEST FOR APPROVAL OF REIMBURSEMENT**  
18 **AGREEMENT**

19 As explained at the February 9, 2010 Status Conference in A.04-09-019 (CAW's  
20 Coastal Water Project CPCN proceeding), MCWD and MCWRA have worked tirelessly,  
21 cooperatively and at great expense for many months on developing the evolving regional  
22 solution to address the long-term water supply deficit in CAW's Monterey District.  
23 However, as also discussed at the Status Conference, the two public agencies have come  
24 to a crossroads regarding their ability to continue funding their full-scale involvement in  
25 this process. Without interim assistance in the form of a Reimbursement Agreement from  
26 CAW to cover the agencies' costs between now and the date the public agencies'

27 \_\_\_\_\_  
28 <sup>1</sup> Counsel for MCWD signs this motion on behalf of all parties pursuant to Rule 1.8(d) of  
the Commission's Rules of Practice and Procedure.

1 respective portions of an approved project can be bonded, the agencies' cash flow issues  
2 will significantly impede their full participation in the CPCN proceeding, and may  
3 jeopardize their ability to participate effectively in the proceeding at all. The need is real,  
4 and a successful outcome for the Coastal Water Project proceeding may hang in the  
5 balance.

6 By this motion the two agencies are not presently seeking reimbursement of the  
7 significant expenditures they have previously made to support and develop a water supply  
8 solution for Monterey County. They merely seek a ruling that would authorize CAW to  
9 assist them, on a purely interim basis, with the project-related costs they incur from now  
10 until the date they are able to sell bonds to finance an approved water supply solution or  
11 December 31, 2010, whichever occurs first.

12 It would be highly imprudent to jeopardize a promising solution to the long-term  
13 water supply deficit in the Monterey District by failing to address the public agencies'  
14 interim cash flow needs. To assure the agencies' full and essential participation in the  
15 ongoing development of a solution for the long-term water supply deficit, the Parties  
16 request a ruling approving CAW's payment of funds to MCWD and MCWRA pursuant to  
17 the Agreement.

18 The critical project development costs that the short-term interim payment of funds  
19 would address would include the design and permitting of a test well or test wells and  
20 efforts to acquire the real property interests necessary to facilitate the construction of such  
21 test well or wells. These are actions that are supported by most, if not all, of the active  
22 parties to A.04-09-019. The costs would also include efforts to secure grants and least-  
23 cost financing for the project that will ultimately reduce costs to CAW ratepayers,  
24 National Environmental Policy Act review of the project (which is a prerequisite to  
25 receiving federal grants and funding for the project), efforts to secure permits that are  
26 required for the project to go forward, the full participation of MCWD and MCWRA in  
27 A.04-09-019, the initial costs of the contractor selection process, and other project-related  
28 costs. The only costs addressed in the Agreement are project-related costs, *i.e.*, costs

1 related to the development of a solution for the Monterey District water supply deficit as  
2 referenced in A.04-09-019.

3 The primary provisions of the Agreement are as follows:

- 4
- 5 ○ CAW will reimburse funds to the two public agencies to pay for all  
6 of their direct project-related costs incurred for a specific and  
7 limited "Term," defined in the Agreement as between February 9,  
8 2010 (the date the issue was first raised to the Commission at the  
9 Status Conference) and either (1) the date the agencies obtain the  
10 proceeds of financing for the project sufficient to both meet the  
11 agencies' ongoing direct project-related costs and commence  
12 repayment to CAW (with interest) of the funds advanced under the  
13 Agreement, or (2) December 31, 2010, whichever occurs first. (The  
14 end date of the Term can only be extended by written agreement.)
  - 15 ○ The funds advanced by CAW and repaid by the two agencies shall  
16 be recorded in CAW's Special Request 1 Surcharge memorandum  
17 account, currently before the Commission in this proceeding.
  - 18 ○ The funds advanced shall bear interest at the interest rate applicable  
19 to CAW's Special Request 1 Surcharge memorandum account, as  
20 such interest rate may change from time to time.
  - 21 ○ The funds advanced shall be in an amount sufficient to cover all of  
22 the agencies' direct project-related costs, including but not limited  
23 to the following:
    - 24 • Administrative project-related costs for all non-attorney staff  
25 of the agencies, including, but not limited to, staff  
26 participation in (1) activities where a Monterey District water  
27 supply solution is addressed, (2) oversight of permitting  
28 processes, consultants, engineers, and attorneys, (3) CEQA  
review and project approval by each agency, (4) legal  
challenges relating to the project, and (5) real property  
negotiations and associated tasks to design a test well or  
wells, as well as NEPA work preparatory to federal grant  
acquisition.
    - Legal costs for participation by inside and outside attorneys  
representing the agencies in all project-related activities,  
including, but not limited to (1) completion and  
documentation of a settlement discussions and pursuit of  
settlement approvals, (2) CEQA review and project approval  
by each agency, (3) defense of any CEQA or other legal or  
regulatory challenges to any project approval, and (4)  
negotiation, documentation, and pursuit of approval of the  
Agreement.

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- Consultant, engineering and legal costs for participation on behalf of the Local Agencies in all Project-related activities, including, but not limited to, (1) pursuit of any required permits, (2) conduct of NEPA review in conjunction with application for federal grants, (3) design of a test well or wells, (4) selection of a site or sites for a test well or wells, (5) selection and procurement of real property interests required for construction and operation of a test well or wells, and (6) participation in project-related activities before jurisdictional agencies.
  
- Purchase costs of real property interests required for construction and operation of a test well or wells.
  
- The Parties will meet and confer at least monthly to review then-current budget, cash flow schedules, and scope of work covered by the Agreement. Any single expenditure item budgeted to cost more than \$300,000.00 must be agreed upon by the Parties in writing before expenditures for such item may occur. A preliminary cash flow schedule and a preliminary description of the scope of work are attached to the Agreement as Exhibit A and Exhibit B, respectively.
  
- The agencies will submit monthly invoices to CAW for funds to be reimbursed under the Agreement, and CAW will review and pay such invoices within 30 days.
  
- The Agreement is not binding on the Parties until it is approved by the governing board of each party and by a ruling in this proceeding of the Assigned Commissioner and/or the Assigned Administrative Law Judge or such other approval as the Commission may require. (The Agreement was approved by the governing board of MCWD on February 24, 2010, by the governing board of MCWRA on February 26, 2010, and by the President of CAW, who possesses delegated authority from CAW's governing board and from CAW's parent company, American Water, on February 26, 2010, and has been executed by the duly authorized representatives of each of the Parties.)
  
- After the project is approved by the Commission and the agencies receive the proceeds of bonding or other financing for the project sufficient both to meet the agencies' ongoing direct project-related costs and commence repayment to CAW of the funds advanced, they will promptly repay to CAW the funds advanced with interest. However, should the Commission deny such project approval, CAW will not seek repayment of the funds advanced, but will be entitled to seek recovery of the funds advanced through rates, subject to CPUC reasonableness review. The agencies shall reasonably support CAW in any such reasonableness review, subject to CAW's reimbursing them the costs of such support.

- 1           o The Parties recognize the legal rights and obligations of their  
2           respective governing boards to exercise prudent business judgment  
3           to approve or disapprove whatever agreements are necessary to  
4           proceed with a project and that each such board will make  
5           determinations of whether to approve or disapprove such  
6           agreements based upon its view of the appropriate exercise of such  
7           prudent business judgment. However, should any Party act in bad  
8           faith in carrying out the terms of the Agreement, any other Party  
9           may seek repayment of any costs that would have otherwise been  
10          reimbursed under the Agreement (which for CAW shall be limited  
11          to funds reimbursed plus accrued interest on such funds) incurred as  
12          a result of that bad faith.

13           Consistent with the Agreement, the Parties request that the sums advanced to the  
14           agencies pursuant to the Agreement be recorded in CAW's Special Request 1 Surcharge  
15           memorandum account, which is the subject of this proceeding. If the project is approved  
16           by the Commission, as the Parties expect it will be, those sums will be repaid to CAW  
17           with accrued interest as soon as the bonds are sold. The repayment revenues recorded in  
18           the memorandum account will net out the costs, thereby obviating the need for any  
19           reasonableness review by the Commission. On the other hand, if the project is not  
20           approved or otherwise fails (for reasons other than the bad faith of one of the agencies),  
21           the funds advanced to the agencies will not be repaid, and CAW will be entitled to seek  
22           recovery of the funds advanced in rates, subject to the reasonableness review which the  
23           Commission has already mandated for costs booked in the memorandum account.

24           At the February 9, 2010 Status Conference in A.04-09-019, the Division of  
25           Ratepayer Advocates ("DRA") expressed concern that the Special Request 1 Surcharge  
26           could only be used for recovery of the costs of the Moss Landing project because, under  
27           the Commission's memorandum account decisions, only the Moss Landing project is the  
28           "Coastal Water Project," meaning the memorandum account would have to be expanded  
29           in response to a Petition for Modification to cover the costs of the alternative desalination  
30           projects being considered in the same proceeding. (Tr. 58-59.) Fortunately, DRA raises  
31           this concern unnecessarily, as a review of relevant Commission decisions and rulings  
32           discloses.

33           The Special Request 1 Surcharge account was established by Decision ("D.") 06-  
34           12-040 "to allow recovery of already incurred preconstruction costs related to its Coastal

1 Water Project.” (D.06-12-040, at p. 2..) On the same page of that decision, the  
2 Commission made clear that it contemplated issuing a CPCN “for the Coastal Water  
3 Project, or alternative long-term supply options.” (*Ibid.*; emphasis added.) The  
4 Commission said (at p. 4): “CalAm determined that the desalination and ASR facilities,  
5 which became the proposed Coastal Water Project, would address the directives of the  
6 SWRCB . . . .” The Commission went on (at p. 5): “In a September 6, 2005 ruling, the  
7 ALJ determined that there should be two distinct phases to this proceeding: (1) Phase I –  
8 interim rate relief and (2) Phase II – selection of a water supply solution.” (Emphasis  
9 added.) The Commission thus anticipated that there would be interim rate relief to  
10 facilitate the recovery of the preconstruction costs of all alternatives until a particular  
11 alternative was selected. The Commission further stated (at p. 5): “A separate Phase II  
12 proceeding to address the selection of a water supply solution will commence after the  
13 EIR on the proposed Coastal Water Project is further under way.”

14 D.06-12-040 further states (at pp. 6-7) that with respect to the Special Request 1  
15 Surcharge, “CalAm would add any remaining uncollected preconstruction costs to the  
16 overall Coastal Water Project or alternative long-term supply solution costs.” (Emphasis  
17 added.) Similarly and quite consistently, the post-approval costs addressed by the Special  
18 Request 2 Surcharge are intended to recover the costs of the approved project. In D.06-  
19 12-040, the Commission said: “The purpose of the Special Request 2 Surcharge is to  
20 generate revenues to offset the ultimate cost of a long-term water supply solution for  
21 CalAm’s Monterey District, whether it is the Coastal Water Project or an alternative. . . .  
22 If the Coastal Water Project (or alternative long-term water supply solution) has not been  
23 completed by January 2009, CalAm would increase the surcharge to 60% of the  
24 customer’s bill and would continue at that level until the Coastal Water Project, or other  
25 approved long-term supply solution, is completed.” (*Id.* At p. 7; emphasis added, footnote  
26 omitted; *see also id.* at p. 33..)

27 D.06-12-040 also states: “CalAm requests recovery of \$1,639,419 for project  
28 management, legal, administrative and other costs through 2005. DRA reviewed these

1 costs and recommends approval. However, DRA recommends recovery of this amount  
2 only after the Coastal Water Project, or alternative project, is certified by the Commission.  
3 DRA's request to delay recovery is denied because ratepayers should not be required to  
4 pay unnecessary interest charges on costs that have been approved. Such delay is not in  
5 the public interest. We authorize CalAm to recover these costs booked in the  
6 memorandum account through the Special Request 1 Surcharge." (*Id.*, at p. 21; emphasis  
7 added.)

8 The "Joint Scoping Memo and Ruling of Assigned Commissioner and  
9 Administrative Law Judge" in this proceeding issued September 3, 2009 also supports this  
10 view. That Scoping Memo indicated that the proposal and application for a CPCN "to  
11 construct and operate a desalination plant and associated facilities proposed to address  
12 long-term water supply problems on the Monterey Peninsula . . . is known as the Coastal  
13 Water Project." (Scoping Memo, p. 1, fn. 1.) This language further recognizes that the  
14 alternatives pending in A.04-09-019 are all part of the "Coastal Water Project."

15 In ruling on this motion, the Assigned Commissioner and Administrative Law  
16 Judge need only confirm that the memorandum account is not limited to preconstruction  
17 costs relating only to the Moss Landing proposal but is intended to record the  
18 preconstruction costs of all three competing alternative desalination projects.

19 The Parties respectfully request that the Assigned Commissioner and  
20 Administrative Law Judge issue a ruling approving CAW's advancement of funds to  
21 MCWD and MCWRA pursuant to the Agreement.

#### 22 **REQUEST FOR SHORTENED RESPONSE TIME**

23 At this critical juncture in the process, it is imperative that CAW be authorized  
24 immediately to advance funds to the two public agencies pursuant to the Agreement.  
25 Accordingly, the Parties request that the Assigned Administrative Law Judge shorten the  
26 time period for response to this motion to no more than five calendar days under Rule  
27 11.1(e), and issue a ruling on this motion at the earliest possible time.

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**CONCLUSION**

For the reasons stated, the Parties respectfully request that their Joint Motion for Approval of Reimbursement Agreement and for Expedited Treatment be granted.

Dated: February 26, 2010

Respectfully submitted,

FRIEDMAN DUMAS & SPRINGWATER LLP

By:   
Mark Fogelman  
Attorneys for MARINA COAST WATER  
DISTRICT

# EXHIBIT A

## REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is by and among the MARINA COAST WATER DISTRICT, a County Water District organized and operating under the County Water District Law, Sections 30000 and following of the California Water Code ("MCWD"), having its principal address at 11 Reservation Road, Marina, CA 93933; MONTEREY COUNTY WATER RESOURCES AGENCY ("MCWRA"), a duly constituted Water Resources Agency created pursuant to the Monterey County Water Resources Agency Act, found at California Water Code Appendix §§ 52-3 *et seq.*, having its principal address at 893 Blanco Circle, Salinas, CA 93901; and CALIFORNIA-AMERICAN WATER COMPANY, a California corporation and regulated public utility ("CAW"), having its principal address at 1033 B Avenue, Suite 200, Coronado, CA 92118. Each of MCWD, MCWRA and CAW are referred to herein individually as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, MCWD, MCWRA and CAW have cooperatively sought to address the water supply deficit in CAW's Monterey District through development of a Monterey District water supply solution consistent with the public interest as referenced in Application No. 04-09-019 pending before the California Public Utilities Commission ("CPUC") and CPUC Decision No. 06-12-040 (the "Project"); and

WHEREAS, to date MCWD and MCWRA (hereinafter referred to individually as a "Local Agency" and collectively as the "Local Agencies"), in cooperation with CAW, have expended significant sums in developing the Project; and

WHEREAS, the Local Agencies will be required to expend certain project approval and development costs during the Term as set forth in this Agreement, including the costs of (1) designing one or more test wells for the project, (2) National Environmental Policy Act ("NEPA") review necessary to facilitate federal financing for the project, and (3) other project development costs, as identified below; and

WHEREAS, the development of the Project is threatened by cash flow issues affecting further participation by the Local Agencies; and

WHEREAS, the Local Agencies do not presently seek reimbursement of their past Project-related expenditures but shall ultimately seek such reimbursement at a later date; and

WHEREAS, the Local Agencies, by this Agreement, seek reimbursement of Project development costs set forth in this Agreement expended from February 9, 2010, until the earlier of (a) the date the Local Agencies obtain proceeds of financing for the Project sufficient to both meet the Local Agencies' ongoing Direct Project-Related Costs and commence repayment to CAW of funds reimbursed under this Agreement, or (b) December 31, 2010, (the "Term"), unless the parties otherwise agree in writing to extend the Term; and

WHEREAS, the Local Agencies commit to use their best efforts to promptly obtain financing for the Project upon Project approval; and

WHEREAS, CAW seeks to ensure that the Local Agencies expeditiously and reasonably expend the costs necessary to continue the Local Agencies' full participation in the development of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCWD, MCWRA and CAW agree as follows:

1. CAW will reimburse funds to each of MCWD and MCWRA to pay for all direct Project-related costs incurred by the Local Agencies during the Term, not to exceed a total of \$4.3 million unless agreed to by the Parties in writing, which agreement shall not be unreasonably withheld. The funds reimbursed under this Agreement, and the interest thereon, shall be repaid or forgiven as set forth in Paragraph 6 hereof.
2. The funds reimbursed hereunder shall be recorded in CAW's Special Request 1 Surcharge memorandum account, currently before the CPUC in Application No. 09-04-015. Such funds reimbursed shall bear interest, which interest shall be added to the sums to be repaid, at the interest rate established from time to time by the CPUC as being applicable to CAW's Special Request 1 Surcharge memorandum account, with the initial interest rate being that applicable to such memorandum account as of February 9, 2010.
3. The funds reimbursed shall be in an amount sufficient to cover all Direct Project-Related Costs of the Local Agencies during the Term subject to Section 5. "Direct Project-Related Costs" shall include but not be limited to the following:
  - 3.1. Administrative costs for the Project-related expenditures of all non-attorney staff of each of the Local Agencies, including but not limited to:
    - 3.1.1. All costs of staff participation in all activities where a Monterey District water supply solution is addressed (for example and without limitation, meeting preparation and attendance, travel costs, and participation in any proceeding of any jurisdictional entity);
    - 3.1.2. All costs of staff participation in overseeing permitting processes, consultants, engineers, and attorneys;
    - 3.1.3. All costs of staff participation in CEQA review and project approval (if any) by each of the Local Agencies;
    - 3.1.4. All costs of staff participation in legal challenges, including appeals, of any sort to any agreement, CPUC decision, or Local Agency action relating to the Project;
    - 3.1.5. All costs of staff participation in real property negotiations and associated tasks to design a test well or wells, as well as NEPA work preparatory to federal grant acquisition.

- 3.2. Legal costs for participation by inside and outside attorneys representing the Local Agencies in all Project-related activities, including but not limited to:
  - 3.2.1. Completion of ongoing settlement discussions, documentation of a settlement, and pursuit of settlement approvals;
  - 3.2.2. Participation in CEQA review and project approval (if any) by each of the Local Agencies;
  - 3.2.3. Defense of any CEQA or other legal or regulatory challenges, in whatever forum such challenges may be raised, to any approvals of a Monterey District water supply solution; and
  - 3.2.4. Negotiation, documentation, and pursuit of approval of this Agreement.
- 3.3. Consultant, engineering and legal costs for participation on behalf of the Local Agencies in all Project-related activities, including but not limited to:
  - 3.3.1. Pursuing and obtaining any necessary or appropriate permits;
  - 3.3.2. Conducting NEPA review in conjunction with application for federal grants;
  - 3.3.3. Design of a test well or wells;
  - 3.3.4. Selection of a site or sites for a test well or wells;
  - 3.3.5. Consulting related to the selection and procurement of real property interests necessary and appropriate for construction and operation of a test well or wells, including such interests as may be necessary for later conversion of test wells to permanent wells; and
  - 3.3.6. Participation in Project-related activities before jurisdictional agencies.
- 3.4. Purchase costs of real property interests required for construction and operation of a test well or wells, including such interests as may be required for later conversion of test wells to permanent wells.
4. The Parties shall meet and confer at least monthly to review then-current budget, cash flow schedules, and scope of work covered by this Agreement. Any single expenditure item budgeted to cost more than \$300,000.00, or any revision to the budget for any single expenditure item that would result in that item costing more than \$300,000.00, must be agreed upon by the Parties in writing before expenditures or further expenditures for such item may occur. A preliminary cash flow schedule under this Agreement is attached hereto as **Exhibit A**. A preliminary description of the scope of work under this Agreement is attached hereto as **Exhibit B**.

5. Each of the Local Agencies shall submit invoices monthly to CAW for funds to be reimbursed under this Agreement, and CAW shall review and pay such invoices that CAW deems to be reasonably prudent within 30 days of submission of such invoices. CAW shall act in good faith and shall not act arbitrarily and capriciously in choosing not to pay an invoice, and shall pay all portions of any invoice other than those CAW deems not to be reasonably prudent. CAW shall promptly provide written notice to the applicable Local Agency concerning denial of payment of any invoice or portion thereof, after which CAW and the applicable Local Agency shall meet and confer within 5 business days to resolve the issue or issues leading to denial of payment.
6. Subject to Project approval by the CPUC and the governing boards of the Local Agencies, and promptly upon receipt by each Local Agency of the proceeds of bonding or other financing for the Project, the Local Agencies shall repay to CAW the funds reimbursed under this Agreement. Should such approval be denied by the CPUC, CAW shall not seek repayment of the funds reimbursed under this Agreement from the Local Agencies, but CAW shall be entitled to seek recovery of the funds reimbursed under this Agreement through rates, subject to CPUC reasonableness/prudency review. The Local Agencies shall reasonably support CAW in any such reasonableness/prudency review, subject to monthly reimbursement by CAW of the costs of the Local Agencies' support. All Parties recognize the legal rights and obligations of their respective governing boards to exercise prudent business judgment to approve or disapprove the various agreements necessary to proceed with the Project and that each such board will make determinations of whether to approve or disapprove such agreements based upon its view of the appropriate exercise of such prudent business judgment. Notwithstanding the preceding sentence, should any Party act in bad faith in carrying out the terms of this Agreement, any other Party may seek repayment of any costs that would have otherwise been reimbursed under this Agreement (which for CAW shall be limited to funds reimbursed under this Agreement and accrued interest on such funds) incurred as a result of that bad faith.
7. Each Party shall provide such further assurances of performance as any other Party may reasonably request during the Term.
8. This Agreement shall not be binding upon any Party until it has been approved by: 1) each Party's governing board and, 2) a ruling in CPUC Application No. 09-04-015 of the Assigned Commissioner, Assigned Administrative Law Judge, or such other approval as the CPUC shall require.
9. This Agreement may be executed in counterparts and upon execution by all Parties each counterpart shall be considered an original, and all counterparts taken together shall constitute one and the same agreement.
10. If by June 30, 2010, a Motion for Approval of Settlement accompanied by all necessary documentation has not been filed with the CPUC in A.04-09-019, which motion may be joined either by all parties or fewer than all parties to said proceeding, any Party may terminate this Agreement, but only after meeting and conferring in good faith with the other

Parties regarding the filing of a Motion for Approval of Settlement of some but not all issues in A.04-09-019 joined by all or some parties to said proceeding, or other potential courses of action.

11. Signatures affixed to this Agreement by ink, and facsimile or electronically reproduced signatures to this Agreement, shall all be deemed to be original signatures.

DATED: February 25, 2010

MARINA COAST WATER DISTRICT, a  
County Water District organized and  
operating under the County Water District  
Law.

  
\_\_\_\_\_  
By: Jim Heitzman, Secretary

DATED: February \_\_, 2010

CALIFORNIA-AMERICAN WATER  
COMPANY, a California corporation.

\_\_\_\_\_  
By: Robert G. MacLean, President

DATED: February \_\_, 2010

MONTEREY COUNTY WATER  
RESOURCES AGENCY, a duly constituted  
Water Resources Agency  
created pursuant to the Monterey County  
Water Resources Agency Act.

\_\_\_\_\_  
By: Curtis V. Weeks, General Manager

Parties regarding the filing of a Motion for Approval of Settlement of some but not all issues in A.04-09-019 joined by all or some parties to said proceeding, or other potential courses of action.

11. Signatures affixed to this Agreement by ink, and facsimile or electronically reproduced signatures to this Agreement, shall all be deemed to be original signatures.

DATED: February \_\_, 2010

MARINA COAST WATER DISTRICT, a County Water District organized and operating under the County Water District Law.

By: Jim Heitzman, Secretary

DATED: February 26, 2010

CALIFORNIA-AMERICAN WATER COMPANY, a California corporation.

  
By: Robert G. MacLean, President

DATED: February \_\_, 2010

MONTEREY COUNTY WATER RESOURCES AGENCY, a duly constituted Water Resources Agency created pursuant to the Monterey County Water Resources Agency Act.

By: Curtis V. Weeks, General Manager



Exhibit A - Estimated Monthly Cash Flow

	February-10	March-10	April-10	May-10	June-10	July-10	August-10	September-10	October-10	November-10	December-10	Total
<b>NEPA/CEQA - Plus</b>												
Task 1: Project Management/Coordination	\$ -	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 142,167
Task 2: NEPA Environmental Documentation	\$ -	\$ 247,650	\$ 138,850	\$ 77,650	\$ 44,550	\$ 28,950	\$ 16,250	\$ 18,450	\$ 7,350	\$ 4,850	\$ 6,650	\$ 591,200
<b>Test Wells</b>												
Task 1: Project Management/Coordination	\$ -	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 194,200
Task 2: Test Well	\$ -	\$ 149,687	\$ 149,687	\$ 71,637	\$ 34,203	\$ 34,203	\$ 34,203	\$ 34,203	\$ 34,203	\$ 34,203	\$ 15,870	\$ 592,100
												\$ 156,830
<b>Agency Administrative, Consultant and Legal Expenses</b>												
MCWD	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 1,600,000
MCWRA	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 1,100,000
<b>TOTAL MONTHLY CASH FLOW</b>	<b>\$ 300,000</b>	<b>\$ 730,973</b>	<b>\$ 622,173</b>	<b>\$ 482,923</b>	<b>\$ 412,390</b>	<b>\$ 296,790</b>	<b>\$ 284,090</b>	<b>\$ 286,290</b>	<b>\$ 275,190</b>	<b>\$ 272,650</b>	<b>\$ 256,157</b>	<b>\$ 4,376,497</b>

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## Exhibit B – Scope of Work

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### Background

The Regional Water Project Facilities will provide up to 10,500 AFY of desalinated water supply to northern Monterey County through construction of a 10 mgd desalination plant including intake wells and pipelines, distribution pipelines, storage tanks, and pump stations. The scope of work presented below is limited to initial, time critical tasks associated with work related to permitting and design of test wells and preparation of NEPA/CEQA Plus environmental documentation as a requirement to obtain federal or state funding (e.g., Title XVI grants or SRF loans) for the Project facilities. The work is time-sensitive because of the need to have NEPA completed before funding can be obtained, because of the length of time required for Federal agency review of the document, and because the biological survey for compliance with the Federal Endangered Species Act (FESA), which is required for NEPA, needs to begin in April due to the spring flowering season for sensitive or other special status species such as the Monterey spineflower, and the test well performance results is necessary for development of final design of the proposed facilities. In addition, this scope of work includes Marina Coast Water District and Monterey County Water Resources Agency administrative, consultant and legal support services required to provide continued development of the Monterey District water supply solution as referenced in California Public Utilities Commission (CPUC) Application No. 04-09-019.

### NEPA/CEQA-Plus Scope of Work

#### 1 Project Management

MCWD's Consultant will coordinate and manage the various activities, communications, and consultants involved in the program elements included in this scope of work as well as related activities being undertaken by others outside of this scope of work.

##### 1.1 Project Meetings

MCWD's Consultant shall conduct as-needed conference calls and meetings with MCWD and its Project Partners to discuss work progress and outstanding issues. These conference calls and meetings will cover status of work products, schedule, and budget. MCWD's Consultant will identify outstanding issues, concerns, etc. and obtain guidance/direction from MCWD and its Project Partners at these conference calls and meetings. This scope of work assumes the following meetings will occur:

- 10 conference calls with MCWD and its Project Partners
- 10 monthly progress meetings with MCWD and its Project Partners

MCWD's Consultant will also conduct internal meetings to coordinate activities and discuss ongoing issues. These meetings will include individuals involved in each element of the project.

##### 1.2 Project Administration

MCWD's Consultant will procure necessary subconsultants for related studies, and administer the subconsultant contracts. MCWD's Consultant will administer the following:

- Preparation of monthly invoices by task and by individual.
- Preparation of monthly progress report describing specific accomplishments during the reporting period, problems encountered or anticipated, work scheduled for the next reporting period, and cost report.

### 1.3 Quality Assurance/Quality Control

MCWD's Consultant and its subconsultants will provide internal quality assurance and quality control (QA/QC) activities which will include detailed review of project design documents, drawings, and calculations.

The Proposed Project/Action is a component of the Monterey Regional Water Supply Project, which is being evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) as part of, and as an alternative to, California American Water Company's (CAW) Coastal Water Project (CWP). Specifically, the CWP and Regional Project were evaluated pursuant to CEQA in a draft environmental impact report (EIR) prepared by the California Public Utilities Commission (CPUC) and released to the public in January 2009. The Final EIR was released in October 2009 and was certified by the California Public Utilities Commission on December 17, 2009.

For the basis of this scope of work, it is assumed that the Regional Project is the preferred alternative for implementation and would be the Proposed Project/Action for the National Environmental Quality Act (NEPA) analysis. Key components of the Regional Project include the construction and operation of the intake wells, desalination facility, distribution pipelines, and certain component of the Carmel River Aquifer Storage and Recovery Project. These components constitute the Proposed Project/Action and were described and analyzed in the CWP EIR. Ownership of the Project facilities will be divided among the Project Partners (MCWD, MCWRA, and CAW). It is anticipated that the environmental documents will address any minor adjustments in pipeline alignments/extensions and site specific requirements for selected well locations.

It is the intention of the Project Partners to seek federal funding under the U.S. Bureau of Reclamation's (USBR or Reclamation) Title XVI Water Reclamation and Reuse Program and possible other funding mechanisms such as the State Revolving Fund (SRF), which is administrated by the State Water Resources Control Board (SWRCB). As a result, the Proposed Project/Action must comply with the NEPA and/or CEQA-Plus requirements. Reclamation will be the federal lead agency for NEPA. The approach will be to prepare an environmental document that meets the requirements of NEPA and CEQA-Plus along with any technical studies needed to support Reclamation's decision to fund the Proposed Project/Action.

At this time, it is anticipated that this Proposed Project/Action would meet NEPA requirements through the preparation of an Environmental Assessment (EA) leading to a Finding of No Significant Impact (FONSI). Specifically, this scope, budget and schedule assume that an EA/FONSI document will be prepared and processed to meet NEPA requirements. However, if it is determined that there are any significant environmental impacts that cannot be mitigated to less than significant levels, then an Environmental Impact Statement (EIS) may need to be prepared to meet NEPA requirements. If it is determined that an EIS is required and/or any additional CEQA analysis or processes are required, then MCWD's Consultant will work with MCWD and its Project Partners and/or Reclamation to implement adjustments in the project scope, budget, and schedule, as determined necessary.

### 2.1 Project Definition and Delineation of Area of Potential Affect

MCWD's Consultant will prepare the project description for the Administrative Draft EA/FONSI that meets NEPA requirements. The project description for the Proposed Project/Action will include the following: articulation of the Project's goals and objectives, the geographic location and footprint for all the physical improvements associated with the Proposed Project/Action, and a comprehensive description of the Proposed Project/Action's technical, operational, economic, engineering, and construction features/details.

As part of this task, MCWD's Consultant will also delineate the area of potential effect (APE), which will be used for conducting any additional field survey work to cover areas not previously surveyed for

## **2.4 Draft Environmental Assessment and Finding of No Significant Impact**

### **2.4.1 Prepare Administrative Draft Environmental Assessment.**

MCWD's Consultant will prepare an Administrative Draft EA on the Proposed Project/Action on behalf of Reclamation to comply with federal environmental laws. An EA is a preliminary analysis involving the use of a checklist of environmental issues to determine whether an EIS is needed to comply with NEPA. In conjunction with the EA, MCWD's Consultant will prepare several special studies as described in Tasks 2.6 through 2.10 to facilitate compliance with the federal environmental laws and regulations. The format and thresholds of significance used in the EA will follow guidance provided by the Council on Environmental Quality (CEQ). This will include an evaluation of environmental justice, Indian trust assets, and socio-economics.

For any potentially significant impact(s) identified through the EA, MCWD's Consultant will develop appropriate mitigation measures to attempt to avoid and/or reduce those impacts to less than significant levels. If the EA document concludes and Reclamation concurs that the Proposed Project/Action will not have a significant effect on the environment then a FONSI or Mitigated FONSI may be prepared. However, if significant environmental impacts cannot be reduced to less than significant levels then an EIS may need to be prepared.

For purposes of this task, it is assumed that an EA/FONSI or Mitigated FONSI will be sufficient for complying with NEPA. The EA will be developed using information contained in the Coastal Water Project EIR, and it is assumed that a Word version of this document will be provided to MCWD's Consultant. If it is determined that an EIS is to be prepared, MCWD's Consultant will prepare a detailed scope of work and budget for the completion of the appropriate NEPA documentation effort. MCWD's Consultant assumes that final comments will be returned within three weeks.

### **2.4.2 Prepare Screen Check and Public Draft EA/FONSI.**

Based on comments from the Project partners and Reclamation, MCWD's Consultant will revise the Administrative Draft and prepare a Public Draft EA/FONSI document to undergo the required 30-day public review. This task will involve the preparation of a Screen-Check Draft EA/FONSI for proof check review by the Project Partners and Reclamation prior to public distribution of the Public Draft EA/FONSI. MCWD's Consultant will work with Reclamation to determine the appropriate distribution of the Public Draft EA/FONSI.

#### Deliverables:

- Ten (10) copies of the Administrative Draft EA/FONSI to the Project Partners and Reclamation for review. It is assumed that final comments will be returned within three weeks.
- Twenty-five (25) copies of the Public Draft EA/FONSI and an electronic PDF for the required 30-day public review.

## **2.5 Prepare Responses to Comments and Process FONSI**

Upon completion of the public review period, MCWD's Consultant will assist the Project Partners and Reclamation in considering any comments received. MCWD's Consultant will help prepare responses to comments received. Because we have no ability to control the number and complexity of comments that we will receive, we have budgeted 100 professional staff hours for responding to comments. Any additional effort will be billed at an additional time and materials basis as directed by the Project Partners. This task assumes that Reclamation will concur that a FONSI should be prepared. MCWD and its Consultant will assist Reclamation in preparing and processing the FONSI.

#### Deliverables

- Twenty-five (25) copies of the Final EA/FONSI and an electronic PDF.

## 2.6 Wetland Delineation and Verification

MCWD's Consultant will obtain a jurisdictional determination of waters of the U.S. for the Monterey Regional Water Supply Project. Field surveys will be conducted to create wetland maps based on current conditions within the project study boundary and to determine the total acreage of jurisdictional waters of the U.S. (including wetlands potentially subject to federal Clean Water Act Section 404 and Section 10 of the Rivers and Harbors Act requirements). The wetland delineation will also include identification of features potentially under the jurisdiction of California Fish and Game Code 1600 and potentially non-jurisdictional "isolated waters" subject to state regulation under the Porter-Cologne Act. The report will be submitted to the Corps with a request for field verification and a jurisdictional determination. This task will include one site visit as well as up to 2 site visits with Corps staff to verify jurisdictional waters of the U.S. and to document any changes to the preliminary wetland maps. Based on preliminary surveys of the project area, wetland features are expected to be minimal, and an Individual 404 Permit is not expected to be necessary for the project. This scope and budget does not include obtaining a 404 permit.

### Deliverables:

- Draft and final Wetland Delineation Report and Maps
- Draft and final Verified Wetlands Maps

## 2.7 Biological Assessment for NOAA Fisheries

The project biologist will prepare a Biological Assessment (BA) for consultation with NOAA Fisheries. Monterey Bay provides potential marine habitat for four animal species that are federally listed that could potentially be affected by project implementation: green sturgeon, steelhead, Chinook salmon, and coho salmon. The Bay was also recently designated as critical habitat for green sturgeon. In addition, federally listed steelhead occur in the Carmel River. As described in the CWP EIR, steelhead within the Carmel River could potentially be affected indirectly and beneficially by the proposed project. The NOAA Fisheries BA will include information regarding the status of each species; its habitat, life history, and potential for occurrence within the project boundary; potential effects to the species resulting from all project activities; and reasonable and prudent measures to avoid and minimize potential for 'take'. The measures identified in the biological resource sections of the CWP EIR will be used as a baseline in developing conservation measures for the BA, but additional measures more specific to the Monterey Regional Water Supply Project will likely be required.

After USBR submits the BA to NOAA Fisheries, MCWD's Consultant will work to determine if formal consultation, leading to a Biological Opinion (BO) will be required, or if NOAA Fisheries will agree to an informal consultation process. If the BA determines that there would be no adverse affect to listed species or critical habitat, and NOAA Fisheries concurs, formal consultation would not be required. If the BA determines that there is a potential to adversely affect critical species or habitat, formal consultation will be required. MCWD's Consultant will assist USBR in the formal consultation process, including development of any additional conservation measures that may be needed to meet the requirements of FESA and the BO/Incidental Take Statement.

Monterey Bay also contains Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Act for species managed under the following Fisheries Management Plans (FMPs): Pacific coast salmon FMP, coastal pelagic species FMP, and Pacific groundfish FMP. The scope includes a consultation with NOAA Fisheries on potential impacts to EFH. EFH assessments in support of consultation under the Magnuson-Stevens Act are similar in content to a BA, and the EFH assessment will be included in, or appended to, the BA. This task will include up to 2 meetings with NOAA Fisheries and ESA staff.

### Deliverables:

- Draft BA for local agency/USBR review
- Final Draft BA for submittal to NOAA Fisheries for review and comment

- Final BA for submittal to NOAA Fisheries in support of consultation

## **2.8 Biological Assessment for U.S. Fish and Wildlife Service (USFWS)**

Project biologists will prepare a BA for consultation with USFWS. The CWP EIR listed four terrestrial animal species and three plant species that are either federally listed or proposed for federal listing that could potentially be affected by project implementation:

- California tiger salamander
- Santa Cruz long-toed salamander
- California red-legged frog
- Smith's blue butterfly
- Monterey spineflower
- Yaden's wallflower
- Sand gilia

The USFWS BA will include information regarding the status of each species; its habitat, life history, and potential for occurrence within the project boundary; potential effects to the species resulting from all project activities; and reasonable and prudent measures to avoid and minimize potential for 'take'. The BA will also include discussion of any marine mammals and non-anadromous fish under the purview of the USFWS that may be affected by the project. Project biologists will use the measures identified in the biological resource sections of the CWP EIR as a baseline in developing conservation measures for the BA, but additional measures more specific to the Monterey Regional Water Supply Project will likely be required.

After USBR submits the BA to USFWS, MCWD and its Consultant will work to determine if formal consultation, leading to a Biological Opinion (BO) will be required, or if USFWS will agree to an informal consultation process. If the BA determines that there would be no adverse affect to listed species or critical habitat, and USFWS concurs, formal consultation would not be required. If the BA determines that there is a potential to adversely affect critical species or habitat, formal consultation will be required. MCWD's Consultant will assist USBR in the formal consultation process, including development of any additional conservation measures that may be needed to meet the requirements of FESA and the BO/Incidental Take Statement.

Project biologists will also prepare a letter report to document how the reports will meet the requirements of the Fish and Wildlife Coordination Act (FWCA).

This task will include up to 2 meetings with USFWS.

### Deliverables:

- Draft BA for local agency/USBR review
- Final Draft BA for submittal to USFWS for review and comment
- Final BA for submittal to USFWS in support of consultation
- Draft and final memorandum documenting requirements of Fish and Wildlife Coordination Act for concurrent review by local agency and USBR followed by submittal to USFWS

## **2.9 Section 106 Compliance**

MCWD's Consultant will complete permitting and consultation requirements associated with Section 106 of the National Historic Preservation Act (NHPA) including inventory efforts, site evaluation, Native American consultation, preparation of a Memorandum of Agreement (MOA) with the State Historic Preservation Officer (SHPO), and the development of a Historic Property Treatment Plan and Archaeological Monitoring Program.

### 2.9.1 Cultural Resources Survey Report

MCWD's Consultant will complete a Cultural Resources Inventory Report update, including final delineation of the Area of Potential Effects (APE), cultural resources inventory findings, preliminary resource evaluation for National Register of Historic Places (NRHP)-eligibility, and presentation of potential treatment options. This update will utilize existing information to the greatest extent possible, including the results of the field work and investigations completed as part of the CWP EIR effort (Archaeological Survey for the Cal-Am Coastal Water Project, Monterey County, California, July 2009). Portions of the APE were not accessible during the initial inventory performed for the CWP EIR, including the Terminal Reservoir site, the Aquifer Storage and Recovery site, and several new pipeline alignments. These components will be surveyed by a Registered Professional Archaeologist and the results will be included in the update.

#### Deliverables:

- Administrative Draft Survey Report update for local agency review and comment.
- Final Survey Report update: Submitted to USBR
- One response for additional information from USBR and revision of report and resubmittal of survey report update

### 2.9.2 Initial Native American Consultation

Project team will contact the Native American Heritage Commission (NAHC) to request information on any known sacred sites within the project area, and to request a list of contacts for Native American tribes/individuals who may have an interest in the proposed undertaking. Each organization or individual on the list will be contacted.

#### Deliverables:

- Coordination with NAHC and Tribal Representatives: letters and phone calls to appropriate stakeholders
- Incorporation of Tribal Consultation into Inventory Report.

### 2.9.3 Evaluation of Cultural Resources

The CWP EIR identified five potentially NRHP-eligible cultural resources within the proposed APE including two prehistoric sites, a historic-period fence line, remnants of the Southern Pacific Railroad, and the foundation of the Del Monte Hotel Depot (Pacific Legacy, 2009). In consultation with the USBR Archaeologist, the project archaeologist will evaluate these resources for eligibility to the NRHP. In the case of prehistoric archaeological sites, evaluation may be completed by examining existing records and reports, detailed recording, and test excavation to determine data potential of the sites. Historic-period resource evaluation may include further study and detailed recording. Results of the evaluation will be presented to USBR for consultation with the SHPO. The SHPO will be presented with APE maps and evaluation results, and will be asked to concur with USBR's finding of either No Historic Properties Affected or Historic Properties Affected. This scope assumes that no new resources beyond those identified above will require evaluation as a result of the additional inventory effort.

#### Deliverables:

- APE maps and evaluation results

### 2.9.4 Preparation of Memorandum of Agreement and Historic Properties Treatment Plan

For those resources identified as eligible to the National Register that cannot be avoided by the project, a Memorandum of Agreement and Historic Properties Treatment Plan (HPTP) will be developed. The HPTP will identify how a proposed data recovery program would preserve the significant information the

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**Exhibit B – Scope of Work**

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archaeological resource is expected to contain and address the scientific/historic research questions applicable to the resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, will be limited to the portions of the historic property that could be adversely affected by the project.

A Memorandum of Agreement (MOA) will be prepared in conjunction with the HPTP. Agencies involved in the development of the MOA could include the project proponent, USBR, the SHPO, and local Indian tribes. The MOA would stipulate the treatment plan outlined in the HPTP, including details about when the work would be done and the responsible parties. This scope does not include data recovery effort or monitoring as potentially required by the MOA and HPTP. This can be scoped as a separate task following completion of the agreement documents.

Deliverables:

- Draft MOA and HPTP for local agency and USBR review and comment
- Final MOA and HPTP submitted to the Corps and SHPO

## **2.10 Federal General Conformity Air Quality Assessment**

MCWD's Consultant will prepare an Air Quality Assessment Report as part of the development of the EA to determine whether the Proposed Project/Action would conform to the National Ambient Air Quality Standards. The Project is located within the northern portion of the North Central Coast Air Basin (NCCAB) and is subject to the jurisdiction of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). The NCCAB is currently designated non-attainment for the State 8-hr ozone and 24-hour PM10 standards. Based on this attainment status, MCWD's Consultant will prepare a comprehensive air quality analysis that shall include an evaluation of both localized and regional air quality impacts based on the construction and operation of the Proposed Project/Action improvements. MCWD's Consultant will include the analysis in the EA and will include a discussion of the Proposed Project/Action's conformance with the Federal General Conformity Rule.

Our approach will be to quantify emission sources from construction and operational activities and compare these emissions to recommended significance thresholds applied by the MBUAPCD. MCWD's Consultant will also maximize the use of the air quality analysis performed in conjunction with the CWP EIR. With these information sources, MCWD's Consultant will discuss the potential for the combined emissions from the Proposed Project/Action and other projects considered in the cumulative analysis to adversely affect air quality. Based on an anticipated low trip generation, no carbon monoxide modeling (e.g., hot-spot analysis of local intersections) is proposed under this scope of work. Similarly, based on the short-duration of construction, this scope does not include a health risk assessment for the calculation of diesel particulates or other toxic air contaminants (TACs). It is assumed that the health risk analysis prepared for the Desalination Facility as part of the CWP EIR will be sufficient to cover issues related to TACs.

The air quality analysis shall also include a discussion of the Proposed Project/Action's potential to contribute to global climate change and will include an estimation of greenhouse gas emissions (i.e. carbon dioxide, methane) generated by long-term Proposed Project/Action operations. These estimates will then be compared to significance thresholds adopted by the MBUAPCD to determine the significance of the Proposed Project/Action's incremental contribution to global climate change impacts.

Deliverables:

- Air quality assessment will be included in the EA.

### **Key Assumptions**

The following assumptions were used in preparing this scope of work, budget and schedule:



- The NEPA document will also be acceptable for CEQA Plus documentation
- The NEPA document will be based on data and analysis performed for the Coastal Water Project EIR, augmented as necessary to meet federal agency requirements.
- A Word version of the Coastal Water Project EIR will be provided so that applicable text can be used in the NEPA document.
- Once the NEPA project description chapters are developed, the project description and alternatives will not change substantially and the design of any project level facilities will not change.
- No public scoping meetings are proposed as part of the NEPA process.
- The Project Partners and Reclamation will publish all public meeting advertisements.
- The Project Partners and Reclamation will provide comments that provide clear direction for revisions and the comments would not require new analyses.
- Due to uncertainty in estimating the level of public comment on the EA/FONSI, the scope of work described herein assumes up to 100 hours to provide written response to public comments. Should the estimated level of effort for preparing responses exceed the hours assumed, additional work would need to be authorized through a contract modification.
- There will not be a public hearing for the Draft EA/FONSI.
- The project description and alternatives will not change once the Biological and Cultural Resources investigations are underway.
- The EA/FONSI will evaluate the “Proposed Project/Action”, the ‘No Action’ Alternative as well as one other alternative. Alternatives will be analyzed at an equal level of detail.
- This scope of work does not include noticing for NEPA documents; noticing will be the responsibility of Reclamation.
- Any special or public outreach or education activities other than that proposed in this scope of work will require additional scope and budget for MCWD’s Consultant.
- Work will not be stopped or slowed by others beyond the Consultant Team’s control.
- Access to property for the biological and cultural resources surveys will be arranged for and/or provided by CAW, MCWD and MCWRA.

## **Test Well Scope of Work**

### **1 Project Management**

MCWRA’s Consultant will coordinate and manage the various activities, communications, and consultants involved in the program elements included in the Test Well scope of work as well as related activities being undertaken by others outside of this scope of work.

#### **1.1 Project Meetings**

MCWRA’s Consultant shall conduct as-needed conference calls and meetings with MCWRA and its Project Partners to discuss work progress and outstanding issues. These conference calls and meetings will cover status of work products, schedule, and budget. MCWRA’s Consultant will identify outstanding issues, concerns, etc. and obtain guidance/direction from MCWRA at these conference calls and meetings. This scope of work assumes the following meetings will occur:

- Up to ten conference calls with MCWRA and its Project Partners

## **Exhibit B – Scope of Work**

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- 10 monthly progress meetings with MCWRA and its Project Partners

MCWRA's Consultant will also conduct internal meetings to coordinate activities and discuss ongoing issues. These meetings will include individuals involved in each element of the project.

### **1.2 Project Administration**

MCWRA's Consultant will procure necessary subconsultants for related studies, and administer the subconsultant contracts. MCWRA's Consultant will administer the following:

- Preparation of monthly invoices by task and by individual.
- Preparation of monthly progress report describing specific accomplishments during the reporting period, problems encountered or anticipated, work scheduled for the next reporting period, and cost report.

### **1.3 Quality Assurance/Quality Control**

MCWRA's Consultant and its subconsultants will provide internal quality assurance and quality control (QA/QC) activities which will include detailed review of project design documents, drawings, and calculations.

#### **2.1 Aquifer Testing Program**

The existing computer model of the area will be used to help develop the aquifer testing program for the test wells, including the location and screen intervals of monitoring wells needed to assess the ultimate source of water to project wells. Existing wells will be used as monitoring wells to the extent possible. Accordingly, the location and construction information for nearby existing wells will be compiled and these wells evaluated for incorporation into the test program as appropriate. Proposed monitoring wells will be added to the program as modeling indicates are necessary. The ultimate intent is to develop a test program that will provide results necessary to differentiate sources of water to the intake wells (seawater vs. intruded brackish water).

Based on the results of the modeling exercise, a Technical Memorandum (TM) summarizing the proposed test program will be prepared. The TM will include the location and construction details of the test pumping well; the number, location, and construction details for proposed monitoring wells; recommended test pumping procedures; and recommended approach to analysis of test data. The last step is especially critical to facilitating consensus on meaning of test results and building support for moving the project forward if results are favorable.

This task assumes the following:

- 5 modeling runs will be necessary to develop the aquifer testing program
- Up to 3 meetings will be conducted with the project stakeholders to review and discuss the aquifer testing program

#### **2.2 Permitting**

MCWRA's Consultant will acquire the necessary permits needed for installing one vertical and one slant test well and associated monitoring wells. Contact will be made and continued to confirm agency jurisdiction and specific issues to be addressed. Once sufficient information has been gathered to complete the necessary permit applications, the draft permit applications will be prepared and submitted.

The following permits will be required:

- Central Coast RWQCB Waste Discharge Permit (compliance under the existing General Permit for Low Threat Discharges)
- Coastal Development Permit

## **Exhibit B – Scope of Work**

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- Monterey County Health Department well permits

### **Deliverables:**

- Permit applications
- Approved Permits

Permit application fees are not included in this scope of services, and are assumed to be paid by MCWRA.

### **2.3 Preliminary Design – Vertical Well**

The preliminary design of the test well will consist of the following items:

- Finalize the location of the test well and monitoring wells. This task will be done in coordination with Task 2.1
- Acquire easements/approval from the land owner(s) for the test well and/or monitoring well(s)
- Determine the source of water for drilling
- Determine location for disposal of the pumped water
- Conduct a site visit to determine the source of power for the long term pumping test
- Determine location for disposal of cuttings from well installation

### **Deliverables:**

- TM that summarizes the findings and outcomes of the preliminary design including any maps or drawings necessary for final design.

### **2.4 Preliminary Design – Slant Well**

The preliminary design of the test well will consist of the following items:

- Finalize the location of the test well and monitoring wells. This task will be done in coordination with Task 2.1
- Acquire easements/approval from the land owner(s) for the test well and/or monitoring well(s)
- Determine the source of water for drilling
- Determine location for disposal of the pumped water
- Conduct a site visit to determine the source of power for the long term pumping test
- Determine location for disposal of cuttings from well installation

### **Deliverables:**

- TM that summarizes the findings and outcomes of the preliminary design including any maps or drawings necessary for final design.

### **2.5 Final Design – Vertical Well**

This task includes preparing a final design TM and detailed technical specifications for the test and monitoring wells to be included with front end contractual documents (to be provided by others) for formation of a bid package. Additionally, a detailed bid schedule, to be attached to the technical specifications, will be prepared with specific line items showing units and unit quantities for the construction of the wells. Items included in the technical specifications will include (but are not necessarily limited to) the following:

## **Exhibit B – Scope of Work**

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The Final Design TM will include the following items:

- Well location, depth, materials and dimensions;
- Expected geohydrologic conditions;
- Permits to be acquired by the contractor;
- Compliance with discharge requirements, as necessary;
- Job conditions (e.g. noise suppression, drilling waste, runoff management, power, lighting, water, security, sanitation and work damage);
- Abandoned boreholes.

The Contract Documents will include the following:

- Bid documents;
- General and Special conditions;
- Mobilization, demobilization and cleanup;
- Site access and preparation;
- Drilling methods;
- Equipment, materials, and records to be furnished by the contractor;
- Records to be kept by the contractor;
- Well drilling and construction, including:
  - Drilling, installation, and cementing of conductor casing,
  - Pilot-borehole drilling,
  - Geophysical borehole logging (i.e. short- and long-normal resistivity logs, guard or lateral logs, self potential log, gamma ray, and sonic),
  - Isolated aquifer zone testing,
  - Final borehole drilling (reaming pass),
  - Alignment, plumbness, borehole integrity, and drilling speed,
  - Well casing and screen installation,
  - Gravel access and sampling tube installation,
  - Filter pack material selection and approved placement method,
  - Annular cement seal installation.
- Well development, including:
  - Initial airlift development between packers,
  - Development by wireline swabbing and bailing (if necessary), and
  - Development by pumping.
- Aquifer pumping and recovery tests;
- Spinner (flow meter) survey;
- Downhole video camera survey;
- Gyroscopic alignment survey;
- Water quality sampling and analyses;
- Wellhead survey; and

- Well cover and final inspection.

MCWRA's Consultant will prepare an engineer's estimate of contractor costs for the drilling, construction, development, and testing of the wells based on local conditions and recent contractor cost estimates for similar projects.

This task assumes the design of one vertical extraction well and up to three monitoring wells.

The final deliverable will include one (1) electronic copy and two (2) bound hard copies of the final technical specifications and cost estimate.

## **2.6 Final Design – Slant Well**

This task includes preparing a final design TM and detailed technical specifications for the test and monitoring wells to be included with front end contractual documents (to be provided by others) for formation of a bid package. Additionally, a detailed bid schedule, to be attached to the technical specifications, will be prepared with specific line items showing units and unit quantities for the construction of the wells. Items included in the technical specifications will include (but are not necessarily limited to) the following:

The Final Design TM will include the following items:

- Well location, depth, materials and dimensions;
- Expected geohydrologic conditions;
- Permits to be acquired by the contractor;
- Compliance with discharge requirements, as necessary;
- Job conditions (e.g. noise suppression, drilling waste, runoff management, power, lighting, water, security, sanitation and work damage);
- Abandoned boreholes;

The Contract Documents will include the following:

- Bid documents;
- General and Special conditions;
- Mobilization, demobilization and cleanup;
- Site access and preparation;
- Drilling methods;
- Equipment, materials, and records to be furnished by the contractor;
- Records to be kept by the contractor;
- Well drilling and construction, including:
  - Drilling, installation, and cementing of conductor casing,
  - Pilot-borehole drilling,

## Exhibit B – Scope of Work

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- Geophysical borehole logging (i.e. short- and long-normal resistivity logs, guard or lateral logs, self potential log, gamma ray, and sonic),
- Isolated aquifer zone testing,
- Final borehole drilling (reaming pass),
- Alignment, plumbness, borehole integrity, and drilling speed,
- Well casing and screen installation,
- Gravel access and sampling tube installation,
- Filter pack material selection and approved placement method,
- Annular cement seal installation.
- Well development, including:
  - Initial airlift development between packers,
  - Development by wireline swabbing and bailing (if necessary), and
  - Development by pumping.
- Aquifer pumping and recovery tests;
- Spinner (flow meter) survey;
- Downhole video camera survey;
- Gyroscopic alignment survey;
- Water quality sampling and analyses;
- Wellhead survey; and
- Well cover and final inspection.

MCWRA's Consultant will prepare an engineer's estimate of contractor costs for the drilling, construction, development, and testing of the well based on local conditions and recent contractor cost estimates for similar projects.

This task assumes the design of one slant extraction well and up to three monitoring wells.

The final deliverable will include one (1) electronic copy and two (2) bound hard copies of the final technical specifications and cost estimate.

### **MCWD/MCWRA Administrative, Consultant and Legal Scope of Work**

MCWD and MCWRA shall provide administrative, engineering, consultant and legal support for the continued development of a Monterey District water supply solution as referenced in California Public Utilities Commission (CPUC) Application No. 04-09-019 (the "Project"). This work includes all administrative and legal tasks necessary to support the development of the Project, whether or not they occur in connection with the proceedings in CPUC Application No. 04-09-019, and includes, without limitation, Project administration, financing, permitting and other Project development activities, participation in ongoing Project-related negotiations and agreements and approvals, and participation in ongoing and future Project-related administrative and court proceedings. With respect to the potential maximum term of the Advance and Reimbursement Agreement – February 9, 2010 to December 31, 2010 – the scope of work would include, without limitation, the following Project-related activities:

- Administrative Project-related activities of all non-attorney staff of the agencies, including staff participation in (1) activities where a Monterey District water supply solution is addressed, including the financing and permitting of the Project, (2)

**Exhibit B – Scope of Work**

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oversight of permitting processes, consultants, engineers, and attorneys, (3) CEQA review and Project approval by each agency, (4) legal challenges relating to the Project, and (5) real property negotiations and associated tasks to design a test well or wells, as well as NEPA work preparatory to federal grant acquisition.

- Legal Project-related activities of inside and outside attorneys representing the agencies in all Project-related activities, including (1) completion and documentation of settlement discussions and pursuit of settlement approvals, (2) CEQA review and Project approval by each agency, (3) defense of any CEQA or other legal or regulatory challenges to any Project approval, (4) negotiation, documentation, and pursuit of approval of the Agreement, and (5) pursuit of permits and financing for the Project.
- Consultant, engineering and legal activities on behalf of the agencies in all Project-related activities, including (1) pursuit of any required permits, (2) conduct of NEPA review in conjunction with application for federal grants, and activities in pursuit of financing options (3) design of a test well or wells, (4) selection of a site or sites for a test well or wells, (5) selection and procurement of real property interests required for construction and operation of a test well or wells, and (6) participation in Project-related activities before jurisdictional agencies.
- Activities related to the purchase of real property interests required for construction and operation of a test well or wells.

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

In the Matter of the Application of	)	Application No. 09-04-015
California-American Water Company	)	(Filed April 16, 2009)
(U 210 W) for an Order Authorizing	)	
the Transfer of Costs Incurred in 2008	)	
for its Long-Term Water Supply Solution	)	
for the Monterey District to its Special	)	
Request 1 Surcharge Balancing Account.	)	

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**RESPONSE OF THE MONTEREY PENINSULA WATER MANAGEMENT  
DISTRICT TO THE JOINT MOTION OF CALIFORNIA-AMERICAN WATER  
COMPANY, MARINA COAST WATER DISTRICT AND MONTEREY COUNTY  
WATER RESOURCES AGENCY FOR EXPEDITED APPROVAL OF  
REIMBURSEMENT AGREEMENT**

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Attorneys for **MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

March 4, 2010



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

In the Matter of the Application of	)	Application No. 09-04-015
California-American Water Company	)	(Filed April 16, 2009)
(U 210 W) for an Order Authorizing	)	
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**RESPONSE OF THE MONTEREY PENINSULA WATER MANAGEMENT  
DISTRICT TO THE JOINT MOTION OF CALIFORNIA-AMERICAN WATER  
COMPANY, MARINA COAST WATER DISTRICT AND MONTEREY COUNTY  
WATER RESOURCES AGENCY FOR EXPEDITED APPROVAL OF  
REIMBURSEMENT AGREEMENT**

Pursuant to Rule 11.1 of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, the Monterey Peninsula Water Management District ("MPWMD" or "Water Management District") hereby files its Response to the Joint Motion of California-American Water Company ("Cal-Am" or "CAW"), Marina Coast Water District ("MCWD"), and the Monterey County Water Resources Agency ("MCWRA") (Collectively, the "Parties") for an expedited ruling approving the Reimbursement Agreement ("Motion").

**I. The Commission's Authority to Approve the Reimbursement Agreement Must Be Clarified.**

In their Motion, the Parties ask the Assigned Commissioner and Administrative Law Judge ("ALJ") to approve, by expedited ruling, the Reimbursement Agreement attached to their Motion as Exhibit A. The Water Management District is not clear as to

the authority of the Assigned Commission and ALJ to approve the Reimbursement Agreement. If the Parties' Motion is approved, the Water Management District respectfully requests the Commission clarify the authority for Cal-Am to book non-Cal-Am costs for alternative projects to the Coastal Water Project Memorandum Account.<sup>1</sup>

The Water Management District, nonetheless, does support completion of the test well program as an essential step to assess the feasibility of the proposed Regional Project.

**II. Cal-Am Can Enter Into An Agreement With MCWD and MCWRA Without Commission Action.**

Cal-Am can freely enter into an agreement with MCWD and MCWRA to loan money to them. If the Parties do not reach a final agreement on the Regional Project, or if the Regional Project is not approved by the Commission or otherwise fails, MCWD and MCWRA are not required to repay the loan pursuant to the terms of the Reimbursement Agreement. If any of these events transpire, Cal-Am customers should not become liable as a result of nonpayment of the loan by MCWD and MCWRA.

Cal-Am is already entitled to recover its Coastal Water Project preconstruction costs in advance of project certification. Ratepayers should not be burdened with potential additional stranded asset costs. If Cal-Am believes it is appropriate to enter into a Reimbursement Agreement, shareholders, not ratepayers, should bear the risk of nonpayment.

**III. Further Analysis of the Reimbursement Agreement Is Necessary.**

The Water Management District has concerns with several provisions of the Reimbursement Agreement. Should the Parties' Motion for approval be granted, the

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<sup>1</sup> The Coastal Water Project Memorandum Account was approved in D.03-09-022.

District respectfully requests further review and analysis of the Agreement by the Commission.

The Parties' Motion specifies that the "funds advanced shall bear interest at the interest rate applicable to CAW's Special Request 1 Surcharge memorandum account . . ." The Water Management District is concerned that the interest rate accrued is too high.<sup>2</sup> While Cal-Am's Coastal Water Project memorandum account currently earns interest at the ninety (90) day commercial paper rate, the Water Management District is concerned that this rate should not be subject to future increase.

The Water Management District is also concerned that amounts specified as MCWD and MCWRA "Agency Administrative, Consultant, and Legal Expenses" in Exhibit A to the Reimbursement Agreement are not well-defined.<sup>3</sup> The basis upon which these expenses are calculated, and the extent to which they are reasonable and prudent, needs to be clarified. By example, it is unclear whether and to what extent these expenses include general and administrative overhead costs.

### CONCLUSION

For the reasons stated herein, the Assigned Commissioner and ALJ should deny the Parties' Motion to approve the Reimbursement Agreement as presented. Such a ruling should not prohibit Cal-Am from loaning money to MCWD or MCWRA, and Cal-Am shareholders would appropriately assume the risk. In the alternative, any ruling should clarify means by which it can be determined that all expenses exclude general and administrative overhead costs, establish a process for reasonableness review, set an appropriate interest rate, and fairly allocate an appropriate share of risk among MCWD,

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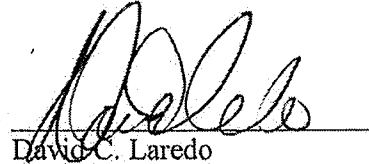
<sup>2</sup> Parties' Motion, p. 3, Lines 13 - 14.

<sup>3</sup> See Exhibit A to Reimbursement Agreement, "Estimated Monthly Cash Flow."

MCWRA, Cal-Am shareholders, and Cal-Am ratepayers in the event these costs become stranded for any reason.

Dated: March 4, 2010

Respectfully submitted,



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Water Management District