

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

In the Matter of the Application of)	Application No. 10-01-012
California-American Water Company)	
(U 210 W) for an Order Authorizing)	
Collection and Remittance of the)	
Monterey Peninsula Water)	
Management District User Fee)	
_____)	

**COMMENTS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
TO THE PROPOSED DECISION**

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I. INTRODUCTION

The Monterey Peninsula Water Management District (Water Management District or MPWMD) submits these Comments to the Proposed Decision (PD or Decision) of Administrative Law Judge Maribeth A. Bushey pursuant to the December 21, 2010 Ruling and Rule 14.3 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure.

The Water Management District opposes adoption of the Decision because it contains both factual and legal errors. The PD should be withdrawn. It is not consistent with Commission precedent or sound policy. MPWMD joins all other Parties in this proceeding and asks the Commission to approve the Settlement Agreement.

It is manifestly unfair for the Commission to reject the uncontested all-Party, all-Issue settlement. Rule 12.1 provides that a settlement may be rejected if the resolution is not reasonable in light of the whole record, but such action must not disallow the Parties an opportunity to present evidence in the record to address the its deficiencies. The PD, at page 15, states "No party has identified a disputed issue of material fact so no

evidentiary hearings are necessary.” This is factually and legally flawed.

As presented, the PD closes Application 10-01-012 without a hearing. This denies the Parties’ rights to due process and deprives them of a fair hearing.

II. COMMENTS

A. SUMMARY OF ERRORS

- The Proposed Decision fails to comply with Commission precedent.
- The Proposed Decision ignores Commission Guidelines.
- The Proposed Decision improperly interferes with the authority of a governmental entity to impose a lawful tax or fee.
- The Proposed Decision contains factual errors.
- The Proposed Decision refers to alleged facts that can be refuted.
- The Proposed Decision contains legal errors.
- The Proposed Decision Results in a prejudicial denial of due process by denying the Parties an opportunity to present evidence to refute erroneous allegations.
- The Proposed Decision Results in an unfair proceeding.

B. BACKGROUND

By its ruling of May 9, 2008 on the combined California American Water (CAW or Cal-Am) Applications for water (A.08-01-027), general office (A.08-01-024), and conservation (A.07-12-010), the Commission stated, “We would also like to better understand the growing role of the Monterey Peninsula Water Management District in allocating costs to Cal-Am’s customers, and have provided some initial questions in

Attachment 2.”¹ Footnote 5 on Attachment 2 stated the “Commission record has not revealed any authorization for Cal-Am to collect this amount from its customers and remit it to the Water Management District.” Decision (D.) 09-07-021, issued July 9, 2009 on Application 08-01-027, disallowed the long-standing existing practice of CAW to collect and remit a lawful user fee² to the Water Management District. D. 09-07-021 notes at page 119 that “numerous proposals” were rejected “for failing to make the required demonstration on the record.” D. 09-07-021, at page 156, provides:

24. California-American Water Company shall meet and confer with the Monterey Peninsula Water Management District regarding costs properly the responsibility of California-American Water Company and its ratepayers.

25. No later than 180 days after the effective date of this order, California-American Water Company shall develop and submit for Commission approval a program to fund the projects currently performed by the Monterey Peninsula Water Management District that are properly California-American Water Company's responsibility, and is authorized to file an advice letter to create a memorandum account for interim costs.

Prior to issuance of D. 09-07-021, the Commission had approved CAW collection of the User Fee.³ The Commission directed CAW to file the instant application to address collection of funds to support District programs “for costs properly assignable to Cal-Am, whether performed by Cal-Am or the Management District.”⁴ However, the Commission lacks authority to review enactment of the District User Fee.⁵

As directed by D.09-07-021, CAW submitted Application 10-01-012 on January

¹ Joint Assigned Commissioner and ALJ Ruling Setting Special Procedures to Develop Record on Conservation and Rationing Programs in A.08-01 027, A.08-01-024, and A.07-12-010, at p. 4

² The testimony of R. Dickhaut and D. Fuerst provide uncontroverted evidence the MPWMD Board followed applicable law to enact the User Fee.

³ Decision 09-07-021, at p. 4, FN 2.

⁴ Proposed Decision (PD), page 4.

⁵ The Commission, as with other local government fees and taxes, lacks authority to review the District user fee. At most it may review CAW's collection to ensure utility customers do not incur duplicate costs.

5, 2010 seeking an order authorizing it to collect and remit to the Monterey Peninsula Water Management District the District's User Fee. The User Fee in question provides funds needed to pay for a Mitigation Program, which is a legal requirement relating to the environmental consequences of CAW's production of water.⁶ The Mitigation Program is required under the California Environmental Quality Act (CEQA)⁷ in response to identified impacts caused by CAW on the Carmel River and the Seaside Groundwater Basin.⁸ The State Water Resources Control Board imposed an obligation on CAW to continue this program if the District should stop its efforts.⁹

On January 18, 2010, the Division of Ratepayer Advocates (DRA) protested CAW's application, contesting the Interest During Construction on the memorandum account balance. DRA supported CAW's application in all other respects. On February 18, 2010, the District timely filed its Response to CAW's Application No. 10-01-012.

On February 19, 2010, Hidden Hills filed a Motion for Party Status, expressing its intent to protest the application. In March 2010, after meeting with the Parties, Hidden Hills determined its protest was not necessary and asked to withdraw as a Party. The CPUC Docket Office responded to Hidden Hills, stating "by tendering the Motion to Withdraw, you manifested an intent that HHSRA not become a party at all, so even though we are rejecting the Motion to Withdraw, we are giving it credence by treating the

⁶The Mitigation Program is required by law. In September, 2009, CAW entered into an agreement with the District to continue funding of this Program. See Application (A.) 10-01-012, p. 5.

⁷Public Resources Code §§21000 – 21178.

⁸A.10-01-012, pp. 8 – 12.

⁹*Id.*, p.10. Also, the PD states, at page 16, the "State Water Resources Control Board imposed the responsibility on Cal-Am to implement all measures in the 'Mitigation Program for the District's Water Allocation Program Environmental Impact Report' not implemented by the Management District." See also, Exhibit 1, Testimony of D. Fuerst, at Answer (A)9.

previous MFPS as moot and no longer viable.”¹⁰

The Commission directed “Cal-Am to meet and confer with the Management District to discuss funding for, and implementation of, both the Mitigation Program and the Aquifer Storage and Recovery Project....”¹¹ Based upon these meetings, CAW, the District, and DRA, on May 18, 2010, filed a joint motion to approve an all-Party, all-Issue settlement agreement in this matter by which the Parties agreed:

1. The Mitigation Program is non-duplicative, reasonable, and prudent.
2. The ASR Program is non-duplicative, reasonable, and prudent. For this reason the Parties agreed the Commission should authorize CAW to collect and remit the user fee to the District.

C. The Proposed Decision Fails to Comply with Commission Precedent, Ignores Commission Guidelines, and Improperly Interferes with the Authority of a Governmental Entity.

The Commission has limited authority to question a local government agency’s collection of a fee or tax. See *In re: Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed By Local Government Entities on Public Utilities* (Guidelines), 32 CPUC 2d 60; D.89-05-063, and *Packard v. Pacific Telephone and Telegraph* 1970 PUC LEXIS 158. In *Packard* the Commission held it had no jurisdiction to determine whether the City of Vallejo was authorized to enact a utility users tax under the general laws of the State of California, or whether the City of Vallejo followed the City Charter in enacting an ordinance to impose a utility users tax.

The Proposed Decision fails to comply with Commission precedent, D.89-05-063, which provided the Guidelines, stating:

This Commission does not dispute or seek to dispute the authority or right of any local governmental entity to impose or levy any form of tax or fee

¹⁰ Email from Nakahara, Martin M. [martin.nakahara@cpuc.ca.gov] to Hidden Hills, 3/19/2010 - Efile Control #30466.

¹¹ D.09-07-021, p. 122.

upon utility customers or the utility itself, which that local entity, as a matter of general law or judicial decision, has jurisdiction to impose, levy, or increase. Any issue relating to such local authority is a matter for the Superior Court, not this Commission.

MPWMD is a government agency.¹² The California Legislature endowed it with the right and power to impose taxes, fees and other assessments¹³. The Commission lacks the authority to contest the District's lawful exercise of its authority¹⁴. The Commission may protect ratepayers and ensure that the imposition is properly placed on the bills of customers, but it does not have the discretion to question or reject the fee, tax or other imposition. If the Commission concludes the MPWMD User Fee is not legally warranted, and action is needed to protect the ratepayer, the proper forum for such review is before the Superior Court.

Additionally, the Proposed Decision fails to follow Commission precedent as set by D.90-08-055 and D.94-03-015. In each of those matters, the Commission recognized MPWMD's authority to assess and collect fees from Cal-Am customers.¹⁵ D.09-07-021 recognized at page 120 "The Management District has a variety of funding mechanisms at its disposal over which the Commission has no jurisdiction." Importantly, the PD cites no authority upon which the Commission can disallow the User Fee in question.

¹² MPWMD was created by state legislation in 1977 (Monterey Peninsula Water Management District Law, Statutes of 1977, Chapter 527). This law invests the District with the sole authority to provide for integrated management of the ground and surface water resources within the Monterey Peninsula area. The District regulates and manages all water distribution systems within its territory including CAW's main system. This statute confers upon the District the power to impose fees and taxes.

¹³ *Id.*

¹⁴ D.89-05-063; CPUC *Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities*; 32 CPUC 2d 60.

¹⁵ See also Exhibit 3, Direct Testimony of David P. Stephenson, at A8, A9, and A13, regarding prior Commission treatment of government imposed fees and other "pass-through" costs, stating on p. 4, "Generally, taxes and fees are added on to customer bills without question. This includes franchise taxes, ad valorem taxes, city taxes, payroll taxes, county taxes, municipal fees, and even payments to governmental entities for the purchase of products or services."

D. The Commission Should Accept the All-Party, All-issue Settlement, or Allow a Hearing and Time for Parties to Request Alternate Relief.

By its Application, CAW seeks authorization to collect funds required by the Water Management District to carry out projects on behalf of CAW, and which CAW is mandated to carry out.¹⁶ The funds are needed to meet the expenses of (1) the Mitigation Program required by CEQA to mitigate the effects of CAW's water withdrawals from the Carmel River; and (2) the ASR Program that is required to offset impacts caused by CAW's unpermitted diversions from the Carmel River.¹⁷

The Parties to this matter have reached an all-Party, all-Issue Settlement. Although Commission Rule 12.4 provides authority for the Commission to "reject a proposed settlement whenever it determines that the settlement is not in the public interest" the Commission must nonetheless "[p]ropose alternative terms to the parties to the settlement which are acceptable to the Commission and allow the parties reasonable time within which to elect to accept such terms or to request other relief." Rule 12.4(c); Public Utilities Code §1701. The PD neither proposes alternate terms acceptable to the Parties, nor does it allow the Parties a reasonable time to request other relief.

E. An Attempted Settlement Cannot Be Used as a Basis to Deny the Parties' Rights to Present Evidence as to Contested Facts.

The Proposed Decision unlawfully denies the Water Management District of its right to present evidence in this matter.¹⁸ The Parties attempt to resolve this matter without evidentiary hearings, resulting from Commission directed meet and confer sessions,¹⁹ cannot be construed to constitute a waiver of the Parties' rights to present evidence and cross-examine witnesses. The Parties' Motion to Approve Settlement Agreement was offered to provide a speedy resolution of uncontested issues; an

¹⁶ A.10-01-012, at p. 3.

¹⁷ *Id.*

¹⁸ MPWMD's Response to the Application requested an evidentiary hearing pursuant to Rule 1.4(a).

¹⁹ D.09-07-021, p. 122.

attempted settlement cannot now be used as a basis to deny the Parties' rights to present evidence as to contested facts.

III. FACTUAL ERRORS

MPWMD notes several factual errors in the PD, including several flawed statements capable of correction or refutation in an evidentiary hearing, and requests the opportunity to introduce evidence to support changes to correct these errors, as noted:

- **Page 2:** The PD cites D.09-07-021 for the proposition that “Cal-Am’s customers *may be paying* user fees to the Management District for projects that may not be necessary or cost effectively performed by the Management District.” There is no evidence in the record of this proceeding to support this allegation. CAW’s Application and supporting testimony demonstrate District programs are necessary and do not duplicate CAW activities.
- **Page 3:** The PD cites D.09-07-021 for the proposition an “incomplete explanation [was] offered by the Management District for all components of the proposed user fee.” Evidence in the record of this proceeding provides ample explanation as to all components.²⁰ If further questions exist, the Parties must be afforded an opportunity to amplify their explanations. This is the proper role for cross-examination and ALJ inquiry that would ordinarily occur during the scope of an evidentiary hearing.²¹
- **Page 8:** The PD states the “user fee proposal is not based on the costs of these two

²⁰ Exhibit 1, Testimony of D. Fuerst, at A6, provides an overview of the District Water Allocation Program and the Comprehensive Mitigation Program. This describes funding sources for the Mitigation Program, including the User Fee. Exhibit 4, Testimony of J. Oliver provides detail as to the District’s Aquifer Storage and Recovery (ASR) Project. Exhibit 5, Testimony of R. Dickhaut provides detail regarding the District’s budget process.

²¹ The need to subject witnesses to cross examination was referenced as a reason to hold the instant proceeding. D.09-07-021, p. 120. This was because, “We are also concerned that the Management District’s explanation of the user fee was incomplete.” D.09-07-021, p. 121.

- programs and includes no ratemaking or programmatic limitations.” This reference is in error.²² R. Dickhaut testified²³ that MPWMD is legally required to review the user fee each year to ensure the purposes for which the fee was imposed have been met, to ensure the fee is still required, and to assess whether the amount of the fee remains appropriate. Mr. Dickhaut stated the fee is required to sunset if the purpose for the fee expires. He also explained, “If the purpose for the fee is determined to continue, but the amounts needed to fund that purpose are decreased, the fee shall be reduced to that lesser amount.”²⁴
- **Page 12:** The PD states “Cal-Am’s application raises several issues, most notably several instances where duplication in effort and accounting *may occur*.” There is no evidence in the record of this proceeding to support this allegation. To the contrary, Exhibit 2, Testimony of F. Mark Schubert at A12, states “I have not observed a duplication of effort between MPWMD and California American Water in achieving the stated goals for Phase 1 ASR. MPWMD is responsible for the full development of the ASR well site; California American Water is responsible for the necessary conveyance of potable water to and from the ASR well site.” At A13 he adds, “California American Water and MPWMD have also discussed that a clear separation of responsibilities, similar to Phase 1 ASR, be assigned to each agency for future ASR as not to duplicate efforts.” The Parties must have an opportunity to address error and present evidence disproving the alleged duplication of effort or accounting.

²² Exhibit 1, Testimony of D. Fuerst, at A8, provides an overview of the Mitigation Program budget process, beginning in 1991, and that “Since 2001, the District Board has voted to continue the Comprehensive Mitigation Program as part of the District’s annual budget approval process.”

²³ Exhibit 5, Testimony of R. Dickhaut, at A9.

²⁴ *Id.*

- **Page 12:** The PD comments that Cal-Am asserts National Oceanic and Atmospheric Administration (NOAA) activities “have no ‘overlap’ with the Management District’s activities... but the record shows no analytical explanation for how endangered species costs for steelhead are divided between the two agencies or any evidence that Cal-Am is in any way managing these costs for ratepayers.” The PD acknowledges duplicated efforts are not occurring, but notes the lack of an analytical explanation. The Parties should be afforded an opportunity to present evidence of such an analysis.
- **Page 13:** The PD concludes that “the record contains insufficient cost justification, several instances of apparent double-counting.” There is no evidence in the record in this proceeding to support this allegation.²⁵ The Parties seek an opportunity to present sufficient cost justification and to clarify the perceived accounting ambiguity.
- **Page 16:** The PD erroneously states “The 1990 Environmental Impact Report (EIR) document referenced in the Board’s decision is attached to the Management District’s General Manager’s testimony in this proceeding.” This is in error. The EIR is not attached to testimony. Exhibit MPWMD-DF-01 is an Executive Summary of the Final EIR. The Parties ask to present the full EIR in evidence.
- **Page 17:** The PD erroneously concludes “Exhibit 2 Table provides an ideal beginning point to prepare a budget for the Mitigation Program that is Cal-Am’s

²⁵ Exhibit 5, Testimony of R. Dickhaut, at A9, demonstrates how the User Fee lawfully complies with Proposition 218 (California Constitution, Articles XIII C and XIII D), and the legal mandate of the California Supreme Court as determined in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205. Mr. Dickhaut testifies to the notice and protest proceedings conducted by MPWMD.

In Exhibit 2, at A 17, F. Mark Schubert testifies that MPWMD ASR efforts are cost effective, and that without reliance on these that CAW would necessarily incur legal expense to modify the SWRCB Declaration of Fully Appropriated Stream, and acquire water rights and complete timely and expensive environmental analyses. He concludes that CAW’s efforts “could cost between \$3,000,000 and up to \$6,000,000.”

responsibility.” The PD confuses the Program EIR with the “Five-Year Mitigation Program.” Exhibit 1, Testimony of D. Fuerst, at A8, shows that the Five-Year Mitigation Program was only an initial program that has since been reassessed and revised by the District Board every year since 2001, as part of the Mitigation Program in the District’s annual budget approval process.

- **Page 17:** The PD erroneously summarizes “cost estimates for each measure, broken down into capital, \$442,700, and annual expenses, \$323,100.” This statement is incorrect. The 1990 annual costs also include “annual funds needed to continue existing environmental programs,” as shown in the lower portion of the PD attachment.²⁶ The costs to continue existing environmental programs in 1990 were \$315,000; therefore the total annual cost to operate the proposed mitigation program in 1990 was \$638,100. Further, Exhibit 5, Testimony of R. Dickhaut, at A10, states “for Calendar Year’s 2010 and 2011, it is anticipated that the amounts budgeted for the MPWMD comprehensive Mitigation Program will be \$3,534,900 and \$3,711,600, respectively. The equivalent number of staff positions is expected to remain at 14.3.”
- **Page 17:** The PD states “If the Management District ceases to perform these mitigation measures, then Cal-Am must prepare and implement a plan to meet this responsibility.” There is no evidence as to the time needed for CAW to assume this role, the environmental consequences resulting from delay, and whether the delay will pose legal jeopardy to CAW or result in fines to be borne by ratepayers.
- **Page 19:** The PD erroneously states in Findings of Fact #7 that the “District did not explain whether these booked costs are included in the user fee even though the

²⁶ The PD attaches a copy of “Exhibit 2, Cost Estimates for Final Mitigation Program for Option V, November 1990.”

Commission has approved and separately funded a joint conservation program with the Management District which *may include some of the same costs.*” The District should be afforded an opportunity to justify these costs, and prove that its joint CAW-District conservation program does not include the same costs.

IV. LEGAL ERRORS

- **General:** The Proposed Decision fails to comply with Commission precedent, D.89-05-063, and deviates from the *Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities.* The PD effectively disputes the authority of MPWMD as a local governmental entity to impose or levy a tax or fee upon utility customers or the utility itself. This issue is not proper for resolution by the Commission, but stated in D.89-05-063, “Any issue relating to such local authority is a matter for the Superior Court, not this Commission.” MPWMD is authorized by the legislature to impose taxes, fees and other assessments. The Commission lacks discretion to question or reject the tax or fee. If the Commission concludes the MPWMD User Fee is not legally warranted, and action is needed to protect the ratepayer, the proper forum for such review is before the Superior Court.
- **General:** The Proposed Decision fails to follow Commission precedent as set by D.90-08-055 and D.94-03-015. In each of those matters, the Commission recognized MPWMD’s authority to assess and collect fees from Cal-Am customers.²⁷

²⁷ See also Exhibit 3, Direct Testimony of David P. Stephenson, at A8, A9, and A13, regarding prior Commission treatment of government imposed fees and other “pass-through” costs, stating on p. 4, “Generally, taxes and fees are added on to customer bills without question. This includes franchise taxes, ad valorem taxes, city taxes, payroll taxes, county taxes, municipal fees, and even payments to governmental entities for the purchase of products or services.”

- **General:** At page 2 of the Motion to Approve Settlement Agreement, the Parties requested introduction of evidence to support that settlement:

- Direct Testimony of Darby Fuerst - Exhibit 1;
- Direct Testimony of F. Mark Schubert - Exhibit 2;
- Direct Testimony of David P. Stephenson - Exhibit 3;
- Direct Testimony of Joseph Oliver - Exhibit 4;
- Direct Testimony of Rick Dickhaut - Exhibit 5.

CAW presented testimony to support the all-Party, all-Issue settlement, but this does not exhaust matters that are relevant and necessary to address issues raised by rejection of the settlement. The Parties require an opportunity to augment the record.

- **Page 3:** By reference to D.09-07-021, the PD incorporates the Commission's earlier conclusion, at pp. 122 and 123, "the current record does not provide sufficient legal or factual support to determine the appropriate level of Cal-Am funding for the Mitigation and Aquifer Storage and Recovery projects." Such a record was not adduced in this proceeding by reason of the all-Party, all-Issue settlement. The PD impermissibly precludes the opportunity of the Parties to present such evidence.
- **Page 11:** The PD comments on the District's decision to fund "on a 'pay-as-you-go' basis rather than incurring debt" and concludes this "has the advantage of avoiding debt costs, [but] such a decision... is not consistent with the Commission's ratemaking standards." There is no basis to show Commission ratemaking standards limit the discretion of the District.²⁸ D.09-07-021 recognized "The Management District has a variety of funding mechanisms at its disposal over which this

²⁸ Exhibit 5, Testimony of R. Dickhaut, at A9, demonstrates the User Fee complies with applicable procedural and substantive legal requirements that apply to MPWMD.

Commission has no jurisdiction.” and that it was “The Management District’s choice of a percentage assessment...”²⁹ The PD fails to justify Commission interference with the lawful, independent exercise of governmental discretion by MPWMD.

- **Page 13:** The PD concludes the District’s “ratemaking treatment [is] at odds with our standards.” It is legal error to apply Commission ratemaking standards to a lawful user fee enacted by the Water Management District.³⁰ This conclusion is an improper deviation from the holding in D.89-05-063.
- **Page 15:** The PD presumes the User Fee is a rate charged by CAW, subject to Commission approval, citing Public Utilities Code §§ 451 and 454, that “no public utility shall charge any rate . . . except upon a showing before the Commission, and a finding by the Commission that the new rate is justified.” In fact, the User Fee is a fee lawfully enacted by a public entity, that CAW is required to pass through, similar to a utility or franchise tax. The user fee is not a new fee. Public Utilities Code §§ 451 and 454 have no applicability to this matter. In Decision 90-08-055 and Decision 94-03-015, the Commission previously recognized MPWMD’s authority to assess and collect fees from Cal-Am customers.
- **Page 15:** The PD concludes “CAW’s application does not address the issues raised in D.09-07-021.” If so, it is legal error to not allow the Parties an opportunity to amend that application to address those issues.
- **Page 18:** Findings of Fact #2 states “Cal-Am *must implement all measures* in the “Mitigation Program for the District’s Water Allocation Program Environmental Impact Report” not implemented by the Management District. This finding is at odds

²⁹ D.09-07-021, p. 120.

³⁰ *Id.*

with the statement at page 17 that “If the Management District ceases to perform these mitigation measures, then Cal-Am *must prepare and implement a plan* to meet this responsibility.” Preparation and submittal of a plan falls far short of required implementation, and does not meet legal mandates imposed on CAW.

VI. CONCLUSION

The Proposed Decision should be withdrawn on the grounds the PD is not consistent with Commission precedent and sound policy, and contains factual and legal error. As an alternative, MPWMD joins the other Parties and requests the Commission approve the all-Party, all-Issue Settlement Agreement.

As stated, the PD impermissibly precludes the opportunity of the Parties to present relevant evidence, and to cross-examine witnesses. This is a fundamental denial of due process. If the Settlement Agreement is rejected, evidentiary hearings are required to enable clarification of the record.

Dated: January 10, 2011

Respectfully submitted,

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MANAGEMENT DISTRICT**

APPENDIX A

PROPOSED CHANGES TO FINDINGS OF FACT IF THE ALL-PARTY, ALL ISSUE SETTLEMENT IS NOT ACCEPTED

1. ~~No party has identified a~~ *There are* disputed issues of material fact *that compel a hearing on the Settlement Agreement.*
2. Cal-Am must implement all measures in the “Mitigation Program for the District’s Water Allocation Program Environmental Impact Report” not implemented by the Management District.
3. The Mitigation Program for the District’s Water Allocation Program Environmental Impact Report is comprised of mitigation measures for fisheries, riparian vegetation and wildlife, and lagoon vegetation and wildlife.
4. The Management District’s 2007-2008 Annual Report for the Mitigation Program shows that the Management District allocated nearly \$1 million of costs of its new office building to the Mitigation Program.
5. The Management District’s 2007-2008 Annual Report for the Mitigation Program shows the Aquifer Storage and Recovery Projects as a component of the user fee Mitigation Program costs and also as a stand-alone additional user fee. *These components are separate and distinct costs centers and do not reflect a duplication of effort or funding.*
6. Cal-Am is actively pursuing water supply augmentation through its Coastal Water Project and the Management District need not act on Cal-Am’s behalf. *The District’s activities, however, do not result in a duplication of effort.*
7. The rebate program, salaries for the Conservation Office Staff and project expenditures for ordinance enforcement *that* are booked as part of the Mitigation Program, ~~even though such costs are not included in the Management District’s 2007-2008 Annual Report for the Mitigation Program. The Management District did not explain whether these booked costs are~~ *not* included in the user fee ~~even though the Commission has approved and separately funded a joint conservation program with the Management District.~~ *These efforts do not* which may include some of the same costs.
8. The testimony supporting the application shows accounting treatment inconsistent with Commission ratemaking standards, *but that treatment does comply with the Commission’s Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities.*

APPENDIX B

PROPOSED CHANGES TO CONCLUSIONS OF LAW IF THE ALL-PARTY, ALL ISSUE SETTLEMENT IS NOT ACCEPTED

1. No Evidentiary hearings are necessary. ~~The testimony supporting the application should be received into evidence and the record on this application closed so that the matter can be determined at this time.~~

2. Testimony should be presented to show whether or not the settlement agreement is ~~not~~ reasonable in light of the record, consistent with the law, or in the public interest.

3. The settlement agreement should not be approved until following this hearing.

4. Cal-Am has no ~~not~~ met its burden of justifying the proposed user fee for the Management District because the Commission typically does not examine the authority of a local government agency to collect a fee or tax.

5. In accord with D.89-05-063 and the Guidelines for the Equitable Treatment of Revenue-Producing Mechanisms Imposed by Local Government Entities on Public Utilities, the Commission does not dispute or seek to dispute the authority or right of any local governmental entity to impose or levy any form of tax or fee upon utility customers or the utility itself, which that local entity, as a matter of general law or judicial decision, has jurisdiction to impose, levy, or increase. Any issue relating to such local authority is a matter for the Superior Court, not this Commission.

~~5. Application 10-01-012 does not meet the Commission's standards set out in D.09-07-021 and Cal-Am's application should be dismissed.~~

~~6. The Monterey Peninsula Water Management District User Fee Memorandum Account should be dissolved and the balance recorded in the account should not be included in revenue requirement or recovered from ratepayers in any way.~~

~~7. Cal-Am should file a Tier 1 advice letter to remove the memorandum account from the preliminary statement in Cal-Am's tariff.~~

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PROOF OF SERVICE

I, Barbara A. Creely, declare as follows:

I am employed in the City of Pacific Grove, County of Monterey, California. I am over the age of eighteen years, and not a party to the within entitled cause. I am an employee of De LAY & LAREDO and my business address is 606 Forest Avenue, Pacific Grove, California 93950. On January 10, 2011, I served the within:

**COMMENTS OF THE MONTEREY PENINSUAL WATER
MANAGEMENT DISTRICT TO THE PROPOSED DECISION**

on the interested parties in this action addressed as follows:

Please see attached Service List

(BY E-MAIL SERVICE) By transmitting such document electronically from De Lay & Laredo, Pacific Grove, California, to the electronic mail addresses listed above. I am readily familiar with the practice of De Lay & Laredo for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 10, 2011, at Pacific Grove, California.

 /s/ Barbara A. Creely

BARBARA A. CREELY

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A.10-01-012

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