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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee.	A.10-01-012 (Filed January 5, 2010)

JOINT NOTICE OF THE SETTLING PARTIES OF EX PARTE COMMUNICATION WITH COMMISSION ADVISOR

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California-American Water Company

Dated: January 10, 2011

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Pursuant to Article 8 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), California-American Water Company ("California American Water") hereby files this notice of ex parte communications on behalf of itself, the Monterey Peninsula Water Management District ("MPWMD" or "the District"), and the Division of Ratepayer Advocate ("DRA") (collectively, "the Parties"). The ex parte communication took place on January 6, 2011, in a meeting at the Commission's offices with Lester Wong, advisor to Commissioner Peevey. The meeting began at 11:00 a.m. and lasted approximately thirty minutes. The meeting was attended by Rob MacLean, President, California American Water; Carrie Gleeson, Vice President-Legal, California American Water; Darby Feurst, Executive Director, MPWMD; David Laredo, General Counsel, MPWMD; Danilo Sanchez, Program Manager, DRA Water Branch; and Diana Brooks, Program Project Supervisor, DRA Water. The meeting consisted of oral communications as summarized below, and the handout included as Appendix A to this notice.

The Parties reviewed the background of the MPWMD User Fee, the direction given by the Commission in Decision 09-07-021, the subsequent application filed by California American Water, and the all-party settlement agreement. The Parties noted that California

American Water was directed to stop collecting the User Fee from its customers, establish a memorandum account to track the payment of the User Fee that would continue to be made to MPWMD, met and confer with MPWMD, and file an application for the Commission's review and approval of the programs funded by the User Fee. California American Water completed all of these steps filing the application on January 5, 2010, and a motion for approval of the all-party settlement agreement on May 18, 2010. Despite this prompt and cooperative response to the Commission's direction, the Parties did not receive any response to the motion until the Proposed Decision was issued on December 21, 2010, seven months after the filing of the settlement. During this time, the amount tracked in the memorandum account consistently and predictably grew until it now exceeds $4.3 million. The Proposed Decision, without explanation or supporting facts, denies recovery of the entire balance.

The Parties emphasized that the primary misconception relied on in the Proposed Decision is that the programs funded by the User Fee are the programs and/or obligation of California American Water, rather than MPWMD. That is not the case. The MPWMD User Fee funds programs that are the responsibility of MPWMD, not that of California American Water. Accordingly, the User Fee is a "Utility User's Tax" as defined in the *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities* adopted in Commission Decision D.89-05-063. The Proposed Decision ignores and conflicts with these guidelines and fails to explain how the Commission has jurisdiction to determine the authority of MPWMD to assess the User Fee and to approve or disapprove the programs funded by the User Fee.

MPWMD explained that the mitigation programs funded by the User Fee are programs mandated by the Environmental Impact Report that assessed the impacts of

MPWMD's water allocation program. While State Water Resources Control Board Order 95-10 states that if MPWMD ceases to provide these programs, California American Water must do so, the programs are the current obligation and responsibility of MPWMD, and are administered by MPWMD, and not by California American Water. MPWMD further explained that it cannot overcollect funding for these programs; funding is reviewed on an annual basis and adjusted accordingly. Without jurisdiction to review the spending of another public agency, the appropriate forum for review of MPWMD's programs and spending would be Superior Court.

DRA distinguished between the mitigation and ASR programs and the conservation programs cited in the Proposed Decision. The conservation programs are a joint responsibility and jointly administered; the mitigation and ASR programs are those of MPWMD not California American Water. MPWMD works with California American Water where necessary (for example, to ensure that the ASR can be connected to the existing water system and properly used) but that does not make them California American Water's projects or programs.

In reaching settlement, the Parties determined that there is no overlap in the programs being conducted. These issues were addressed in testimony in the proceeding, which is not referenced or cited in the Proposed Decision. The Settlement Agreement squarely meets the Commission's standard for approval of settlement agreements because it is reasonable in light of the whole record that demonstrates that MPWMD is a government entity assessing a fee for conducting programs of benefit to the public, it is consistent with the law including the Commission's Guidelines, and is in the public interest. Approval of the Proposed Decision means MPWMD will no longer be able to conduct these important and legally mandated

programs. California American Water would then be required under Order 95-10 to assume the programs, yet the Proposed Decision does not provide for past, present, or future funding.

The Parties asked for consideration of an alternative decision approving the very reasonable settlement put forth by the Parties and resolving the application.

The Parties provided Mr. Wong with a copy of the attached one-page of bullet points, pages 116-123 and 156-157 of Decision 09-07-021, and a copy of Decision 89-05-063 being the *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities* (32 CPUC 2d 60).

Dated: January 10, 2011

Respectfully submitted,

By: *\/s/ Lori Anne Dolqueist*
Lori Anne Dolqueist

Attorneys for Applicant
California-American Water Company

300198928.1

Appendix A

The PD incorrectly asserts California American Water did not comply with D.09-07-021 in filing this application. D.09-07-021 states:

> 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.

- **California American Water and the MPWMD met, conferred and collaborated in filing this Application.**
- **California American submitted its Application on January 5, 2010 requesting authority to resume collection of the MPWMD's User Fee, a utility user's tax, consistent with the Commission's *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities*, and filed the all-party settlement on May 18, 2010.**
- **The MPWMD User Fee funds programs that are the responsibility of the MPWMD, not that of California American Water.**
- **The PD does not address the Commission Guidelines, even though raised in the Application.**

The Proposed Decision conflicts with Commission precedent

- The MPWMD Mitigation Program is required by the California Environmental Quality Act to mitigate the cumulative effects of the MPWMD Water Allocation Program. The Water Allocation Program is an appropriate exercise of MPWMD regulatory authority.
- The PD ignores and conflicts with the Commission's *Guidelines for the Equitable Treatment of Revenue Producing Mechanisms Imposed by Local Government Entities on Public Utilities* adopted in D.89-05-063:
  - "Utility User's Taxes" are "pass-along taxes to the consumer, usually based on consumption, but collected by the utility for the taxing entity." **The MPWMD User Fee is a Utility User's Tax.**
  - The Commission has no jurisdiction to determine the authority of local taxing entities to impose taxes on utility customers, or utilities, or users' taxes on commodities used by a utility to produce its product. (Finding of Fact #9)
  - A public utility is authorized, in its discretion, to set forth as a separate line item in a utility bill the utility users' tax imposed on the local government entity on utility customers within the jurisdiction of that local governmental entity. Conclusion of Law #3 and Ordering Paragraph #4 .
  - **The MPWMD User Fee has been included as a line item on customer bills for almost 30 years. The PD would end this practice without citation to authority.**

We ask that an APD be issued approving the all-party, all-issue settlement between California American Water, DRA and MPWMD.

PROOF OF SERVICE

I, Cinthia A. Velez, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On January 10, 2011, I served the within:

Joint Notice of the Settling Parties of Ex Parte Communication with Commission Advisor

on the interested parties in this action addressed as follows:

See Attached Service List

☒ **(BY CPUC E-MAIL SERVICE)** By transmitting such document electronically from Manatt, Phelps & Phillips, LLP, San Francisco, California, to the electronic mail addresses listed above. I am readily familiar with the practice of Manatt, Phelps & Phillips, LLP 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. Said practice also complies with Rule 1.10 of the Public Utilities Commission of the State of California and all protocols described therein.

☒ **(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 10, 2011, at San Francisco, California.

Cinthia A. Velez

PUC E-Mail Service List
A.10-01-012
[Updated December 20, 2010]

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U.S. Mail Service List
A.10-01-012
[Updated December 20, 2010]

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