

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



FILED

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

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

**CALIFORNIA-AMERICAN WATER COMPANY MOTION FOR
OFFICIAL NOTICE OF FACTS**

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Attorneys for Applicant
California-American Water Company

Dated: January 15, 2013

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

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

A.12-04-019
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**CALIFORNIA-AMERICAN WATER COMPANY MOTION FOR
OFFICIAL NOTICE OF FACTS**

Pursuant to Rule 13.9 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, California-American Water Company (“California American Water”) respectfully requests that the Commission take official notice of the following actions taken in a matter adjudicated¹ by the Superior Court of California, County of San Francisco (“San Francisco Superior Court”): 1) the County of Monterey’s (“County”) Complaint for Declaratory Relief, dated June 26, 2012;² 2) the County’s Request for Dismissal with prejudice of entire action of all parties and all causes of action filed, dated December 11, 2012; and 3) a print out of the San Francisco Superior Court’s docket which shows that the matter was taken off the calendar on December 13, 2012. California American Water provides these items as Attachment 1 to this motion. As the Commission noted in Decision (“D.”) 12-10-030, the Commission directed California American Water to “seek expeditiously a dismissal, summary judgment or other favorable disposition in . . . Case No. CGC-12-521875 . . . on the ground that

¹ See *County of Monterey vs. California-American Water Company*, Superior Court of the County of San Francisco, Case No. CGC-12-521875.

² In its Complaint for Declaratory Relief, the County sought a judicial interpretation of whether Monterey County Code of Ordinances, Title 10, Chapter 10.72 applied to the California American Water’s proposed Monterey Peninsula Water Supply Project.

applicable law requires a determination that the Commission’s authority regarding Application 12-04-019 preempts the Monterey County Desalination Ordinance.”³

I. DISCUSSION

In accordance with Commission Rule 13.9⁴ and sections 452 (c)⁵ and 452 (d)⁶ of the California Code of Evidence, it is appropriate for the Commission to take official notice of the attached filings and corresponding ruling. The Commission has long recognized that official notice is reserved for those facts and propositions that are not subject to dispute⁷ and that Rule 13.9 is “designed to avoid . . . legal problems . . . by specifying that only certain inherently reliable materials may be officially noticed. (Cal. Code Regs., tit. 20, §13.9; *see* Evid. Code, §§451, 452).”⁸

The facts that California American Water is asking the Commission to take official notice of are not in dispute. The filings made by the County are now part of the San Francisco Superior Court’s records pertaining to Case No. CGC-12-521875. Furthermore, the ruling granting the County’s Request for Dismissal is an official act of the San Francisco Superior Court, a judicial department of the State of California. The Commission, by way of the California Code of Evidence, allows for official notice of these documents.

³ D.12-10-030, pp. 25-26.

⁴ According to Rule 13.9 of the Commission’s Rules of Practice and Procedure, “[o]fficial notice may be taken of such matters as may be officially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.”

⁵ According to Evid. Code § 452 (c), judicial notice may be taken of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.”

⁶ According to Evid. Code § 452 (d), judicial notice may be taken of “[r]ecords of . . . any court of this state . . .”

⁷ *See A.09-05-026, Administrative Law Judge’s Ruling on Two Motions*, filed November 02, 2010, p. 3.

⁸ D.11-04-034, *In the Matter of the Application of the Southern California Edison Company (U 338 E) for a Certificate of Public Convenience and Necessity for the Eldorado-Ivanpah Transmission Project*. 2011 WL 1502688, 9 (Cal. P.U.C. 2011).

II. CONCLUSION

Pursuant to Rule 13.9 and the California Code of Evidence, the Commission should grant California American Water's motion for judicial notice of facts. As previously stated, these are official acts of a California court and are also part of the San Francisco Superior Court's records.

Dated: January 15, 2013

Respectfully submitted,

By: /s/ Javier E. Naranjo

Javier E. Naranjo
Attorney for Applicant
California-American Water Company

Attachment 1



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
Document Scanning Lead Sheet

Jun-26-2012 10:59 am

Case Number: CGC-12-521875

Filing Date: Jun-26-2012 10:55

Filed by: DEBORAH STEPPE

Juke Box: 001 Image: 03665746

COMPLAINT

COUNTY OF MONTEREY, A POLITICAL SUBDIVISION OF VS.
CALIFORNIA-AMERICAN WATER COMPANY, A CALIFORNIA et al

001C03665746

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CALIFORNIA-AMERICAN WATER COMPANY, a California corporation, and DOES 1 through X, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

COUNTY OF MONTEREY, a political subdivision of the State of California

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

C6C-12-521875
CASE NUMBER: (Número del Caso):

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO
400 McAllister Street
San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Charles J. McKee, County Counsel (SBN 152458) Mark A. Wasser (SBN 060160)
Susan K. Blich, Sr. Deputy County Counsel (SBN 187761) 400 Capitol Mall, Suite #2640
168 W. Alisal St, 3rd Fl, Salinas, CA 93901 Ph: 831-755-5045 Sacramento, CA 95814 Ph: 916-444-6400

DATE: JUN 26 2012
(Fecha)

CLERK OF THE COURT

Clerk, by Deborah Stepp, Deputy
(Secretario) *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

- 3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- 4. by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Charles J. McKee, County Counsel (SBN 152458)
Susan K. Blich, Sr. Deputy County Counsel (SBN 187761)
Office of the County Counsel
168 W. Alisal Street, Third Floor, Salinas, CA 93901
TELEPHONE NO.: 831-755-5045 FAX NO.: 831-755-5283
ATTORNEY FOR (Name): Plaintiff

FOR COURT USE ONLY
FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO
2012 JUN 26 AM 8:25
CLEARED BY THE COURT
DEPUTY CLERK
BY: [Signature]

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME:

CASE NAME: COUNTY OF MONTEREY V. CAL-AM WATER COMPANY

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CGC-12-521875
JUDGE:
DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- Auto Tort**
 Auto (22)
 Uninsured motorist (46)
 - Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**
 Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)
 - Non-PI/PD/WD (Other) Tort**
 Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)
 - Employment**
 Wrongful termination (36)
 Other employment (15)
 - Contract**
 Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)
 - Real Property**
 Eminent domain/inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)
 - Unlawful Detainer**
 Commercial (31)
 Residential (32)
 Drugs (38)
 - Judicial Review**
 Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)
 - Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)**
 Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)
 - Enforcement of Judgment**
 Enforcement of judgment (20)
 - Miscellaneous Civil Complaint**
 RICO (27)
 Other complaint (not specified above) (42)
 - Miscellaneous Civil Petition**
 Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. Large number of separately represented parties
 - b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 - c. Substantial amount of documentary evidence
 - d. Large number of witnesses
 - e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 - f. Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): - 0 -
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: June 26, 2012

Susan K. Blich (TYPE OR PRINT NAME)

[Signature] (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

2012 JUN 26 AM 8:25

CLERK OF THE COURT

BY: _____
DEPUTY CLERK

Deborah Steppe

1 CHARLES J. MCKEE, State Bar No. 152458
2 COUNTY COUNSEL
3 SUSAN K. BLITCH, State Bar No. 187761
4 Senior Deputy County Counsel
5 County of Monterey
6 168 W. Alisal Street, 3rd Floor
7 Salinas, California 93901
8 Phone: (831) 755-5045
9 Fax: (831) 755-5283
10 E-mail: mckeecj@co.monterey.ca.us

(Fee Exempt, Gov. Code § 6103)

11 MARK A. WASSER, State Bar No. 060160
12 LAW OFFICES OF MARK A. WASSER
13 400 Capitol Mall, Suite 2640
14 Sacramento, California 95814
15 Phone: (916) 444-6400
16 Fax: (916) 444-6405
17 E-mail: mwasser@markwasser.com

18 Attorneys for Plaintiff, County of Monterey

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

STANDARD

16 COUNTY OF MONTEREY, a political
17 subdivision of the State of California,

18 Plaintiff,

19 vs.

20 CALIFORNIA-AMERICAN WATER
21 COMPANY, a California corporation, and
22 DOES I through X, inclusive,

23 Defendants.

Case No.: CGC-12-521875

**COMPLAINT FOR DECLARATORY
RELIEF**

(Code of Civ. Proc. §1060)

24 Plaintiff alleges:

25 1. Plaintiff County of Monterey ("County") is and at all times herein mentioned was a
26 political subdivision of the State of California.

27 2. Defendant California-American Water Company ("Cal-Am") is and at all times
28 herein mentioned was a California corporation organized and existing under and pursuant to the laws

1 of the State of California and doing business in Monterey County. Cal-Am is a privately owned
2 public utility regulated by the California Public Utilities Commission. Cal-Am owns and operates a
3 water distribution system within Monterey County that provides domestic drinking water to
4 thousands of consumers.

5 3. Plaintiff is ignorant of the names and capacities of defendants DOES I through X,
6 inclusive and, therefore, sues those defendants by those fictitious names. Plaintiff is informed and
7 believes and thereon alleges that each of the fictitiously named defendants is an employee, agent or
8 representative of Cal-Am and interested in this proceeding. Plaintiff will amend this complaint to set
9 forth their true names and capacities when the same have been ascertained.

10 4. Cal-Am is under an order from the California Water Resources Control Board to
11 develop a new source of water for its water distribution system no later than December 31, 2016.
12 Cal-Am has applied to the California Public Utilities Commission for a certificate of public
13 convenience and necessity to construct specified improvements necessary for the development of a
14 new water source. Among the improvements Cal-Am proposes is a desalination facility to be
15 constructed and operated in Monterey County.

16 5. Chapter 10.72 of the Monterey County Code ("the Ordinance") provides that no
17 person can construct or operate a desalination facility within Monterey County without first
18 obtaining a permit to construct and a permit to operate the facility from the County's Director of
19 Environmental Health. A certified copy of the Ordinance is attached to this complaint as Exhibit A.

20 6. The Ordinance requires that an applicant for a permit to construct and a permit to
21 operate a desalination facility submit certain information to the Director of Environmental Health,
22 including proof of financial capability and commitment, feasibility studies, evidence the facility will
23 be appropriately located, engineering, construction plans and specifications, chemical analysis of the
24 water at the proposed intake, a study of potential impacts of groundwater extraction, a detailed
25 monitoring and testing program, noise studies, a maintenance and operating plan, plans for the
26 disposal of brine and other by-products, a contingency plan for an alternative water supply and
27 emergency shut down operations, and provisions for emergency contingencies in acceptable form
28 such as a bond, letter of credit or suitable security. The operator is also required to notify the

1 Director of any change in capacity, number of connections, type or purpose of use, technology,
2 reliance on existing potable water sources or ownership.

3 7. The Ordinance also requires the applicant to provide assurances that the facility will
4 be owned and operated by a public entity.

5 8. Cal-Am has communicated to the County its intention to proceed with plans to
6 construct and operate the facility without applying for or obtaining either a permit to construct or a
7 permit to operate the facility from the County's Director of Environmental Health.

8 9. Cal-Am is not a public entity and, under the Ordinance, is not eligible for a permit to
9 operate a desalination facility in Monterey County.

10 10. An actual controversy has arisen and presently exists between the County and Cal-
11 Am in that the County contends the Ordinance applies to Cal-Am, that Cal-Am may not construct a
12 desalination facility without a permit to construct from the County's Director of Environmental
13 Health, that Cal-Am is ineligible for a permit to operate a desalination facility in Monterey County
14 because it is not a public entity and that Cal-Am may not lawfully operate such a facility without
15 such a permit, whereas Cal-Am disagrees and contends the Ordinance does not apply to Cal-Am,
16 that Cal-Am does not need either a permit to construct or a permit to operate a desalination facility
17 from the County's Director of Environmental Health and that Cal-Am may lawfully construct and
18 operate such a facility without such a permit.

19 11. The County requests a declaration of the parties' rights and duties with regard to the
20 application of the Ordinance to Cal-Am and Cal-Am's right to lawfully operate a desalination
21 facility in Monterey County without either a permit to construct or a permit to operate from the
22 County's Director of Environmental Health.

23 12. The controversy alleged herein affects the parties' substantial rights as well as the
24 public health and welfare of thousands of people in Monterey County. Its prompt resolution is in the
25 best interests of the parties as well as the public.

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WHEREFORE, the County prays for a declaratory judgment determining the parties' rights and duties with regard to the Ordinance and providing such other relief as this Court deems just.

Dated: June 26, 2012

CHARLES J. MCKEE, COUNTY COUNSEL

By: 
SUSAN K. BLITCH, Senior Deputy County Counsel
Attorneys for Plaintiff, County of Monterey

NO VERIFICATION REQUIRED

Code of Civil Procedure §446

COUNTY OF MONTEREY,
a political subdivision of the State of California, Plaintiff,

vs.

CALIFORNIA-AMERICAN WATER COMPANY,
a California corporation,
and DOES I through X, inclusive, Defendants.

COMPLAINT FOR DECLARATORY RELIEF
(Code of Civil Procedure § 1060)

EXHIBIT "A"

EXHIBIT "A"

ORDINANCE NO. 3439

AN ORDINANCE ADDING CHAPTER 10.72 TO THE MONTEREY COUNTY CODE RELATING TO THE OPERATION OF A DESALINIZATION TREATMENT FACILITY.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1.

Chapter 10.72 is added to the Monterey County Code to read as follows:

Chapter 10.72

DESALINIZATION TREATMENT FACILITY

Sections:

- 10.72.010 Permits Required.
- 10.72.020 Construction Permit Application Process.
- 10.72.030 Operation Permit Process.
- 10.72.040 Inspection.
- 10.72.050 Testing.
- 10.72.060 Permit - Display - Surrender.
- 10.72.070 Permit - Revocation and Suspension.
- 10.72.080 Appeal Procedure.
- 10.72.090 Fees.
- 10.72.100 Penalty for Violation.
- 10.72.110 Severability.

10.72.010 Permits Required.

No person, firm, water utility, association, corporation, organization, or partnership, or any city, county, district, or any department or agency of the State shall commence construction of or operate any Desalinization Treatment Facility (which is defined as a facility which removes or reduces salts from water to a level that meets drinking water standards and/or irrigation purposes) without first securing a permit to construct and a permit to operate said facility. Such permits shall be obtained from the Director of Environmental Health of the County of Monterey, or his designee, prior to securing any building permit.

10.72.020 CONSTRUCTION PERMIT APPLICATION PROCESS.

All applicants for construction permits required by Section 10.72.010 shall:

A. Notify in writing the Director of Environmental Health or his designee, of intent to construct a desalinization treatment facility.

B. Submit in a form and manner as prescribed by the Director of Environmental Health, preliminary feasibility

studies, evidence that the proposed facility is to be located within the appropriate land use designation as determined by the affected local jurisdiction, and specific detail engineering, construction plans and specifications of the proposed facility.

C. Submit a complete chemical analysis of the sea water at the site of proposed intake. Such chemical analysis shall meet the standards as set forth in the current ocean plan as administered by the California State Water Resources Control Board and the United States Environmental Protection Agency. In the event the proposed intake is groundwater (wells), a chemical analysis of the groundwater at the proposed intake site shall be submitted as prescribed by the Director of Environmental Health.

D. Submit to the Director of Environmental Health and Monterey County Flood Control and Water Conservation District a study on potential site impacts which could be caused by groundwater extraction.

E. Submit preliminary feasibility studies and detailed plans for disposal of brine and other by-products resultant from operation of the proposed facility.

F. Submit a contingency plan for alternative water supply which provides a reliable source of water assuming normal operations, and emergency shut down operations. Said contingency plan shall also set forth a cross connection control program. Applications which propose development of facilities to provide regional drought reserve shall be exempt from this contingency plan requirement, but shall set forth a cross connection control program.

G. Prior to issuance of any construction permit, the Director of Environmental Health shall obtain evidence from the Monterey County Flood Control and Water Conservation District that the proposed desalinization treatment facility will not have a detrimental impact upon the water quantity or quality of existing groundwater resources.

10.72.030 OPERATION PERMIT PROCESS.

All applicants for an operation permit as required by Section 10.72.010 shall:

A. Provide proof of financial capability and commitment to the operation, continuing maintenance replacement, repairs, periodic noise studies and sound analyses, and emergency contingencies of said facility. Such proof shall be in the form approved by County Counsel, such as a bond, a letter of credit, or other suitable security including stream of income. For regional desalinization projects undertaken by any public agency, such proof shall be consistent with financial market requirements for similar capital projects.

B. Provide assurances that each facility will be owned and operated by a public entity.

C. Provide a detailed monitoring and testing program in a manner and form as prescribed by the Director of Environmental Health.

D. Submit a maintenance and operating plan in a form and matter prescribed by the Director of Environmental Health.

E. All operators of a desalinization treatment plant shall notify the Director of Environmental Health of any change in capacity, number of connections, type or purpose of use, change in technology, change in reliance upon existing potable water systems or sources, or change in ownership or transfer of control of the facility not less than ten (10) days prior to said transfer.

10.72.040 INSPECTION.

A. Prior to operation of any desalinization treatment facility, operator shall submit to an onsite inspection of said facility by the Director of Environmental Health.

B. The Director of Environmental Health shall have a continuing right to reasonable inspection of any desalinization treatment facility.

10.72.050 TESTING.

A. Prior to operation, all desalinization treatment facilities shall be tested for reliability and efficacy for a period and in a form and manner as prescribed by the Director of Environmental Health.

B. In the event that testing prescribed by Section 10.72.050A proves satisfactory, and notwithstanding any other permits required by this Chapter, applicant shall obtain a water system permit from the Director of Environmental Health prior to commencing operation.

10.72.060 PERMIT - DISPLAY - SURRENDER.

A. All permits issued pursuant to this chapter shall be kept posted by the permittee in a conspicuous place in the permittee's place of business.

B. If any such permit is suspended or revoked, it shall be surrendered to the Director of Environmental Health upon his demand.

10.72.070 PERMIT - REVOCATION AND SUSPENSION.

Upon proof to his satisfaction of the violation by the permittee of any of the relevant sanitation and health laws or regulations of the State of California or the County of Monterey, the Director of Environmental Health may temporarily suspend or may revoke either the construction or operation permit. No person whose permit has been suspended or revoked shall continue to engage in or carry on the business for which the permit was granted, unless and until, in the case of suspension, such permit has been reinstated by the Director of Environmental Health.

Any unreasonable denial of a request to inspect pursuant to Section 10.72.040 above shall result in revocation of the facility operating permit.

10.72.080 HEARING PROCEDURE.

A. Any person whose application for a permit has been denied, or whose permit has been suspended or revoked, may appeal to the Director of Environmental Health, in writing, within thirty (30) days after any such denial, or within three (3) days

after notification of any such suspension or revocation. The Director of Environmental Health shall set a time for such meeting, and make a decision without unnecessary delay.

B. The filing of the written appeal shall operate as a stay of such suspension or revocation until final disposition of the appeal by the Director of Environmental Health.

10.72.090 FEES.

Prior to issuance of any construction or operation permit, applicant shall pay to the County Health Department fees as set forth in Section 10.08.050 of the Monterey County Code.

10.72.100 PENALTY FOR VIOLATION.

A. Every person who violates any of the provisions of this chapter is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail for not to exceed six (6) months, or both.

B. Every person who violates any of the provisions of this chapter is declared to be in violation of this chapter and a public nuisance. The County may summarily abate the public nuisance and the County Counsel upon order of the Board of Supervisors may bring civil suit, or other action, to enjoin or abate the nuisance. Such public nuisance is subject to civil penalties in the amount of five thousand dollars (\$5,000.00) per day.

10.72.110 SEVERABILITY.

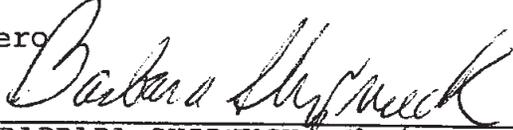
If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the other portions of this chapter. The Board of Supervisors hereby declares that it would have passed this ordinance and any section, subsection, clause, or phrase thereof irrespective of the fact that one or more sections, subsections, clauses or phrases thereof be declared unconstitutional.

PASSED AND ADOPTED by the Board of Supervisors of the County of Monterey this 28th day of November, 1989, by the following vote:

AYES: Supervisors Shipnuck, Petrovic, Karas and Strasser Kauffman

NOES: None

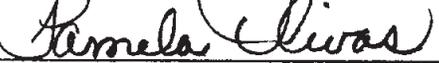
ABSENT: Supervisor Del Piero



BARBARA SHIPNUCK, Chairwoman
Board of Supervisors

ATTEST:

ERNEST K. MORISHITA
Clerk of Said Board

By 

Deputy



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

187 Eldorado • Suite E • P.O. Box 85 • Monterey, CA 93940 • (408) 649-4866

11/28/89

10.72.020

F. - Add the following - Applications which propose development of facilities to provide regional drought reserve shall be exempt from this contingency plan requirement, but shall set forth a cross connection control program.

10.72.030

A. - Add a new last sentence to read as follows - For regional desalination projects undertaken by any public agency, such proof shall be consistent with financial market requirements for similar capital projects.

**STATE OF CALIFORNIA
COUNTY OF MONTEREY**

I, Gail T. Borkowski, Clerk of the Board of Supervisors, do hereby certify the foregoing to be a full, true and correct copy of the original

Ordinance No. 3439 on file in my office.

Witness my hand and seal of the Board of Supervisors.

This 25th day of June, 2012

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

seal

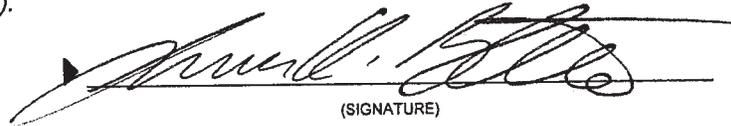
By: [Signature] Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): CHARLES J. McKEE, County Counsel (SBN 152458) SUSAN K. BLITCH, Sr. Deputy County Counsel (SBN 187761) Office of the County Counsel, 168 W. Alisal Street, 3rd Floor Salinas, CA 93901 TELEPHONE NO.: 831-755-5042 FAX NO. (Optional): 831-755-5283 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff, County of Monterey	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McALLISTER STREET MAILING ADDRESS: CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME: SAN FRANCISCO	
PLAINTIFF/PETITIONER: COUNTY OF MONTEREY DEFENDANT/RESPONDENT: CALIFORNIA-AMERICAN WATER COMPANY, ET AL.	
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): COMPLAINT FOR DECLARATORY RELIEF	CASE NUMBER: CGC-12-521875
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -	

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
- (3) Cross-complaint filed by (name): _____ on (date): _____
- (4) Cross-complaint filed by (name): _____ on (date): _____
- (5) Entire action of all parties and all causes of action
- (6) Other (specify):* **Each party to bear their own costs and attorney's fees.**
2. (Complete in all cases except family law cases.)
- Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: December 11, 2012

.....**SUSAN K. BLITCH, Sr. Deputy County Counsel**
 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)


 (SIGNATURE)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**
 Date: _____

 (TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

 (SIGNATURE)

Attorney or party without attorney for:

Plaintiff/Petitioner Defendant/Respondent
 Cross-Complainant

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for the cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(f) or (j).

(To be completed by clerk)

4. Dismissal entered as requested on (date): _____
5. Dismissal entered on (date): _____ as to only (name): _____
6. Dismissal not entered as requested for the following reasons (specify): _____
7. a. Attorney or party without attorney notified on (date): _____
- b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to be conformed means to return conformed copy

Date: _____ Clerk, by _____, Deputy
 Page 1 of 2

PLAINTIFF/PETITIONER: COUNTY OF MONTEREY	CASE NUMBER: CGC-12-521875
DEFENDANT/RESPONDENT: CALIFORNIA-AMERICAN WATER COMPANY	

Declaration Concerning Waived Court Fees

The court has a statutory lien for waived fees and costs on any recovery of \$10,000 or more in value by settlement, compromise, arbitration award, mediation settlement, or other recovery. The court's lien must be paid before the court will dismiss the case.

1. The court waived fees and costs in this action for *(name)*:
2. The person in item 1 *(check one)*:
 - a. is not recovering anything of value by this action.
 - b. is recovering less than \$10,000 in value by this action.
 - c. is recovering \$10,000 or more in value by this action. *(If item 2c is checked, item 3 must be completed.)*
3. All court fees and costs that were waived in this action have been paid to the court *(check one)*: Yes No

I declare under penalty of perjury under the laws of the State of California that the information above is true and correct.

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)

(SIGNATURE)

Superior Court of California, County of San Francisco

Case Number: CGC-12-521875

Title: COUNTY OF MONTEREY, A POLITICAL SUBDIVISION OF VS. CALIFORNIA-AMERICAN
WATER COMPANY, A CALIFORNIA et al

Cause of Action: OTHER NON EXEMPT COMPLAINTS

Generated: Jan-08-2013 8:54 am PST

[Register of Actions](#) [Parties](#) [Attorneys](#) [Calendar](#) [Payments](#) [Documents](#)**Register of Actions**Date Range: First Date Last Date (Dates must be entered as MMM-DD-YYYY)

Date	Proceedings	Document	Fee
DEC-13-2012	NOT REPORTED. COMPLEX LITIGATION CASE MANAGEMENT CONFERENCE SET ON DEC-13-2012, IN DEPT. 304, IS TAKEN OFF CALENDAR PURSUANT TO REQUEST FOR DISMISSAL WITH PREJUDICE OF ENTIRE ACTION OF ALL PARTIES AND ALL CAUSES OF ACTION FILED DEC-11-2012 (TRANS# 48355386). JUDGE RICHARD A. KRAMER; CLERK FELICIA GREEN; DEPT. 304.		
DEC-04-2012	NOT REPORTED. COMPLEX LITIGATION CASE MANAGEMENT CONFERENCE, PREVIOUSLY SET FOR DEC-05-2012, IS CONTINUED TO DEC-13-2012, AT 3:30 PM, IN DEPT. 304, AT THE PARTIES REQUEST. COUNSEL TO PROVIDE NOTICE. JUDGE RICHARD A. KRAMER; CLERK FELICIA GREEN; DEPT. 304.		
OCT-12-2012	DEPT. 304: CASE MANAGEMENT CONFERENCE OF OCT-12-2012 IS CONTINUED TO DEC-05-2012 AT 3:30 PM IN 304 AT REQUEST OF THE PARTIES. NOTICE BY PLAINTIFF(S)' COUNSEL. NOT REPORTED. COURT CLERK: J. RIOS-MERIDA.		
AUG-28-2012	DEPT. 304: CASE MANAGEMENT CONFERENCE HELD. ACTION CONTINUED TO OCT-12-2012 AT 10:30 AM IN DEPT. 304 FOR CASE MANAGEMENT CONFERENCE AND OTHER PROCEEDINGS. JUDGE: RICHARD A. KRAMER; COURT CLERK: J. RIOS-MERIDA; COURT REPORTER: NONE/WAIVED. JRM/304.		
AUG-28-2012	MINUTES FOR AUG-28-2012 9:30 AM	View	
AUG-22-2012	CASE MANAGEMENT STATEMENT FILED BY PLAINTIFF COUNTY OF MONTEREY, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA ALSO FILED BY DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY	View	
AUG-10-2012	JURY FEES DEPOSITED BY DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY		150.00
JUL-27-2012	ANSWER TO COMPLAINT FILED BY DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY	View	
JUL-25-2012	DEPT. 340: ORDER GRANTING COMPLEX DESIGNATION AND SINGLE ASSIGNMENT TO JUDGE RICHARD A. KRAMER FOR ALL PURPOSES. CASE MANAGEMENT CONFERENCE SET FOR AUG-28-2012 AT 9:30 AM IN DEPT. 304. NOV-28-2012 CASE MANAGEMENT CONFERENCE IS OFF CALENDAR. NOTICE SENT BY COURT.	View	
JUL-09-2012	SUMMONS ON COMPLAINT, PROOF OF SERVICE ONLY, FILED BY PLAINTIFF COUNTY OF MONTEREY, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA SERVED JUN-26-2012, PERSONAL SERVICE ON DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY, A CALIFORNIA CORPORATION		

JUN-29-2012	POS OF NTC OF APPLICATION AND APPLICATION FOR APPROVAL OF COMPLEX DESIGNATION; MEMO OF P & A AND POS FILED BY DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY		
JUN-29-2012	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR APPROVAL OF COMPLEX DESIGNATION FILED BY DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY		
JUN-29-2012	COMPLEX FEE PD FILED BY DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY		550.00
JUN-29-2012	APPLICATION FOR APPROVAL OF COMPLEX LITIGATION DESIGNATION FILED BY DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY		410.00
JUN-26-2012	NOTICE TO PLAINTIFF	View	
JUN-26-2012	OTHER NON EXEMPT COMPLAINTS, COMPLAINT FILED BY PLAINTIFF COUNTY OF MONTEREY, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA AS TO DEFENDANT CALIFORNIA-AMERICAN WATER COMPANY, A CALIFORNIA CORPORATION DOES 1 TO X, INCLUSIVE SUMMONS ISSUED, JUDICIAL COUNCIL CIVIL CASE COVER SHEET FILED CASE MANAGEMENT CONFERENCE SCHEDULED FOR NOV-28-2012 PROOF OF SERVICE DUE ON AUG-27-2012 CASE MANAGEMENT STATEMENT DUE ON NOV-13-2012	View	EXEMPT