



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

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In the Matter of the Application of California-American Water Company (U 210 W) for an Order (1) Approving a Settlement Agreement with the County of Monterey and the Monterey County Water Resources Agency to Settle and Resolve Claims and Issues Between the Parties and to Promote the Development, Construction and Operation of a Water Supply Project for Monterey County on an Expedited Basis, and (2) Authorizing the Transfer of Authorized Costs Related to the Settlement Agreement to Its Special Request 1 Surcharge Balancing Account

A1305017

Application No. 13-05-_____

APPLICATION OF CALIFORNIA-AMERICAN WATER COMPANY (U 210 W) FOR AN ORDER (1) APPROVING A SETTLEMENT AGREEMENT WITH THE COUNTY OF MONTEREY AND THE MONTEREY COUNTY WATER RESOURCES AGENCY TO SETTLE AND RESOLVE CLAIMS AND ISSUES BETWEEN THE PARTIES AND TO PROMOTE THE DEVELOPMENT, CONSTRUCTION AND OPERATION OF A WATER SUPPLY PROJECT FOR MONTEREY COUNTY ON AN EXPEDITED BASIS, AND (2) AUTHORIZING THE TRANSFER OF AUTHORIZED COSTS RELATED TO THE SETTLEMENT AGREEMENT TO ITS SPECIAL REQUEST 1 SURCHARGE BALANCING ACCOUNT

(PUBLIC VERSION)

(Exhibit D – Confidential Invoices)

[The Confidential Invoices are tendered for filing in an archival-grade DVD that is filed under seal pursuant to the provisions of Rule 11.4 (a), General Order 66-C, and Public Utilities Code Section 583]

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I. INTRODUCTION

California-American Water Company (“California American Water” or “the Company”) files this application (“Application”) for a California Public Utilities Commission (“Commission”) order (1) approving – on an expedited basis – as reasonable, consistent with the law, and in the public interest a settlement agreement among California American Water, the County of Monterey (“County”) and the Monterey County Water Resources Agency (“MCWRA”) which settles and resolves claims and issues between the Company on the one hand, and the County and MCWRA on the other, and which promotes the development, construction and operation of a water supply project for Monterey County, and (2) authorizing

the transfer of certain costs, plus interest and fees, related to the settlement agreement to the Company's Special Request 1 Surcharge Balancing Account. A copy of the fully-executed Settlement Agreement and Mutual Release ("Settlement Agreement") together with an amendment thereto is attached to this Application as Exhibit A. California American Water stresses the need for the Commission to resolve this Application on an expedited basis. Paragraph 19 of the Settlement Agreement states that if the Settlement Agreement is not approved "in a manner acceptable to the Parties within 18 months after the [December 4, 2012] Execution Date, either party may at any time thereafter give written notice to the other that the Agreement will terminate 60 days after the receipt of such notice." Settlement Agreement, Paragraph 19, p. 12.

The Settlement Agreement is a product of months of both Commission-sponsored mediation and negotiations among California American Water, the County, and MCWRA (collectively referred to herein as the "Settling Parties"), and represents numerous compromises on both financial and non-financial issues. As will become clear as the Settlement Agreement is summarized below, and as is typical of settlements of disputed issues where litigation is involved, no party to the settlement got everything it wanted on either financial or non-financial issues. However, the settlement represents a critical step forward, away from costly and time-consuming litigation and toward the achievement of a timely, safe and dependable water supply for the Monterey Peninsula. The Commission has continually encouraged the Settling Parties to reach a settlement and, after much effort, the Settling Parties have done so. In this Application, California American Water now seeks Commission approval of the Settlement Agreement so that the Settling Parties' collective efforts and resources can be completely focused on the task of achieving a timely long-term water supply solution for the Monterey Peninsula.

The Settlement Agreement, which includes both non-financial and financial terms, is summarized in Part III of this Application. In addition, a summary of costs addressed by the Settlement Agreement to be transferred upon approval of this Application to California American Water’s Special Request 1 Surcharge Balancing Account– totaling approximately \$2.68 million¹, plus interest and fees – is attached as Exhibit B. The supporting invoices are attached, hereto, as Exhibits C& D.²The components and details regarding this amount which are addressed further in Parts III.B.i and ii of this Application, exclusive of related interest and fees, are summarized as follows:

Costs advanced to MCWRA under RDP Agreements	\$1,918,034 ³
Amounts due to MCWRA for costs not yet reimbursed	\$764,557 ⁴

This Application also seeks approval for California American Water to file a subsequent application at a later date for recovery of funds set aside in an escrow account. The Settlement Agreement requires California American Water to deposit \$718,315.44 into a Trust Account that will function as an escrow account.⁵See Part III.B.iii of this Application.

II. PROCEDURAL BACKGROUND AND HISTORY

The need for a long-term water supply project for California American Water’s Monterey County District is wellknown to the Commission. In 1995, the State Water Resources Control Board (“SWRCB”) issued Order No. WR 95-10, which found that California American Water

¹ For the purposes of this application, California American Water rounded all the numbers – except those numbers associated with section 4C of the Settlement Agreement –to the closest dollar amount.

²Exhibit D is comprised of confidential invoices that California American Water is requesting to be filed under seal.

³ For purposes of this Application, the figure has been rounded to \$1,911,724 and consists of \$1,173,744 previously advanced to MCWRA under the Reimbursement Agreement, and \$744,290 previously advanced to MCWRA under the Credit Line Agreement.

⁴ This number reflects the amount the Parties agreed to in the amendment to section 4B of the Settlement Agreement. This amount includes a reduction in Steve Collins-related costs and corresponding interest. The testimonies of David P. Stephenson and Richard C. Svindland discuss the Steve Collins related costs and corresponding interest.

⁵ The funds in this account are set aside for possible use in resolving or responding to claims of MCWRA contractors and consultants, but that escrow account will not remain open indefinitely and funds remaining in the account upon close of escrow will be returned to California American Water.

had been diverting water from the Carmel River in excess of its water rights. As a result, the SWRCB ordered the Company to find replacement sources of water and to adopt conservation measures sufficient to replace 10,730 acre feet of water per year. A subsequent 2009 SWRCB Cease and Desist Order provided a deadline of December 31, 2016 for California American Water to reduce its unpermitted diversions from the Carmel River. In addition to the SWRCB orders regarding the Carmel River, the Seaside Basin was adjudicated in 2005 and the Monterey County District faces triennial additional reductions from that water source through the end of year 2021 totaling approximately 1,500 acre feet of water per year. As a result of the SWRCB orders and the Seaside Basin adjudication, California American Water is faced with replacing approximately 70 percent of its current demand of 12,500 acre feet per year in its Monterey County District.

A. The Regional Desalination Project

In response to the SWRCB Order No. 95-10, California American Water initially proposed a new dam and reservoir project for the Carmel River. However, due to numerous challenges to this proposal, the new dam and reservoir project was abandoned. In its place, California American Water filed Application (“A.”) 04-09-019 proposing a long-term water supply project, known as the “Coastal Water Project,” consisting of a combination of desalination treatment facilities, aquifer storage and recovery facilities, and associated transmission pipelines.

In D.09-12-017, the Commission certified an Environmental Impact Report (“EIR”) for the Coastal Water Project in compliance with the California Environmental Quality Act (“CEQA”). Thereafter, the Commission issued D.10-12-016, approving a settlement agreement among a number of interested parties in A.04-09-019, including the Company and MCWRA, and

a Water Purchase Agreement (“WPA”) among the Company, MCWRA, and the Marina Coast Water District (“MCWD”), and authorizing the Company’s participation in a Regional Desalination Project (“RDP”) – a joint project with local Monterey County public agencies MCWRA and MCWD. In D.10-12-016, the Commission issued California American Water a Certificate of Public Convenience and Necessity (“CPCN”) for certain facilities that the Company would own and operate as part of the RDP (the “California American Water-only facilities”). Components of the RDP other than the California American Water-only facilities would be owned and operated by the public agency participants in the RDP. Following the authority granted in D.09-12-017 and D.10-12-016, California American Water, along with MCWRA and MCWD, undertook activities to pursue the RDP.⁶

In or about April 2011, allegations emerged that MCWRA Director Steve Collins had a conflict of interest under Government Code Section 1090 and possibly other California statutes with respect to the WPA and other RDP-related agreements. The conflict of interest allegations called into question the legal validity of these RDP-related agreements. Mr. Collins resigned as a member of MCWRA’s board of directors⁷ on April 11, 2011. Beginning in July and continuing through August 2011, the three participants in the RDP exchanged correspondence

⁶ California American Water entered into a number of agreements with MCWRA and MCWD, including, *inter alia*, a Reimbursement Agreement, approved by the Commission in D.10-08-008, and a Credit Line Agreement, which was provided for as part of the WPA, approved in D.10-12-016. For purposes of this Application, the WPA, the Reimbursement Agreement, the settlement agreement approved in D.10-12-016, the Credit Line Agreement, and a Project Management Agreement also called for in the WPA are referred to collectively as the “RDP Agreements.” Under the Reimbursement Agreement, California American Water would advance funds to MCWRA and MCWD to allow their continued participation in development of a water supply solution for the Company’s Monterey County District, subject to reimbursement of such advances by those agencies, with interest, from proceeds from financings to be obtained by them for the project. Under the Credit Line Agreement, California American Water would make available to the public agency participants in the RDP funds from a line of credit in order to manage the short-term financial liquidity needs of the public agencies related to RDP implementation and operation. MCWD is not a party to the Settlement Agreement, approval of which is sought in this Application and which, accordingly, does not address any costs incurred by MCWD with respect to the RDP.

⁷ MCWRA has a dual board governing structure, with an elected board of supervisors that appoints a board of directors. See D.10-12-016, Concl. of Law 12, pp.194 – 195. Collins was a member of MCWRA’s board of directors.

regarding the project. This correspondence revealed disagreements about the status of compliance and development efforts, some traceable to the Collins issues. On August 12, 2011, California American Water sent MCWRA and MCWD a notice of default alleging the public agencies' failure to obtain by May 2011 all or partial financing for their respective obligations under and as called for in the WPA. In late August 2011, the RDP parties pursued Commission-sponsored mediation to address the disputes among them that were impacting the future of the RDP. On September 28, 2011, the Company notified MCWRA and MCWD, by letter, that it was exercising its right to terminate the RDP Agreements, asserting anticipatory breach.

After almost *five* months of mediation, the RDP Parties were unable to reach a three-party agreement to settle their disputed issues and the Commission-sponsored mediation ended on January 16, 2012. Based on the unsuccessful mediation process, California American Water publicly announced on January 17, 2012 that it had withdrawn its support for the RDP and that it would consider alternative desalination projects.

On April 23, 2012, California American Water filed A.12-04-019 for approval of a new Monterey Peninsula Water Supply Project ("MPWSP") and for authorization to recover in rates all present and future costs of this new desalination project. On July 12, 2012, the Commission issued D.12-07-008, which closed A.04-09-019, affirmed that it would not be reasonable to force California American Water to pursue the RDP, and established how California American Water would recover costs incurred before and after January 17, 2012 – the date California American Water announced its withdrawal of support for the RDP. That decision noted disputes among the parties as to amounts California American Water asserted the public agencies owed it and the interpretation of the requirements of the WPA and related agreements. The decision also noted that the RDP parties were meeting to determine whether issues concerning disputed costs and

interpretation of the RDP-related agreements could be settled and the Commission encouraged such settlement discussions. D.12-07-008, p. 20.

The demise of the RDP resulted in a number of lawsuits among the RDP participants and the County. In June 2012, the County commenced a lawsuit against California American Water entitled *County of Monterey v. California American Water Company*, San Francisco Superior Court Case No. CGC-12-521875, seeking a judicial determination regarding the application of Chapter 10.72 of the Monterey County Code – which prohibited a privately-held company from owning or operating any desalination facility in Monterey County – to California American Water and its MPWSP proposed in A.12-04-019.⁸ In October 2012, California American Water commenced a lawsuit against MCWRA and MCWD entitled *California American Water Company v. Marina Coast Water District, et al.*, Monterey County Superior Court Case No. M-120053, seeking, among other things, a judicial determination of the validity of the various RDP-related agreements in light of the Collins conflict of interest issues. This lawsuit was subsequently transferred to San Francisco County Superior Court and remains pending as Case No. CGC-13-528312.

Following California American Water's withdrawal of support for the RDP, the RDP Parties continued discussions to resolve remaining issues. On March 26, 2012, the RDP Parties participated in a confidential session with a neutral JAMS mediator. However, notwithstanding multiple efforts to settle the disputed issues, no settlement has been reached with MCWD. Despite the lack of success of the previously-referenced mediation before the Commission and other efforts to reach a resolution of all issues among all RDP Parties, California American Water, the County, and MCWRA remained interested in fulfilling the public interest by reaching

⁸ On December 11, 2012, the County filed a request for dismissal, with prejudice, of the entire action. San Francisco County Superior Court subsequently approved the request and removed Case No. CGC-12-521875 from its calendar on December 13, 2012.

a settlement that would advance development of a water supply project for the Monterey County District while resolving the disputes among them. Accordingly, throughout much of 2012, they diligently continued discussions (which at times included MCWD) in pursuit of such a resolution. Although a resolution which included MCWD remained elusive, after several months of negotiations, on December 4, 2012, California American Water, the County, and MCWRA entered into the Settlement Agreement, stating that they:

[B]elieve it is in their mutual best interest and the best interests of their customers, taxpayers and constituents to settle, without admitting liability, all claims the Parties have against each other and jointly move forward towards an alternate project that will lead to the successful development of a long-term water supply, compliance with [the SWRCB's order regarding the Carmel River] and avoidance of litigation, while preserving their respective claims and defenses against [MCWD] and others. Settlement Agreement, Recital U, p. 3.

In reaching a settlement, the Settling Parties concluded that the public interest demanded they find a way to close the gap between them, reach resolution of their disputes, and get on with the most important task at hand: providing a dependable water supply for the Monterey Peninsula. The Settlement Agreement, which reflects the settlement discussions concerning disputed costs and contract interpretation that the Commission encouraged in D.12-07-008, represents a comprehensive agreement which concerns much more than disputed costs and associated cost recovery. Just as important as the settlement of the disputed costs and contract interpretation issues are the Settling Parties' respective commitments to cooperate in constructing and implementing California American Water's new long-term water supply project, the MPWSP.

As is the case with many settlement agreements the Commission considers, the Settlement Agreement reflects compromises from both sides of the ongoing dispute, and was reached in lieu of continuing on a path that would have embroiled the Settling Parties in

expensive and time-consuming litigation; litigation that in this circumstance might have even further delayed development and implementation of a water supply solution for the Company's Monterey District. The Company for its part, and MCWRA and the County for theirs, believed strongly in the rectitude of their positions concerning all issues, including but not limited to whether contractual requirements to obtain financing had been satisfied, whether and how the parties continued to be obligated under the WPA, whether good faith actions were taken with respect to activities needed to develop the RDP, and any import of the Collins conflict of interest. To provide two specific examples of the many compromises agreed to by the Settling Parties and reflected in the Settlement Agreement: (1) MCWRA agrees in paragraph 4F of the Settlement Agreement to forego inclusion in the settlement costs those RDP costs incurred by MCWRA before January 1, 2009 as well as legal costs incurred addressing the Collins conflict of interest issue; and (2) California American Water acknowledges the responsibilities of the County and MCWRA to protect water in the Salinas River Groundwater Basin and prevent its export under the Agency Act and agrees to groundwater monitoring for the MPWSP.

Paragraphs 17 and 19 of the Settlement Agreement provide that the Settling Parties will cooperate in the preparation of, and California American Water will file, an application for approval of the Settlement Agreement in accordance with D.12-07-008. The Settlement Agreement states that if the Settlement Agreement is not approved "in a manner acceptable to the Parties within 18 months" of the execution date (December 4, 2012), then either Settling Party may terminate the Settlement Agreement. In accordance with those provisions, California American Water files this Application for approval of the Settlement Agreement. The pertinent terms of the Settlement Agreement are detailed in Part III. below.

B. Recovery of Costs Related to the RDP

In a series of decisions, the Commission has prescribed the procedures by which California American Water is to seek the recovery of costs incurred in connection with the RDP. First, in D.03-09-022, the Commission authorized a memorandum account and acknowledged that “the most appropriate manner to track these costs [related to a long-term water supply project] is for [the Company] to establish a memorandum account to book costs associated with initial, preliminary engineering studies, environmental studies, analysis of necessary permitting requirements, and development of cost estimates for the Coastal Water Project.” D.03-09-022, p. 22.

Later, in D.06-12-040, the Commission established a procedure for recovery by California American Water of the costs tracked in the memorandum account authorized in D.03-09-022. That decision authorized California American Water to establish a Special Request 1 Surcharge Balancing Account and a corresponding Special Request 1 Surcharge by which the Company could recover reasonable and prudent preconstruction costs for the Coastal Water Project tracked in the memorandum account.

In D.10-08-008, the Commission approved the Reimbursement Agreement and authorized California American Water to record the funds advanced to MCWRA, with interest, in the Special Request 1 Surcharge Balancing Account. If the RDP was built, the agencies would repay the advances, with interest, and “to the extent that these funds are not repaid, it is reasonable for ratepayers to be responsible for funding costs associated with the Environmental and Test Well Development Scopes of Work . . .” D.10-08-008, p. 20.

Finally, in D.12-07-008, the decision that found that it would not be reasonable for California American Water to pursue the RDP and closed A.04-09-019, the Commission

established how California American Water would recover costs incurred before and after January 17, 2012 – the date California American Water announced its withdrawal of support for the RDP. Ordering Paragraph 2 of that decision, as modified by D.12-11-031, provides, in pertinent part, that:

To the extent that there are disputed costs related to the Reimbursement Agreement or the Line of Credit under the [WPA] of the [RDP] . . . and associated cost recovery must be addressed by this Commission, [California American Water] should file a new application . . . The recoverability of costs that have been incurred in Application (A.) 04-09-019 related to the [RDP] will be examined in other proceedings . . .” D.12-11-031, Ordering Paragraph 2, p.15; and *see* generally 14 – 16. Italics in original removed.

Pursuant to the procedure established by the foregoing Commission decisions, California American Water files this Application for approval of the Settlement Agreement and the provisions therein addressing the settlement amongst the Settling Parties of disputed costs related to the RDP.

III. THE SETTLEMENT AGREEMENT

The Settlement Agreement is reasonable, consistent with the law, and in the public interest. The Commission has long recognized “the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.”⁹ As the Commission has explained:

This policy [favoring settlements] supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results.¹⁰

Furthermore, the Settling Parties agree that the Settlement Agreement complies with the Commission’s standard of review which is “whether the settlement, *taken as a whole* is in the public interest.”¹¹

⁹ D.05-03-022, pp.8-9; *see also* D.06-06-067, p.14 and D.08-01-043, p.73.

¹⁰*Id.* at 9.

In assessing settlements, we consider individual settlement provisions but, in light of strong public policy favoring settlements, we do not base our conclusion on whether any single provision is necessarily the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome.¹²

The Settlement Agreement is the product of Commission-sponsored mediation and extensive negotiations between the Settling Parties. Without admitting liability, the Settling Parties have decided that it would be in both their and the public's best interests to resolve the disputed issues addressed in the Settlement Agreement without continuing or further pursuing litigation. As demonstrated by the document itself, and as discussed in the following sections, the Settling Parties addressed a wide range of issues that relate to the failed RDP.

Paragraph 1 of the Settlement Agreement provides:

The purpose of this Agreement is to settle and resolve claims and issues between the Parties and promote the development, construction and operation of a successful water project to provide a long-term, stable source of potable water for Monterey County. In recognition of the substantial benefits of the settlement memorialized in this Agreement, including but not limited to the parties' meaningful progress towards development of a long-term water supply for Monterey County, compliance with the [SWRCB's order regarding the Carmel River] and avoidance of time-consuming and expensive litigation and, in acknowledgement of the reasonable and prudent nature of [MCWRA's] . . . expenditures to be reimbursed under this Agreement, the payments and debt forgiveness described in paragraphs 4A, 4B and 4C of this Agreement (collectively "Settlement Costs") are deemed reasonable and prudent costs that should be collected through [California American Water's] Special Request 1 Surcharge.

California American Water requests that the Commission 1) approve the Settlement Agreement as reasonable, consistent with law, and in the public interest; and 2) authorize the transfer of approximately \$2.68 million of these costs, plus interest and fees of \$98,027, to the Special Request Surcharge 1 Balancing Account. These reasonable Settlement Agreement costs are described below.

¹¹ D.96-09-097, 1996 Cal. PUC LEXIS 971, *17 (internal citations omitted, emphasis added).

¹² D.12-03-015, p.19.

A. Individual and Mutual Non-Financial Obligations under the Settlement Agreement

The Settlement Agreement contains both non-financial and financial obligations. Turning first to the former, the Settlement Agreement, which notes in Paragraph 1 (quoted above) that one purpose of the Settlement Agreement is to promote the development of a long-term stable supply of potable water for Monterey County, contains a number of important individual and joint covenants regarding the MPWSP that justify its approval by the Commission.

The County and MCWRA agree not to oppose the MPWSP, subject to the rights of their officials to exercise their rights of free expression and independent judgment and their discretion under CEQA, the Monterey County Water Resources Agency Act (“Agency Act”),¹³ or other statutes. Settlement Agreement, Paragraphs 6E and 14, pp. 8 and 10. The County and MCWRA also pledge their cooperation with the Company in processing all applications necessary for the MPWSP. Settlement Agreement, Paragraph 2B, p. 4. This pledge is effectuated in Paragraphs 4I, 5, and 6 of the Settlement Agreement. The Company must submit to a number of governmental agencies applications for various project approvals. Settlement Agreement, Paragraph 4I, p. 6. When such applications have been submitted, the County and MCWRA promise to “expeditiously and in good faith process or assist in the processing” of CEQA reviews and assessments, applications for permits or amendments to the County General Plan, the County Zoning Ordinance, the County Local Development Plan, and a broad range of other applications for permits and requests for approvals necessary for the permitting, construction and operation of the MPWSP. Settlement Agreement, Paragraph 5, pp. 6 – 7. The County and MCWRA also pledge other support in connection with processing of applications submitted by

¹³ California Water Code, Appendix, Chapter 52.

the Company, including prompt responses to inquiries from other agencies regarding the MPWSP; attendance by senior-level planning staff at proceedings before other agencies; sharing with the Company any written MCWRA responses to other agencies before submission of the responses to those agencies; and collaboration between the Company, appropriate Commission staff, and the SWRCB with respect to the MPWSP application. Settlement Agreement, Paragraphs 6A – 6D, p. 8.

The Company also agrees to a number of non-financial obligations in the Settlement Agreement. It promises to “support the Governance Committee of the Monterey Peninsula Regional Water Authority consistent with [California American Water’s] October 26, 2012 filing with the [Commission].” Settlement Agreement, Paragraph 4J, p. 6. On March 8, 2013, California American Water entered into this Governance Committee Agreement, appended hereto as Exhibit E, with the Monterey Peninsula Regional Water Authority (“MPRWA”), the Monterey Peninsula Water Management District (“MPWMD”), and the County. The parties to the Governance Committee Agreement agreed to form the MPWSP Governance Committee comprised of representatives of the signatories to “ensure efficient and effective public input into the development and operation of the [MPWSP].” *Agreement to Form the Monterey Peninsula Water Supply Project Governance Committee*, Section I, p. 1.¹⁴

The Company also agrees that nothing in the Settlement Agreement prevents the County or MCWRA “from imposing customary indemnity and defense conditions on the approval of any permit or discretionary entitlement.” Settlement Agreement, Paragraph 5E, p. 8. The Company also agrees in Paragraph 8 to explore and, if feasible, attempt to use source water from what is

¹⁴ The Governance Agreement was also included in Exhibit CA-21, the Rebuttal Testimony of Richard C. Svindland, in the Monterey Peninsula Water Supply Proceeding. See A.12-04-019, Rebuttal Testimony of Richard C. Svindland, dated March 8, 2013, Attachment 4. California American Water requests official notice of the Governance Agreement as support for its fulfillment of its obligations under Paragraph 4J. Rule 13.9 of the Commission’s Rules of Practice and Procedure; Cal. Ev. Code §§ 452(c) & (d) and 453.

known as the “shallow aquifer” rather than any deeper aquifers, in an effort not to implicate or at least minimize implications for the SalinasRiverGroundwaterBasin. Settlement Agreement, Paragraph 8, p. 9. In compliance with the Agency Act, the Company agrees in Paragraph 9 to develop, with appropriate public input, and pay for a groundwater monitoring plan. Settlement Agreement, Paragraph 9, p. 9. And as previously referenced, the Company acknowledges the rights of the officials of the County and Agency to exercise their independent judgment and discretion in making decisions with respect to taking actions concerning the MPWSP. Settlement Agreement, Paragraph 14, p. 10.

Finally, the Settling Parties agree to undertake certain joint or shared non-financial obligations. Pursuant to Paragraph 10, the Settling Parties agree to consult on other approvals or findings that may be necessary or appropriate for the MPWSP. Settlement Agreement, Paragraph 10, p. 7. Paragraph 7 addresses the thorny issue of Commission preemption of Chapter 10.72 of the Monterey County Code and permits the County and MCWRA to seek to preserve local control over water issues in Monterey County by seeking rehearing or appellate review of D.12-10-030,¹⁵ the Commission’s decision declaring that County ordinance to be preempted, but the Settling Parties agree that regardless of the outcome of any such challenge, that decision remains binding on them with regard to the Settlement Agreement and MPWSP, and the County ordinance will not apply to the Company or the MPWSP. Settlement Agreement, Paragraph 7, p. 8. The Settling Parties also agree to broad mutual releases with certain reserved rights related to possible future litigation interpleading the funds in the Trust Account (discussed

¹⁵ The County filed such an application for rehearing on November 30, 2012 in A.12-04-019.

further below) or against the Settling Parties by non-settling and other third parties. Settlement Agreement, Paragraph 15, pp. 10 – 12.¹⁶

All together, the foregoing non-financial obligations of the Settling Parties represent critical commitments to forego costly and time-consuming litigation and to cooperatively work toward achieving a long-term water supply solution for the Monterey Peninsula.

B. Financial Provisions of the Settlement Agreement

Paragraph 11 of the Settlement Agreement provides that:

Upon [Commission] approval of this [Settlement] Agreement and performance of the CAW obligations with respect to the Settlement Costs, the Settlement Costs will be transferred to the [Special Request 1 Surcharge] Balancing Account for recovery from customers through the 15% monthly surcharge approved by the CPUC in Decision No. 11-09-039 or through such other recovery mechanism as may be approved by the CPUC.

As previously noted, this Application seeks Commission approval of this regulatory treatment of the Settlement Costs. Those costs are discussed in more detail in the next several sections of this Application.

i. Paragraph 4A – Costs Advanced Pursuant to the Reimbursement and Credit Line Agreements.

Paragraph 4A of the Settlement Agreement provides that on the Approval Date – defined by Paragraph 3 of the Settlement Agreement as the date that the Commission approves the payment and recovery provisions of the Settlement Agreement – the amounts owed by MCWRA to California American Water for sums advanced by California American Water under the RDP Agreements, “together with any and all interest or charges accrued thereon, shall be forgiven.” As of the date of execution of the Settlement Agreement, those amounts, not including interest or

¹⁶ The Settlement Agreement does not affect judicial proceedings that adjudicate the validity of the RDP Agreements such as the case that is currently pending in San Francisco County Superior Court, discussed in Part II.A *supra*.

fees, total \$1,918,034. Pursuant to Paragraph 4F of the Settlement Agreement, that amount does not include any costs incurred before January 1, 2009.

The amounts previously advanced by California American Water to MCWRA under the RDP Agreements include costs to pay outside legal fees, County Counsel fees, employee labor costs, employee travel expenses, other expenses and other outside consultant expense, all of which were incurred with respect to the negotiation, approval, development, and implementation of the RDP Agreements and the RDP. Interest on the total amount advanced to MCWRA is discussed in subsection D. below. A summary of these charges is attached to this Application as Exhibit B.

Forgiving certain sums advanced to MCWRA as part of a settlement of disputed outstanding costs and reimbursements is appropriate as this was one of the compromises between the Settling Parties. Although litigation between both the Settling Parties and MCWD is still pending before the San Francisco Superior Court, the Settling Parties chose to resolve the outstanding costs and reimbursements addressed in the Settlement Agreement instead of waiting for the resolution of the litigation. This compromise reduces the need to incur additional costs related to litigation and also allows the Settling Parties to move forward in finding a water supply solution for Monterey County.

ii. Paragraph 4B Costs – Costs Incurred and Not Yet Reimbursed.

Paragraph 4B of the Settlement Agreement provides that within 30 days after the Approval Date, California American Water will pay to MCWRA the amount of \$764,557.¹⁷ This amount represents payments related to the negotiation, approval, development, and implementation of the RDP Agreements and the RDP, made by MCWRA to pay outside legal

¹⁷ On or about May 23, 2013, the Settling Parties entered into an amendment modifying the amount set forth in Paragraph 4B of the Settlement Agreement from \$779,967.47 to \$764,557. This application reflects the new amount that California American Water shall remit to MCWRA under Paragraph 4B.

fees, County Counsel fees, Agency labor costs, Agency employee travel expenses, other expenses and other outside consultant expense that are over and above those expenses that were previously funded by California American Water through the RDP Agreements. Again, pursuant to Paragraph 4F of the Settlement Agreement, that amount does not include any costs incurred before January 1, 2009. These yet-to-be-reimbursed costs will not earn interest until after the Approval Date since they have not yet been advanced by California American Water. A summary of these charges is attached to this Application as Exhibit B.

iii. Paragraph 4C Costs –Separate Application for Approval for Recovery of Costs Held in Special Trust Account.

Paragraph 4C of the Settlement Agreement requires California American Water to deposit \$718,315.44 into a special trust account to be maintained by the Monterey County Auditor-Controller. The trust account will function as an escrow account with the funds to be used to pay possible future claims of MCWRA’s contractors or consultants arising under the RDP or the RDP Agreements.

California American Water does not seek recovery at this time of the funds to be deposited into the trust account. However, it is a prudent and reasonable course of action to reserve funds against the possibility, however remote, of an adverse judgment on any claims by MCWRA’s consultants or contractors.

Paragraph 4D of the Settlement Agreement addresses disbursement of funds from the Trust Account. That provision requires that if MCWRA designates funds from the Trust Account to pay the claims of its contractors or consultants, “unless the parties agree otherwise, [California American Water] shall promptly request approval from the [Commission] to recover any such designated funds . . . [and such] designated funds shall be released to [MCWRA] from the Trust Account within 5 business days following [Commission]approval of [the Company’s]

request” for recovery of the funds to pay MCWRA’s contractors or consultants. California American Water reserves the right not to seek recovery of the funds, in which case the Settling Parties can agree to the release of the funds to MCWRA without prior Commission approval.

Escrow will not remain open indefinitely. Under Paragraph 4E of the Settlement Agreement, “[e]scrow shall close when all funds in the Trust Account have been disbursed or three years after the Approval Date [of this Application], whichever occurs first, provided that, if litigation is pending between [MCWRA] and any of [its] contractors or consultants concerning the RDP . . . on either of those dates, escrow shall remain open until the litigation is resolved.”

iv. Interest.

Paragraph 11 of the Settlement Agreement provides that the amount advanced by California American Water to MCWRA pursuant to the Reimbursement Agreement, which is \$1,173,744, will continue to accrue interest after the execution of the Settlement Agreement at the rate authorized for the Reimbursement Agreement in D.10-08-008 and D.11-09-039. As of April 30, 2013, interest applicable to the funds advanced under the Reimbursement Agreement totals \$84,095. Similarly, the \$744,290 advanced by California American Water to MCWRA pursuant to the Credit Line Agreement will also continue to accrue interest after the execution of the Settlement Agreement at the rate authorized for the Credit Line Agreement in D.10-08-008 and D.11-09-039. As of December 31, 2012, interest and fees applicable to the funds advanced under the Credit Line Agreement total \$13,932.¹⁸ Interest and fees applicable to the amounts advanced pursuant to the RDP Agreements, as authorized by the Commission, currently totals \$98,027.

IV. SB 960 SCOPING MEMORANDUM

A. Category? Ratesetting

¹⁸This amount is comprised of \$3,623 of interest and \$10,308 for an unused credit line fee.

B. Are Evidentiary Hearings Necessary? The Company does not believe evidentiary hearings are required. However, if the Commission deems hearings necessary, California American Water would expect to introduce the following evidentiary items in support of this Application:

- This Application, copies of which have been or will be delivered to the Commission;
- Prepared witness qualifications and direct testimony of employees of California American Water and possibly other witnesses to support the Application;
- Written and oral rebuttal testimony and related exhibits in support of California American Water’s specific requests.

C. Are Public Witness Hearings Necessary?No.

D. Issues. The issues presented by this Application are (1) whether the Settlement Agreement should be approved as reasonable, consistent with law, and in the public interest, and (2) whether the certain costs set forth in the Settlement Agreement and described in this Application are eligible to be transferred to the Special Request 1 Surcharge Balancing Account for recovery.

E. Schedule. Pursuant to Rule 2.1(c) of the Commission’s Rules of Practice and Procedure, California American Water submits the procedural schedule below for the Commission’s consideration of the relief requested.

Day	Event	Date
0	Application Filed	May 24, 2013
3-6	Docketing and Formal Public Notice	
35	Comments/Protests to Application	June 28, 2013

Day	Event	Date
	due	
45	Prehearing Conference (if preliminarily determined that a hearing is needed)	July 8, 2013
90	ALJ's Proposed Decision Mailed (if no hearings required)	August 22, 2013
110	Comments on Proposed Decision due (if no hearings required)	September 11, 2013
115	Reply Comments to Proposed Decision Comments due (if no hearings required)	September 16, 2013
140	Proposed Decision posted to Commission's Agenda for Commission vote (if no hearings required)	October 11, 2013
	<u>Alternative Schedule if hearings required</u>	
75	DRA Report/Intervenor Testimony (if hearings required)	August 7, 2013
90	Rebuttal Testimony (if hearings required)	August 22, 2013
122	Evidentiary Hearing (if hearings required)	September 23, 2013
140	Opening Brief (if hearings required)	October 11, 2013
147	Reply Brief (if hearings required)	October 18, 2013
167	ALJ's Proposed Decision Mailed (if hearings required)	November 7, 2013
187	Comments on Proposed Decision due (if hearings required)	November 27, 2013
192	Reply Comments to Proposed Decision Comments due (if hearings required)	December 2, 2013

Day	Event	Date
	required)	
210	Proposed Decision posted to Commission's Agenda for Commission vote (if hearings required)	December 20, 2013

V. OTHER FORMAL MATTERS AND PROCEDURAL REQUIREMENTS

A. Applicant's legal name is California-American Water Company. California American Water's corporate office and mailing address is 1033 B Avenue, Suite 200, Coronado, California 92118.

B. Applicant California American Water, a California corporation organized under the laws of the State of California on December 7, 1965, is a Class A regulated water utility organized and operating under the laws of the State of California. California American Water provides water service in various areas in the following California counties: San Diego, Los Angeles, Ventura, Monterey, Sonoma, Sacramento, and Placer.

C. A certified copy of California American Water's articles of incorporation was filed with the Commission on January 6, 1966 in connection with Application 48170. A certified copy of an amendment to California American Water's articles of incorporation was filed with the Commission on November 30, 1989 in connection with Application 89-11-036. A certified copy of an Amendment to California American Water's Articles of Incorporation dated October 3, 2001 and filed with the office of the California Secretary of State on October 4, 2001, was filed with the Commission on February 28, 2002, in

connection with Application 02-02-030. The Articles of Incorporation have not been subsequently amended.

D. None of the persons described in Section 2 of General Order No. 104-A has a material financial interest in any transaction involving the purchase of materials or equipment or the contracting, arranging, or paying for construction, maintenance work, or service of any kind to which Applicant has been a party during the period subsequent to the filing of California American Water's last Annual Report with this Commission or to which California American Water proposed to become a party at the conclusion of the year covered by such Annual Report.

VI. CORRESPONDENCE CONCERNING APPLICATION

Correspondence and communications concerning this Application should be addressed to the following person:

Robert G. MacLean
President
California-American Water Company
1033 B Avenue, Suite 200
Coronado, CA, 92118
Telephone: (619) 522-6361
Email: robert.macleam@amwater.com

Copies of such correspondence and communications should be sent to:

Sarah E. Leeper
Javier E. Naranjo
333 Hayes Street, Suite 202
San Francisco, CA94102
Telephone: (415) 863-2470
Facsimile: (415) 863-0615
Email: sarah.leeper@amwater.com
javier.naranjo@amwater.com

AND

Jose E. Guzman, Jr.
Guzman Law Offices
288 Third Street, #306
Oakland, CA94607
Telephone: (415) 515-4034
Email: jeguzmanjr@gmail.com

VII. SERVICE

A copy of this Application has been served upon the service list attached hereto. Attached to the copy of the Application being served is the Proof of Service. The Application's supporting testimony has also been served upon the service list attached hereto.

VIII. NOTICE

California American Water will provide customers with notice if directed by the Commission following the filing of this Application. The recovery proposed in this Application will not result in an increase in monthly bills. Rather, it will result in an established surcharge sun-setting at a later date. Under the terms of the Settlement Agreement, the expenses related to complying with the Settlement Agreement will be added to the amount being recovered through the existing Special Request 1 Surcharge, adopted by the Commission in D.06-12-040, as modified by D.11-09-039. Special Request 1 Surcharge will remain fixed at a flat percentage (15%) of the customer's bill. The Commission has already approved the use of the Special Request 1 Surcharge for recovering costs related to the RDP and customers have been noticed of this surcharge in accordance with the requirements of the Commission's Rules of Practice and Procedure. Due to the unique circumstances of the proposed Settlement Agreement, California American Water seeks to balance the need to keep its customers informed with the goals of not overwhelming customers with information that could lead to confusion and keeping unnecessary costs to a minimum. For these reasons, no additional customer mail on the Special Request 1 Surcharge will be provided at this time.

IX. EXHIBITS

- A. Settlement Agreement and Amendment.
- B. Summary of Costs addressed in the Settlement Agreement and requested to be transferred to the Company's Special Request 1 Balancing Account.
- C. Non-Confidential Invoices.
- D. Confidential Invoices.
- E. *Agreement to Form the Monterey Peninsula Water Supply Project Governance Committee.*

X. CONCLUSION

As described herein, California American Water believes that the Settlement Agreement is reasonable, consistent with the law, and in the public interest, and should therefore be approved by the Commission. The overall value of the Settlement Agreement – in terms of both financial and non-financial obligations – cannot be overemphasized. The Settlement Agreement allows the Settling Parties to forego costly and time-consuming litigation and to focus all their efforts and resources toward achieving a long-term water supply solution for the Monterey Peninsula, a solution which so far has proved elusive.

Therefore, for all of the reasons discussed in this Application, California American Water respectfully requests that the Commission issue its order:

- A. Approving the Settlement Agreement.
- B. Authorizing California American Water to transfer to the Special Request 1 Surcharge Balancing Account the sum of approximately \$2.68 million of costs addressed in the Settlement Agreement, plus \$98,027 of interest and fees associated with such costs, for recovery through rates; and

C. Granting such other and further relief as the Commission deems appropriate.

Dated: May 24, 2013

Respectfully submitted,

By: /s/ Jose E. Guzman, Jr.
Jose E. Guzman, Jr.

Attorney for Applicant
California-American Water Company

NOTICE OF AVAILABILITY

Exhibit C in support of California American Water's Application exceeds 50 pages in length and is greater than 3.5 megabytes in size. Therefore, pursuant to Rule 1.9(d) (1)-(2), California American Water hereby provides this Notice of Availability of Exhibit C in support of the Application. Upon written request, California American Water will provide access to Exhibit C, which can be found on the Manatt, Phelps, & Phillips, LLP's Extranet, to parties on whom this Notice of Availability is served. Parties that wish to access Exhibit C in support of the Application should contact:

Margaret Bailes
Paralegal
California-American Water Company
333 Hayes Street, Suite 202
San Francisco, CA 94102
Phone: (415) 863-2470
Fax: (415) 863-0615
Email: margaret.bailes@amwater.com

Exhibits to the Application

Exhibit C – Non-Confidential Invoices

California American Water will serve (but not file) direct testimony in support of the Application. Parties needing a copy of direct testimony should also contact Ms. Bailes.

Dated: May 24, 2013

By: 
Margaret Bailes

VERIFICATION

I, the undersigned, say:

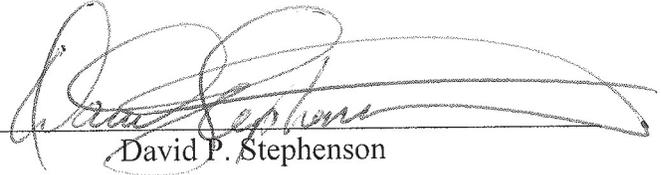
I am an officer of CALIFORNIA-AMERICAN WATER COMPANY, a corporation, and am authorized to make this verification for and on behalf of CALIFORNIA-AMERICAN WATER COMPANY, and I make this verification for that reason. I have read the foregoing application, am informed, and believe the matters therein are true, and, on that ground, allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Sacramento, California, May 24, 2013.

CALIFORNIA-AMERICAN WATER COMPANY

By



David P. Stephenson