

Decision 11-05-017 May 5, 2011

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

In the Matter of the Application of California-American Water Company (U 210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coaster Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates.

Application 04-09-019  
(Filed September 20, 2004;  
amended July 14, 2005)

**DECISION GRANTING INTERVENOR COMPENSATION TO SURFRIDER  
FOUNDATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 10-12-016**

<b>Claimant: Surfrider Foundation (Surfrider)</b>	<b>For contribution to Decision (D.) 10-12-016</b>
<b>Claimed: 333,477.00</b>	<b>Awarded: \$285,818.23 (reduced 14%)</b>
<b>Assigned Commissioner: Michael R. Peevey</b>	<b>Assigned ALJ: Angela K. Minkin</b>

**PART I: PROCEDURAL ISSUES**

**A. Brief Description of Decision:** Decision Approving Regional Project, Adopting Settlement Agreement, And Issuing Certificate of Public Convenience and Necessity for California-American Water Facilities.

**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

<b>Verified By Claimant</b>		<b>CPUC Verified</b>
<b>Timely filing of Notice of Intent (NOI) to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	March 13, 2009	Yes
2. Other Specified Date for NOI:		
3. Date NOI Filed:	April 13, 2009	Yes
4. Was the notice of intent timely filed?		Yes. See ALJ ruling of April 27, 2009, reference in Section C, Comment 1.

<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	A.04-09-019	Yes
6. Date of ALJ ruling:	April 27, 2009	Yes
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	A.04-01-019	Yes
10. Date of ALJ ruling:	May 29, 2009	Yes. <i>See</i> Section C, Comment 1.
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision	D.10-12-016	Yes
14. Date of Issuance of Final Decision:	December 3, 2010	Yes
15. File date of compensation request:	January 31, 2011 <sup>1</sup>	Yes
16. Was the request for compensation timely?		

### C. Surfrider’s Additional Comments on Part I:

#	Claimant	CPUC	Comment
1	X		On April 27, 2009, the ALJ ruled that Surfrider was eligible for intervenor compensation but requested additional information from Surfrider to bring its NOI in compliance with Rule 17.1(e). On May 13, 2009, Surfrider filed and served the required information. On May 29, 2009, a subsequent ruling was issued which reaffirmed a finding of significant financial hardship pursuant to § 1802(g).

## PART II: SUBSTANTIAL CONTRIBUTION

### A. Claimant’s description of its claimed contribution to the decision:

Contribution	Citation to Decision or Record (Provided by Claimant)	Showing Accepted by CPUC
1. Settlement Agreement adopted by Commission deemed Surfrider’s contribution significant (“The Parties	Settlement Agreement, at 16, para.10.7 D.10-12-016 adopting Settlement Agreement.	Yes

<sup>1</sup> Surfrider’s claim was initially filed on January 13, 2011, but was amended and re-filed on February 14, 2011. We use the January 31, 2011 date to assess the issue of timeliness.

<p>agree that intervenor Surfrider has made a substantial contribution to this Proceeding, including but not limited to provision of a full economic analysis of the alternative projects and contributing to the Parties' understanding of the risks and benefits of the alternative projects.”)</p>		
<p>2. Commission adopted the Settlement Agreement as proposed with no significant modifications.</p>	<p>D.10-12-016, at 155.</p>	<p>Yes</p>
<p>3. “The Regional Project provides the most expeditious, feasible, and cost-effective alternative to address the water supply constraints on the Monterey Peninsula.”</p>	<p>D.10-12-016, at 169, Finding 72.</p>	<p>Yes</p>
<p>5. “The Regional Project “best serves...the environment,[and]... is by far the least costly and the most environmentally benign [alternative].”</p>	<p>D.10-12-016, at 57; See also D.10-12-016, Appendix B, at 4-5.</p>	<p>Yes</p>
<p>6. The Moss Landing Project is “unlikely to be permitted” due to the controversial once through cooling design which results in significant impingement and entrainment of numerous fish and aquatic organism; and is “subject to increasingly restrictive regulations.”</p>	<p>D.10-12-016, at 38-39; at 162, Finding 34; Appendix B, at 80-82.</p>	<p>Yes</p>
<p>7. “As to the non Cal-Am portions of the Regional Project, we find that the applicable and feasible mitigation measures described in the CEQA Findings can and should be (and in most cases, already have been) imposed as conditions of approval by MCWD, MCWRA and/or MRWPCA on the Regional Project.”</p>	<p>Decision, at 165, Finding 49; at 166, Finding 54.</p>	<p>Yes</p>
<p>8. “We find that the Regional Project is the most feasible alternative that provides a viable solution to the water constraints on the Monterey Peninsula, given the adverse social and economic consequences associated with taking no action or delayed action, in the timeframe imposed by the State Water Resource Control Board’s Cease and</p>	<p>Decision, at 168, Finding 65.</p>	<p>Yes</p>

Desist Order.”		
9. “As contemplated by the Settling Parties and set forth in Section 6 of the Water Purchase Agreement, the Advisory Committee would consist of a representative of Cal-Am, MCWD, and MCWRA, each of whom would have full decision-making authority because they are defined as Parties under the Water Purchase Agreement” and “The WPA also provides for a “Municipal Advisor” to serve on the Advisory Committee. Under the WPA, the Municipal Advisor will be two representatives appointed by the Cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside...”	Decision, at 179-181, Findings 136-146.	Yes
10. “Section 8.2(a) of the Water Purchase Agreement requires that at least one vertical test well and one slant well be drilled to obtain more precise data regarding the operation of the wells and the salinity of the water extracted from the wells.”	Decision at 183, Finding 163.	Yes
11. “There is little practical experience with slant wells, and drilling and operating both a vertical test well and a slant test well should provide important information.”	Decision, at 185, Finding 169. See also Finding 170 and at 187, Finding 181, and at 188, Finding 188.	Yes

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?</b>	Yes	Yes
<b>b. Were there other parties to the proceeding?</b>	Yes	Yes
<b>c. If so, provide name of other parties:</b> <i>See</i> Service List. Other parties with similar interest were Citizens for Public Water and The Public Trust Alliance.		Yes
<b>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of other parties:</b>  Earlier in the proceedings, Surfrider coordinated efforts with DRA to ensure no duplication of efforts was occurring. For example, Ms. Venskus would regularly telephone DRA representatives to discuss dividing up the workload to ensure the respective organizations’ experts were not		We agree that Surfrider took reasonable steps to avoid duplication and that its participation

<p>addressing identical issues or considerations. In addition, Ms. Venskus reviewed data requests propounded upon the applicant to ensure similar requests were not made by Surfrider; and responsive information provided by the parties were mined for potential use by Surfrider’s experts if relevant to their developing testimony.</p> <p>Surfrider also coordinated efforts with Public Trust Alliance to include public trust doctrine considerations in testimony and before the commission. (See ALJ Ruling of May 29, 2009.)</p> <p>Later in the process, especially after the settlement agreement was signed, moved into the record, and subsequently contested, Surfrider demonstrated its conservative bias against duplication of efforts by collaborating with MCWD’s expert to develop testimony for the contested litigation over the settlement agreement (<i>see e.g.</i>, Kasower and Labriola timesheets describing efforts) instead of participating directly. For example, most of the issues raised by DRA in the litigation involving the settlement agreement were not germane to Surfrider’s concerns, except with respect to issues pertaining to the Project’s water wells and the effect of sea level rise and erosion rates upon the type of wells drilled. MCWD also showed interest in this topic, so Surfrider’s expert assisted MCWD’s expert in developing testimony for these issues.</p> <p>Surfrider also did not agree with DRA’s position that Moss Landing was a viable contingency project that should be adopted by the Commission, and worked with the pro-settlement litigating parties to develop testimony as to why the Moss Landing Project was not feasible as a “contingency project.”</p> <p>As another example, Surfrider elected not to file an opening brief in support of the settlement agreement since such efforts would have been duplicative of the other Settling Parties’. (See Surfrider Foundation’s Reply Brief in Support of Motion to Adopt Settlement Agreement, July 16, 2010, at 2.)</p>	<p>supplemented, complemented, or contributed to that of other parties. We make no reductions to Surfrider’s claim as a result of duplication of other parties’ efforts.</p>
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**C. Additional Comments on Part II:**

#	Claimant	CPUC	Comment
1	X	We agree with Surfrider’s claimed participation detailed here.	The Commission has previously recognized that where parties have engaged in case preparation and settlement activities, eligible parties may receive “full compensation for pre-hearing activity, even where the settlement is not adopted.” D.06-06-048; D.96-05-064, at 4. In this case, not only were Surfrider’s recommendations recognized by the applicant and successfully incorporated into the adopted settlement, but the Commission adopted the Settlement Agreement as proposed with no significant modifications. D.10-12-016, at 155. Thus, Surfrider is eligible for full compensation for all of Surfrider’s case preparation and

			<p>settlement activities contributing to D.10-12-016; D.06-06-048; D.96-05-064, at 4.</p> <p>Not only did Surfrider’s counsel and consultants propose and advocate for an alternative ultimately accepted by the applicant and Settling Parties, but Surfrider's experts and consultants informed and influenced the parties’ perceptions and understanding of the alternative projects, leading to the applicant’s and ultimately the Commission’s adoption of the Regional Project alternative advocated by Surfrider. Settlement Agreement, at 16, paragraph 10.7.</p> <p>Surfrider’s participation in the settlement negotiations contributed to mitigating the environmental and rate impact on the customers it represents. (D.10-12-016 [Commission noted that least costly alternative given the circumstances].) Surfrider’s participation was critical to this proceeding, as referenced by other settling parties in oral arguments and at status conferences, and therefore made a substantial contribution to D.10-12-016.</p>
2, 5	X	We agree with Surfrider’s claimed participation detailed here.	<p>Rule 12.6 of the Commission’s Rules of Practice and Procedure prohibits Surfrider from disclosing the details of negotiations that led to the adopted settlement. However, the information in this request meets the requirements for an award of compensation for intervenors who participate in settling a proceeding. D.98-11-009; D.06-06-048.</p> <p>Surfrider was a signatory and “Settling Party” to the settlement agreement adopted in D.10-12-016.</p> <p>The Commission found that Surfrider was an "active part[y] in this proceeding." D.10-12-016, at 57; see D.98-11-009. Surfrider participated in ADR helping to resolve the most contentious issues confronting the Commission. D.10-12-016, at 10.</p> <p>Surfrider, in coordination with the other settling parties "worked together to reach a settlement of the many difficult issues in this proceeding" and each of the Settling Parties “agreed to compromises.” (Joint Motion to Approve Settlement Agreement, April 7, 2010 at 13.) The result was the settling of a politically thorny and "difficult case." <i>Ibid.</i></p>

**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

**A. General Claim of Reasonableness (§§ 1801 & 1806):**

<b>Claimant’s explanation of how its costs of participation bore a</b>	<b>CPUC Verified</b>
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<p><b>reasonable relationship with benefits realized through claimant's participation</b></p>	
<p>The settlement agreement adopted the Regional Project Alternative. The record does not contain Surfrider's prepared testimony, because ADR was initiated prior to the commencement of the evidentiary hearings. However, Surfrider's work to demonstrate that the then-preferred project by the applicant (Moss Landing Project) was significantly more costly and environmentally destructive included an emphasis on the problems with once through cooling technology and its uncertain regulatory future, and was a factor in the applicant's decision to enter into settlement negotiations. (Joint Motion to Adopt Settlement Agreement, April 7, 2010 at 13-14.)</p> <p>The benefits to ratepayers as a result of Surfrider's participation cannot be quantified. See D.06-06-048, at 6. This is especially true given the environmental costs associated with Cal-Am's continued water transfers from the Carmel River and the fact that time is of the essence to permit, finance and construct a water supply solution on the Monterey Peninsula. (See D.10-12-016, at 194, Findings 8 and 11; at 195, Finding 17; at 196, Findings 20 and 21; at 202, Finding 61.) Surfrider believes the ratepayers will save substantial amounts of money in the form of avoided penalties associated with the State Water Board's Cease and Desist Order, federal agencies' Endangered Species Act enforcement actions, as well as avoided litigation associated with the Moss Landing or North Marina alternative projects. These avoided penalties, fees and costs are many times higher (in fact on orders of magnitude greater) than the compensation requested by Surfrider. Thus, Surfrider's efforts have been productive.</p> <p>Surfrider's efforts in this portion of the proceeding are similar to those deemed awardable to Surfrider in D.10-06-045, at page 16, wherein the Commission stated:</p> <p>In many proceedings such as this one, the precise monetary benefits to ratepayers are hard to quantify. However, environmental consequences of the CWP are of concern to many ratepayers. The efforts of intervenors such as Surfrider's are productive when they culminate in the elimination or minimization of harmful environmental consequences or when the record is influenced by the intervenor's participation.</p> <p>Surfrider has maintained detailed records of time spent on this proceeding, and has segregated hours by time spent by advocates and experts, as set forth in Attachments to this Request. The hours claimed are reasonable given the scope of this proceeding and the complexity of the issues presented. The fees and costs requested herein do not duplicate fees and costs requested in Surfrider's prior compensation request for work in the CEQA portion of A.04-09-019. (See Request, March 30, 2010.)</p> <p>All of the activities itemized in Attachment A were related to</p>	<p>We agree that monetary benefits to ratepayers are difficult to quantify, given a proceeding of this nature involving environmental issues and costs. We make reductions to Surfrider's claim in areas we have <b>highlighted</b> here and describe in detail our reasoning in Part III, Sectioning C of this claim.</p> <p>After the reductions and disallowances we make to Surfrider's claim, the remaining hours and costs demonstrate that Surfrider's participation was productive and reasonable, and should be compensated.</p>

understanding the issues, preparing and presenting expert opinion, coordinating work with other parties, drafting briefs, appearing and participating at hearings, workshops, conferences and settlement meetings, and negotiating settlement terms. The Commission in other proceedings has previously deemed allowable all such costs incurred in participating in settlement. (D.06-06-048, at 4 [Commission recognizes “full compensation for pre-hearing activity” leading to settlement]; D.06-06-048; D.96-05-064, at 4.)

Although the amount Surfrider hereby requests is more than initially estimated in its Notice of Intent to Claim Compensation, Surfrider is only asking the Commission to award what is fair and reasonable with respect to the non-CEQA portion of the Phase 2 Proceeding, as is hereby reflected, explained, and justified herein and attachments. Surfrider entered this proceeding in March, 2009 and began preparing for litigation soon thereafter. Seven months later, after discovery was in full swing and a number of cost workshops were held wherein the parties hammered out their differences over cost assumptions, the litigation was placed on hold and ADR commenced at the request of the parties. (ALJ Minkin Ruling, November 5, 2009.) Settlement negotiations continued for the next five months, until April, 2010. The extent of the settlement negotiations and required meetings, hearings, and conferences leading up to the settling parties’ final signatures could not have been anticipated by Surfrider at the time of filing its NOI in April, 2009. Nor could Surfrider have anticipated that the settlement agreement would be aggressively contested which necessitated litigation involving the settlement agreement itself. It would be unwise to impose such a burden of foresight on an intervenor, especially considering the tremendous effort undertaken by each and every one of the settling parties to reach agreement and attempt to address the opposition’s remaining concerns. See D.10-12-016, at 10.

Nor would it have been appropriate for Surfrider to file an amended Notice of Intent to Claim Compensation after ADR had commenced. The confidential and sensitive nature of the settlement negotiations would have precluded Surfrider from providing a sufficient basis for an estimate.

Moreover, a ruling denying compensation for Surfrider’s efforts would discourage intervening parties from participating in timely and complex negotiations that could lead to settlement of a matter before the Commission, for fear such investment would ultimately be non-compensable. (See D.06-06-048.)

The Commission recognized the complex nature of the proceeding, reaching its decision following an “extensive vetting of the severity of the water supply problem,” and after “extensive review of the information supplied by the parties over many months, extensive discussion, and a thorough analysis of the agreements, the circumstances surrounding those agreements, vigorous public vetting, a review of the applicable law, and an

assessment of the political and economic situation surrounding this application.” D.10-12-016 at 5.

Surfrider’s participation included “keeping on top of actions and information as such became known during the proceeding.” (D.09-10-094, at 17.) This is evident in expert Steve Kasower’s itemized timesheet included in Attachment A, wherein he explains the numerous revisions to the cost estimates required equally numerous revisions to his economic analyses. Admittedly, Mr. Kasower’s fees are considerably more than anticipated in Surfrider’s NOI. However, these hours are justified by Mr. Kasower’s detailed timesheets, as well as the settlement agreement, which explicitly recognizes Surfrider’s significant contribution to the negotiations included a “full economic analysis of the alternative projects.” (Settlement Agreement, at 16, para.10.7.)

Nevertheless, Ms. Venskus and Mr. Kasower jointly performed a reasonableness review of Mr. Kasower’s timesheets. Upon reviewing his time records for reasonableness, Mr. Kasower determined that a number of tasks could have been performed more efficiently and thus reduced his billed time by 23%, or a total of \$52,235. In addition, Ms. Venskus’ reasonableness review rendered a reduction in fees claimed by the law firm for:

- Ms. Venskus in the amount of 2.3 hours for non-Compensation Request work and 10.1 hours for Compensation Request work (pre-amended compensation request). In addition, Ms. Venskus did not bill for any time related to this amended compensation request, of which approximately 4.1 hours in attorney and 4.2 paralegal time was spent.
- Ms. Labriola in the amount of 1.8 hours for non-Compensation Request work.
- Ms. Moeller in the amount of 1.3 hours for non-Compensation Request work and 2.4 hours for Compensation Request work.
- Even though eligible to do so, note that Surfrider is NOT requesting any fees related to paralegal services, which totaled approximately 110 hours for this proceeding, at a value of approximately \$11,000.
- In addition, Ms. Venskus did not bill for all time spent in teleconferences with Mr. Kasower regarding his work on developing testimony and economic analyses, nor in teleconferences with the client’s staff, such as Ms. Damron.

Furthermore, Surfrider significantly reduced the potential compensation request by working to reduce duplication of effort amongst advocates and experts. For example, in an effort to reduce expense, Ms. Venskus exercised her discretion in determining and directing when experts and

<p>attorneys should and should not make personal appearances at the CPUC headquarters, based upon her professional judgment as to when an expert witness and/or attorney was needed for the monitoring or participating in a given proceeding event. (<i>See e.g.</i>, Surfrider’s Statement RE: February 9, 2010 Status Conference, filed 2/8/10.)</p> <p>As a further example, Mr. Kasower did not attend a number of proceeding hearings and conferences when it was clear Surfrider’s expert participation was not essential to the Commission proceedings. In fact, out of the approximately 15 personal appearances (workshops, conferences, ADR meetings, and hearings) listed in Kasower’s and Venskus’ invoices, there were only a few in which both advocates and experts appeared. Travel time should not be reduced, especially because Surfrider’s attorneys were specifically requested to appear and testify on certain occasions by the Settling Co-Parties (such as the Status Conference of November 10, 2010 in which Ms. Venskus travelled 10 hours for oral argument in San Francisco on behalf of Settling Parties MRWPCA, Public Trust Alliance, Citizens for Public Water and Surfrider Foundation) and further because Surfrider’s attorneys made appearances by phone or simply did not attend at all when practicable and feasible (see e.g., no Surfrider attorneys attended July, 2009 Public Participation Workshops in Monterey and Seaside; Attorney Labriola appeared telephonically for ADR meeting on 2/4/10; Venskus not billing for ADR meeting of February 3, 2010; no Surfrider attorneys attended February 21, 28, or March 12-15, 2010 ADR meetings; no Surfrider attorneys attended May and June, 2010 evidentiary hearings re: Settlement; no Surfrider attorneys attended Commissioner requested All Parties Meetings; Surfrider attorney personal appearance reasonable and necessary for Prehearing Conference and Cost Workshops; Surfrider attorney personal appearance reasonable and necessary for first all-party Settlement conference and ADR meeting in December 2009). Thus, Surfrider’s fees associated with travel time are reasonable and productive and should be fully compensated.</p>	
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**B. Specific Claim\*:**

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
Sabrina Venskus	2009	97.8	350	D.10-06-045	34,230.00	2009	90.7	330	29,931.00
Sabrina Venskus	2010	33.1	350	D.10-06-045	11,585.00	2010	33.1	330	10,923.00
Sabrina Venskus	2011	1.6	350	ALJ-267	560.00	2011	1.6	330	528.00
Emilee	2009	7.4	295	D.10-06-045	2,183.00	2009	5.5	295	1,622.50

Moeller									
<i>We find these 1.9 hours of Ms. Moeller, originally classified as attorney work, to be paralegal work and compensate them as such. See also Section C.</i>						2009	1.9	110	209.00
Theresa Labriola	2010	21.3	285	D.10-06-045	6,070.50	2010	21.3	285	6,070.50
<b>Subtotal: \$54,628.50</b>						<b>Subtotal: \$49,284.00</b>			
EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
Steven Kasower	2009	388.0	325	Requested in Claim	126,100.00	2009	324.0	315	102,060.00
Steven Kasower	2010	263.05	325	Requested in Claim	85,491.25	2010	243.05	315	76,560.75
Bill Powers	2009	16.0	200	D.08-12-015	3,200.00	2009	16.0	200	3,200.00
Heather Cooley	2009	53.0	175	Requested in Claim	9,275.00	2009	53.0	175	9,275.00
Lucy Allen	2009	22.0	75	Requested in Claim	1,650.00	2009	22.0	75	1,650.00
Peter Gleick	2009	4.0	250	Requested in Claim	1,000.00	2009	4.0	250	1,000.00
Mathew Heberger	2009	77.0	175	Requested in Claim	13,475.00	2009	77.0	175	13,475.00
<b>Subtotal: \$240,191.25</b>						<b>Subtotal: \$207,220.75</b>			
OTHER FEES (Travel)									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
Sabrina Venskus	2009	18.0	175	½ D.10-06-045 rate	3,150.00	2009	18.0	165	2,970.00
Sabrina Venskus	2010	22.0	175	½ D.10-06-045 rate	3,850.00	2010	18.0	165	2,970.00
Theresa Labriola	2010	7.0	142.5	½ D.10-06-045 rate	997.50	2010	6.0	142.5	855.00
Steven Kasower	2009	23.5	162.5	½ rate approved here	3,818.75	2009	16.5	157.5	2,598.75
Steven Kasower	2010	52.5	162.5	½ rate approved here	8,531.25	2010	52.5	157.5	8,268.75
<b>Subtotal: \$20,347.50</b>						<b>Subtotal: 17,662.50</b>			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$

Sabrina Venskus	2010	1.9	175	½ D.10-06-045 rate	332.50	2010	.6	165	99.00
Sabrina Venskus	2011	6.9	175	½ D.10-06-045 rate	1,207.50	2011	6.9	165	1,138.50
Emilee Moeller	2011	14.5	147.5	½ D.10-06-045 rate	2,138.75	2011	11.7	147.5	1,725.75
<i>We find these 2.8 hours of Ms. Moeller, originally classified as attorney work, to be paralegal work and compensate them as such. See also Section C.</i>						2011	2.8	55	154.00
<b>Subtotal: \$3,678.75</b>						<b>Subtotal: \$3,117.25</b>			
<b>COSTS</b>									
#	Item	Detail			Amount \$	Amount \$			
1	Venskus & Associates Travel	Includes airfare, lodging and related costs.			2,276.00	1,899.44			
2	Steven Kasower Travel	Includes lodging and related costs.			12,350.00	6,628.95			
3	Postage and Printing	Delivery costs, exhibits, pleadings and other work specific to this proceeding.			5.00	5.34			
<b>Subtotal: \$14,631.00</b>						<b>Subtotal: \$8,533.73</b>			
<b>TOTAL REQUEST: \$333,477</b>						<b>TOTAL AWARD: \$285,818.23</b>			
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Reasonable travel and claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>									

**C. CPUC Adoptions and Disallowances:**

**Adoptions**

**Hourly rates**

**Sabrina Venskus:** We previously approved an hourly rate of \$330 for Venskus in D.10-06-045 for 2009 and 2010 and determine that to be a reasonable rate for 2011. Ms. Venskus requested that we increase her rate for the work done in this phase of the proceeding during 2009 and 2010. However, we are not convinced that an increase is required. We confirm the previously approved rate of \$330 as appropriate for Ms. Venskus. Furthermore, Commission Resolution ALJ-267 denied any cost of living raise for intervenor compensation rates for calendar year 2011.

**Emilee Moeller, Theresa Labriola, and Bill Powers:** We previously approved rates of \$295, \$285, and \$200, respectively, for these two attorneys and engineer (D.08-04-010). As Commission Resolution ALJ-267 denied any cost of living raise for intervenor compensation rates for calendar year 2011, we maintain the rates previously approved.

**Steven Kasower:** Surfrider requested a rate of \$325 for Mr. Kasower for cost and economic analyses performed in 2009 and 2010. Mr. Kasower has over 25 years of experience directly related to the work necessary to resolve the issues in this proceeding. Mr. Kasower is currently the Principal of Water Energy Partners Company focusing on the water/energy nexus. Over the course of his career, Mr. Kasower has been Senior Research Economist at the University of California, Santa Cruz; Desalination Planning Manager and Area Planning Officer with the United States Bureau of Reclamation; Recycling Project Coordinator at Big Bear Area Regional Wastewater Agency; and Area Water Recycling Specialist and Senior Staff Economist with the California Department of Water Resources. Mr. Kasower received his Bachelor of Arts Degree in Economics from the San Francisco State University and a Master of Arts in Economics from the University of California, Davis. In 1988, Mr. Kasower completed his class work and examinations leading to a Ph.D. in Economics with a specialization in Energy and Natural Resource Economics. We approve a rate of \$315 here, which is comparable to rates we have approved for experts of the same caliber (D.08-04-010).

**Lucy Allen:** Surfrider requested a rate of \$75 for Ms. Allen, research associate with Pacific Institute. Ms. Allen worked as a Laboratory Assistant at the Lawrence Berkeley National Laboratory and has recently received her bachelor degree in Conservation and Resource Studies from the University of California, Berkeley. Ms. Allen has worked at the Pacific Institute since 2008 and has published several research papers on water conservation policy and related topics. We approve a rate of \$75, which is comparable to rates we have approved for experts of the same caliber (D.08-04-010).

**Heather Cooley:** Surfrider requested a rate of \$175 for Ms. Cooley, the Water Program Co-Director at Pacific Institute. Ms. Cooley has been working on similar water conservation issues for seven years, first at the University of California, Berkeley and then the Lawrence Berkeley National Laboratory. Ms. Cooley received a Bachelor of Science in Molecular and Environmental Biology and a Master of Science in Energy and Resources, both from the University of California, Berkeley. M. Cooley has written several research papers on water and climate change. She has also written a research paper on desalination. We approve a rate of \$175, which is comparable to rates we have approved for experts of the same caliber (D.08-04-010).

**Peter Gleick:** Surfrider requested a rate of \$250 for Dr. Gleick, co-founder and president of Pacific Institute. Dr. Gleick has over 20 years of experience working in the field of water and climate change. Dr. Gleick began his career at the Lawrence Berkeley National Laboratory as a Research and

Teaching Associate before becoming Deputy Assistant on Energy and Environment to the Governor of California. He then went on to become a Research Associate for the Energy and Resource Group at the University of California, Berkeley. Dr. Gleick graduated cum laude, with distinction from Yale University with a Bachelor of Science in Engineering and Applied Sciences. He also has a Master of Science in Energy and Resources from the University of California, Berkeley. In 1986, Dr. Gleick received his Ph.D. in Energy and Resources. We approve a rate of \$250, which is comparable to rates we have approved for experts of the same caliber (D.08-04-010).

**Matthew Heberger:** Surfrider requested a rate of \$175 for Mr. Heberger, Research Associate with the Pacific Institute's Water Program, performing geographic and demographic analyses for health, water use and conservation projects. Mr. Heberger, a licensed professional engineer, has over 10 years of experience working in the field of water resources engineering. After working in West Africa for the United States Peace Corp training local farmers to install and maintain low-cost pumps, he returned to the U.S. where he worked as a Coordinator for the International Network on Participatory Irrigation Management in D.C. before becoming a Research Assistant for Tufts University, Water Resources Engineer for six years at Camp Dresser & McKee. He graduated from Tufts University with a Master of Science in Water Resources Engineering. Mr. Heberger received his Bachelor of Science in Agricultural and Biological Engineering from Cornell University. We approve a rate of \$175, which is comparable to rates we have approved for experts of the same caliber (D.08-04-010).

### **Disallowances**

#### **Reasonableness of Billed Hours**

We find the bulk of Surfrider's billed hours to be reasonable except in the following cases:

- We disallow 7.1 hours for Ms. Venskus' work that we find duplicative or excessive.
- We disallow 4 hours of Ms. Venskus' travel time in 2010 that we find excessive.
- We disallow 1 hour of Ms. Labriola's travel time in 2010 that we find excessive.
- We disallow 4.7 hours of Ms. Moeller's time that we find to be equivalent to that of paralegal work and thus adjust the rate to \$110 for those hours.
- We disallow 84 hours (64 hrs 2009; 20 hrs 2010) of Mr. Kasower's time that we find to be excessive or, in some cases, lacking adequate information and adjust his hours to reflect so.
- We disallow 4 hours of Mr. Kasower's time participating in the 7/13 – 7/14 Public Participation Hearings (PPHs) in Monterey and Seaside. We likewise disallow 7 hours of his travel time to these PPHs. We have consistently indicated since 1996<sup>2</sup> that we do not award compensation for the time related to PPHs, as such hearings are an opportunity for non-parties to address the Commission.

#### **Miscalculations / Typographical Errors**

Venskus & Associates travel costs listed on line 1 of the "Costs" section are understated compared to the itemization in Attachment B of Surfrider's filed claim. Total compensation requested in Attachment B for Venskus & Associates equals \$2,293.71. Mr. Kasower's travel costs listed on line 2 of the "Costs" sections are overstated compared to the itemization in Attachment B of Surfrider's filed claim. Total compensation requested in Attachment B for Mr. Kasower's travel costs equals

<sup>2</sup> See Commission Decisions D.96-08-040, 67 CPUC2d 562, 577, D.04-08-041 at 12, and D.10-07-015.

\$8,778.35. Thus the total *requested* compensation for travel by Surfrider, including \$5.34 in printing costs, equals \$11,077.40.

**Disallowance of Travel Costs**

Our rules do not permit compensation for meals,<sup>3</sup> travel considered to be routine commute or travel costs related to PPHs. In keeping with past practices, we disallow all requests by Surfrider for compensation for meals. We consider routine commuting to be 120 miles or less each way. Despite being less than 120 miles each way, we do not consider Mr. Kasower’s travel from Sacramento to San Francisco to be routine, but rather trips that would not have occurred but for Surfrider’s participation in this proceeding.<sup>4</sup>

Disallowed:     \$1,683.46   All Meals  
                         \$465.94     Lodging, and personal vehicle use for 7/13/2009-7/15/2009 PPH

**PART IV: OPPOSITIONS AND COMMENTS**

**A. Opposition: Did any party oppose the claim?**

No

**B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?**

Yes

**FINDINGS OF FACT**

1. Claimant has made a substantial contribution to D.10-12-016.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$285,818.23.

**CONCLUSION OF LAW**

1. The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

<sup>3</sup> See Commission Decisions; D.07-08-021, D.07-12-020, and D.09-11-029.

<sup>4</sup> See Commission Decision 09-03-044.

**ORDER**

1. Claimant is awarded \$285,818.23.
2. Within 30 days of the effective date of this decision, California-American Water Company shall pay claimant the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 29, the 75<sup>th</sup> day after the filing of claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated May 5, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
CATHERINE J.K. SANDOVAL  
MARK FERRON  
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO  
Commissioner

**APPENDIX**  
**Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D1105017	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D1012016	
<b>Proceeding(s):</b>	A0409019	
<b>Author:</b>	ALJ Angela K. Minkin	
<b>Payer(s):</b>	California-American Water Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Surfrider Foundation	2/14/09	\$333,477.00	\$285,818.23	No	Adjusted hourly rates, excessive hours, duplication of effort, re-classification of attorney work as paralegal work, costs related to Public Participation Hearings, and non-compensable meal costs.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Lucy	Allen	Expert	Surfrider Foundation	\$75	2009	\$75
Heather	Cooley	Expert	Surfrider Foundation	\$175	2009	\$175
Peter	Gleick	Expert	Surfrider Foundation	\$250	2009	\$250
Matthew	Heberger	Expert	Surfrider Foundation	\$175	2009	\$175
Steve	Kasower	Expert	Surfrider Foundation	\$325	2009/2010	\$315
Theresa	Labriola	Attorney	Surfrider Foundation	\$285	2010	\$285
Emilee	Moeller	Attorney	Surfrider Foundation	\$295	2009/2010	\$295
Bill	Powers	Expert	Surfrider Foundation	\$200	2009	\$200
Sabrina	Venskus	Attorney	Surfrider Foundation	\$350	2009/2011	\$330

**(END OF APPENDIX)**