

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 a Certificate of Public
Convenience and Necessity to Construct
and Operate its Coastal 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)

**REPLY BRIEF
OF THE DIVISION OF RATEPAYER ADVOCATES**

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Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the schedule set by Administrative Law Judge Minkin ("ALJ"), the Division of Ratepayer Advocates ("DRA") files its Reply Brief on the Settling Parties'¹ Motion to Approve Settlement Agreement. DRA's Reply Brief addresses new arguments raised by California American Water Company ("Cal Am"), Marina Coast Water District ("MCWD") and Monterey County Water Resource Agency ("MCWRA") in their Opening Briefs. For the most part, DRA will not reargue positions previously addressed in detail in its May 27, 2010, Comments on the Settlement, its May 27, 2010, Proposed Modification to the Settlement, and its July 3, 2010, Opening Brief.

¹ The Settling Parties are California American Water Company ("Cal Am"), Monterey County Water Resources Agency ("MCWRA"), Marina Coast Water District ("MCWD"), Monterey Regional Water Pollution Control Agency, Surfrider Foundation, The Public Trust Alliance and Citizens for Public Water.

I. DRA HAS ALWAYS SUPPORTED THE REGIONAL PROJECT

A. Contrary to the Parties' claims, DRA does not seek to "kill" the Regional Project.

In a desperate attempt to try to discredit DRA and its proposed modifications to the Settlement Agreement and Water Purchase Agreement, MCWRA, MCWD and Cal Am try to portray DRA as a party that is trying to "kill" the Regional Project.² The Parties have resorted to name-calling and hyperbole to try to persuade the Commission that DRA is anti-Regional Project and that the Commission should, therefore, disregard DRA's recommendations. MCWD even goes so far as saying that DRA are "disingenuous naysayers" and "spoilers" who are out to destroy the Regional Project. Incredulously, MCWRA alleges that DRA is "driven by a more sinister purpose."

In fact, DRA's purpose now-- and throughout this proceeding--has been to carry out its statutory mandate to protect Cal Am's ratepayers. As stated in its Opening Brief, DRA's duty is to Cal Am ratepayers and it must make every effort to ensure that the Regional Project is fair to Cal Am customers and that it does not place unacceptable costs and risks on Cal Am ratepayers.

Despite the Settling Parties' rhetoric and false claims, DRA has never expressed anything other than support for a fair and equitable Regional Project. DRA finds it offensive that the Parties would even allege that DRA is trying to kill the project. Without DRA's initiative, there would be no Regional Project.³ DRA has invested years of work, thousands of staff hours and over half-a-million dollars from its own budget to support the formation of a regional project. Regrettably, the fruit of DRA's investment may be misappropriated by opportunists seeking to take advantage of the tough spot Cal Am ratepayers are in.

Either the Parties do not understand the fundamental nature of DRA's concerns, or the Parties believe that insulting DRA and its staff will somehow marginalize DRA's

² MCWRA Opening Brief, p. 25, MCWD Opening Brief p. 2, 12, 58.; Cal Am Opening Brief, p. 3.

³ See DRA Comments, pp. 3, 12 -13 for DRA's sponsorship of Regional Dialogues, and DRA objectives in doing so.

legitimate concerns in the eyes of the Commission. DRA assumes it must be the latter, because the community fully understood DRA's concerns as evidenced by their strong support for DRA's recommendations during the Public Participation Hearings.

II. THE AGREEMENT IS NOT SO FRAGILE IT CANNOT BE MODIFIED

The Parties portray the Settlement Agreement and Water Purchase Agreement as fragile agreements that will fall to pieces if the Commission modifies them in any way. The Parties are attempting to extract from the Commission a flawed, unfair decision by saying, if you dare to modify this Agreement, the Parties will walk away and there will be no Regional Desalination Project. The Parties are attempting to hold the project hostage by telling the Commission, if you dare to modify this Agreement, the Parties will walk away and there will be no Regional Desalination Project.

In considering the Parties' threats, the Commission should look at what MCWD and MCWRA have to lose if they refuse to accept any Commission modification to the Settlement. MCWD will not get reimbursed for all of its past expenses on its own desalination project. MCWD and MCWRA also will not get reimbursed for the Regional Project costs they have spent to date or for their exorbitant legal expenses spent during this proceeding opposing ratepayer interests. Through December 31, 2009, these activities amount to \$6.6 million, with \$5.8 million spent by MCWD alone.⁴ Furthermore, since December 31, 2009, costs have been mounting. The Commission can expect the Parties to seek recovery of millions more for their 2010 actions opposing ratepayer interests.

If MCWD or MCWRA walk away from this project, MCWD will need to pursue and pay for some other water supply project, without financing from Cal Am ratepayers.

⁴ MCWD Ex. 301, Exhibit D stating that total Pre-effective Date Costs and Expenses amount to \$6.6 million.

Because MCWD’s prior desalination plant project was tossed in “the recycle bin,”⁵ MCWD would need to start anew.

In addition, if MCWD and MCWRA walk away from the project, their own communities would feel the economic effects that they say the “No Project” alternative would have on the area. As MCWD points out, their witnesses’ testimony on the economic impact of the “No Project” alternative “conservatively focused on the Monterey Peninsula, not the entire county.”⁶ The “No Project” alternative would affect the economy and the revenue stream of Monterey County as a whole, including the MCWD community.

The Commission should not be misled into accepting the Parties’ argument that this agreement is so fragile that it cannot be modified. As DRA stated in its Opening Brief, the Commission has other options should the Agencies decide to play “spoilers” by rejecting Commission modifications.

III. THIS UNDERLYING ISSUE IS NOT ABOUT TRUST -- IT IS ABOUT PROTECTING CAL AM RATEPAYERS

In their Opening Briefs, the MCWD and MCWRA argue that their disagreement with DRA is one of trust, arguing that DRA does not trust the public agencies.⁷ The Parties also argue that the Commission must trust these agencies to do the right thing.⁸

The Parties miss the point. The issue is not about whether the agencies’ expenses will be reasonable, but rather what incentives exist within the agreement to ensure that the agencies keep costs as low as possible for Cal Am ratepayers. It is not that DRA does not trust the agencies to act in the interest of their ratepayers; it is that there is nothing in the settlement that establishes any duty or accountability of MCWD or MCWRA to Cal Am’s ratepayers. DRA’s concern continues to be ensuring that Cal Am’s ratepayers are

⁵ MCWD/Heitzman, 12 RT 1162

⁶ MCWD Opening Brief, p. 8.

⁷ MCWRA Opening Brief, pp. 6, 12; MCWD Opening Brief, pp. 26, 32, 40-41.

⁸ MCWRA Opening Brief, p. 13

properly protected by the terms of this 94-year contract. Unfortunately, as written, the agreement maximizes the protections afforded to MCWD and MCWRA and their customers while placing all of the risk and prospective expenses on Cal Am's customers. Thus, the issue is protecting Cal Am's ratepayers, not trust.

MCWD discusses in detail its obligation to charge only reasonable rates to its ratepayers.² What does this have to do with the price of Product Water to Cal Am ratepayers? Nothing! MCWD's responsibilities to protect its own customers have nothing to do with what MCWD charges Cal Am's ratepayers under the terms of the Settlement Agreement. Until MCWD takes a Permanent Allocation of water, which Parties now say may *never* occur,¹⁰ MCWD will not be charging its customers for Product Water, and Cal Am ratepayers will be picking up all of the costs. MCWD's claim that the courts are available if laws are violated is irrelevant because these laws do not apply to what MCWD charges Cal Am ratepayers.

Because MCWD can be in complete compliance with the laws as they relate to its own ratepayers without providing protection to Cal Am ratepayers, MCWD could make decisions that protect its ratepayers but that impose substantial costs on Cal Am's ratepayers. For example, it may be reasonable for MCWD and MCWRA to use all vertical wells instead of slant wells to ensure a low cost augmentation to its water supply under its Agreed Allocation. But, is that decision the least costly to Cal Am ratepayers? Not necessarily, and nothing in the Settlement requires MCWRA to consider the costs to Cal Am ratepayers when considering which type of intake well to use for the Regional Project.

Cal Am ratepayers are not assured just and reasonable rates as required by Public Utilities Code §§ 451, 454 and 728 if the Commission relies simply on "trust" as the only protection for Cal Am ratepayers. As Commissioner Grueneich candidly stated in her

² MCWD Opening Brief, pp 26-29.

¹⁰ See MCWRA Opening Brief, p. 27 stating that even if MCWD needs additional water for development of Fort Ord, it "has the ability to obtain potable water from groundwater and other sources. Ex. 305 (MCWD/Heitzman)"

dissent to the adoption of the Commission’s decision adopting a solar Photovoltaic program for Pacific Gas and Electric Company, “I am not willing to bet almost \$ 1.5 billion of ratepayer money on a ‘trust me’ approach for ratepayer protection which does nothing to drive down the cost.”¹¹

IV. A PER-ACRE-FOOT COST CAP WILL ASSURE CAL AM RATES ARE JUST AND REASONABLE

A. A cost cap is more than just a tool that allows the project to move forward.

Cal Am argues that the cost cap is nothing more than a tool for the Settling Parties and the Commission to rely on to allow the project to move forward. Cal Am’s position demonstrates the fundamental difference that exists between DRA and the Parties. DRA views the cost cap as more than a mere tool. DRA views the cost cap as a realistic budgeting process that provides the Parties, and their contractors, with a clear incentive to control costs. Moreover, the price cap provides the Commission with a means to assure that rates are just and reasonable for Cal Am ratepayers, something that the Commission is required to do under law. The absence of a cost cap, as proposed by MCWD,¹² would prevent the Commission from ensuring just and reasonable rates for the entire 94-year duration of the WPA. DRA's proposed price cap would allow the Commission to entrust Cal Am's water supply to the agencies while exercising its authority to ensure just and reasonable rates for Cal Am ratepayers.

B. The Parties' presentation to the State Water Resources Control Board shows a per-acre cost of the desalination plant.

MCWRA attempts to rebut DRA’s position that the Parties’ own presentation to the State Water Resources Control Board (“SWRCB”) supports DRA’s \$2,200 cost cap by arguing that the presentation “was for illustrative and comparative purposes to show

¹¹ Application of Pacific Gas and Electric Company to Implement and Recover in Rates the Costs of its Photovoltaic (PV) Program (U39E), 2010 Cal. PUC LEXIS 137 (D.10-04-052) Dissent.

¹² MCWD Opening Brief, p. 59

the differences between the costs of the different projects.”¹³ Apparently, it is MCWRA’s position that those looking at this presentation are supposed to ignore the cost-per-acre-foot numbers it presented and instead focus on only the relative difference in price between the various proposed projects.

MCWRA’s argument is comical. What good is a comparison of costs between the various projects if the underlying assumptions and cost figures are not correct? If all the parties wanted to demonstrate to the SWRCB was that the Regional Project was less costly than Moss Landing or the North Marina Alternative, why didn’t they just submit a graph that compared the total capital cost of the three projects? When the Parties provide a comparison of the “cost per acre-foot” of the projects it is logical for one to conclude that what is presented is the “cost per acre-foot” of each project. Nothing in the presentation provides any disclaimer or proviso that the “costs per acre-foot” were not in fact the “cost per acre-foot” of the projects.

MCWRA seems to believe that because Mr. Weeks provided testimony saying that the purpose of this presentation was only for illustrative and comparative purposes the issue is resolved and the presentation cannot be used to support DRA’s cost cap proposal. What Mr. Weeks’ testimony omits, however, is as interesting as what he does say. For example, Mr. Weeks’ testimony does not state that he or any of the Parties told the SWRCB that the only purpose of the February 2010 graph was to show the State Water Resources Control Board a comparison of costs between projects or that the “cost per acre-foot” estimates were not the cost of the water produced from the plant.

DRA’s cost cap recommendation is in line with the cost estimates the Parties presented to the SWRCB in February 2010.

C. DRA’s cost-cap estimate and cost-cap recommendation are not inconsistent.

MCWRA and Cal Am both argue that DRA’s cost cap of \$2,200 for Product Water is inconsistent with DRA’s cost estimates that show potential costs greatly

¹³ MCWRA Opening Brief, p. 26.

exceeding the proposed cap.¹⁴ Rather than being contradictory, DRA testimony graphically demonstrates why creating a cap is absolutely necessary. If the Commission authorizes the Parties' proposed plant cost cap, the Commission would be authorizing the parties to charge Cal Am ratepayers up to \$8,000 per acre foot or more for the Product Water. DRA's per-acre-foot cost cap recommendation is an attempt to help contain costs and assure that they do not go as high as the Parties' proposed cost cap would permit. Moreover, it provides a mechanism for the Commission to assure that the resulting charges to Cal Am ratepayers will result in just and reasonable rates because the costs will not be able to exceed an authorized per-acre-foot cap without further reasonableness review.

DRA notes that Cal Am also appears to have misunderstood DRA's cost-cap proposal, as it states that DRA's witness admitted that DRA's recommended cost cap of \$2,200 per acre-foot does not include the costs of Cal Am facilities.¹⁵ DRA has *never* stated that its proposed Product Water cost cap should include the Cal Am-only facilities. As DRA stated in multiple places in its testimony, DRA recommends a per-acre-foot cost cap on Product Water and a separate cost cap on the Cal Am facilities.¹⁶

D. DRA's recommended Product Water Cost Cap would not render the project "unfinanceable."

The claim by some Parties that a Product Water cost cap would render the project unfinanceable is just one more example of the misguided scare tactics being used by the Parties to attempt to force the Commission to approve an open-ended project with unlimited funding provided by Cal Am ratepayers. While this issue of "unfinanceability" was first raised only during evidentiary hearings, on the stand, DRA witness Mr. Rauschmeier indicated clearly and unambiguously on more than one occasion that he

¹⁴ MCWRA Opening Brief, p. 19; Cal Am Opening Brief, p. 23, note Cal Am incorrectly includes the costs of its facilities when making its argument. DRA's cost cap does not include the Cal Am-only facilities.

¹⁵ Cal Am Opening Brief, p. 24.

¹⁶ DRA Ex. 202, p. 1-1 to 1-7.

doubted the accuracy of Parties' claims.¹⁷ In fact, on the issue of cost caps, the Settling Parties' own witness Mr. Kalinovich testified, "So you get into this circle where I just don't know, depending on the level of the cost cap, will they be willing to do that, will they be able to get the surety bonds to do that? I don't know."¹⁸ This statement substantially undermines the claims made in Parties' briefs.

In his testimony, Mr. Kalinovich does acknowledge the importance of the ultimate engineering, procurement and construction ("EPC") contracts when assessing the implications of cost caps.¹⁹ However, at this point, no definitive procurement method or financing plan has been established. Therefore, it is impossible for Settling Parties to dismiss the very real option of a procurement contract or delivery method where a guaranteed Product Water price is actually contained within the terms of the contract. While it is true that various procurement and delivery methods allocate costs and risks differently,²⁰ none of the Settling Parties have presented any evidence that these costs or risks would be even marginally greater than the potential costs and risks of a project approved by the Commission with no bounds on the price of water.

The most powerful rationale for the Commission to place a cap or target price on the cost of product water ironically comes from the very arguments that some parties have used to attack DRA. So while both MCWD and MCWRA accuse DRA's analysis on the impacts of cost caps as being "sloppy" and lacking "thoughtfulness," these same parties come before the Commission seeking approval for the most costly water project ever to be considered by the Commission without providing the Commission the barest semblance of a financing plan. Such irresponsibility and poor judgment reinforce the need for the Commission to insert adequate consumer safeguards and protections into any

¹⁷ DRA/Rauschmeier 14 RT 1673 lines 22-23 and 14 RT 1674:8-1675:2

¹⁸ Cal Am /Kalinovich 14 RT 1605, lines 17-20

¹⁹ "The engineering, the construction contract. That contract to build a plant. What are the terms and conditions in that contract is very important." Cal Am/Kalinovich 14 RT 1603-1604 lines 27-28

²⁰ "As Mr. Kalinovich explained, such a risk would result in ratepayers paying not only higher interest costs, but 'less obvious costs must be added to the all-in cost to rate payers.'" Cal Am Opening Brief, p. 26

approved contract via a maximum price Cal Am customers will pay for water supplied from the desalination plant.

E. Bureau of Reclamation expertise should be given great weight.

In its Opening Brief, MCWRA attempts to discredit the Bureau of Reclamation by arguing that because DRA had employed the Bureau of Reclamation since March 2007, both DRA and the Bureau of Reclamation had years to develop stronger evidence to support the DRA-recommended cost cap. Specifically, MCWRA states that DRA had the ability to provide stronger evidence to support Dr. Shah's and Mr. Leitz' testimony as the Bureau of Reclamation has been consulting for DRA since March 2007.²¹ Incredibly, MCWRA then cites to California Civil Jury Instructions to argue that the Commission should consider each parties' ability to provide evidence, and if a party provides weaker evidence when it could have provided stronger evidence, the weaker evidence may be distrusted.²²

It is disturbing that MCWRA would choose to take such a misleading position in its brief. As everyone is well aware, the Parties filed their Settlement Agreement with the Commission on April 7, 2010. DRA had only three weeks, until April 30, 2010, to prepare both its Comments on the Settlement Agreement and its Testimony on the Agreement. The Bureau of Reclamation's Report was completed on March 11, 2010, before the Settlement was even filed. It is illustrative of MCWRA's *modus operandi* that MCWRA would attempt to discredit DRA and its consultants by implying that DRA had years, rather than weeks, to develop stronger evidence to support its recommendations about the Parties' proposed Settlement.

²¹ MCWRA Opening Brief, p. 23, n. 11.

²² MCWRA Opening Brief, p. 23, n. 11.

V. MARINA COAST WATER DISTRICT MUST PAY ITS FAIR SHARE OF THE REGIONAL PROJECT

- A. **Although MCWD was pursuing a desalination plant of its own up until at least December 2008, MCWD now wants the Commission to believe that MCWD may never need Product Water from the desalination plant because other sources of water may be available.**

MCWRA argues that MCWD may never have a future need for Product Water from the desalination plant and therefore the cost allocation under the WPA is fair.²³ MCWRA cites to Mr. Weeks' testimony stating that when Marina Coast Water District annexed into Zones 2 and 2A, it paid \$10 million to annex those zones, and, in exchange, MCWRA committed potential additional water supplies from the Salinas Basin to serve the former Fort Ord.²⁴ Apparently, MCWRA is arguing that MCWD already has adequate rights to Salinas Basin water supplies to meet the water needs of the former Fort Ord and thus should not be allocated its fair share of the Regional Project cost.

Nevertheless, up until at least December of 2008, MCWD was pursuing a desalination plant to meet the former Fort Ord's water needs. It is interesting that only now, when it is time to allocate the costs of the Regional Desalination Project to those that will benefit, that Parties claim that sufficient water exists to meet the needs of the former Fort Ord. The Commission should not be fooled. What MCWD is now trying to do is to subsidize development in its service territory on the former Fort Ord at the expense of Cal Am ratepayers. MCWD has recognized the need for 1,700 AFY to meet the water needs of the former Fort Ord.²⁵ Parties' intend that those needs would be met by the Regional Project. One of the primary reasons for developing a regional project is to allow current and future ratepayers to benefit from the economies of scale that result

²³ See MCWRA Opening Brief, p. 27 stating that even if MCWD needs additional water for development of Fort Ord, it "has the ability to obtain potable water from groundwater and other sources. Ex. 305 (MCWD/Heitzman)"

²⁴ MCWRA Opening Brief p. 27

²⁵ Direct Testimony of Lyndel Melton, June 24, 2009, p. 4, lines 24-27

from a larger desalination plant.²⁶ A fair allocation of desalination plant costs will assure that this happens.

B. If MCWD had continued to pursue its own desalination plant it would have had to expend funds before the water was needed.

Cal Am argues that it is appropriate for MCWD to not contribute to the project until it needs the water.²⁷ What the Parties want the Commission to ignore is that if this project did not exist, MCWD would have to pursue its own project to get the water supply needed for the development of the former Fort Ord. If there were no Regional Project, MCWD would not be able to wait until the development at Fort Ord had already occurred before it had to expend the money to develop a new water supply, as would be allowed by the Settlement Agreement. Rather, MCWD would have to start expending money now to begin the development of a future water supply project. In fact, that is what it had started to do. Over the past few years, MCWD had been spending money pursuing its own stand-alone desalination plant, money that it now seeks to recover from the pockets of Cal Am's ratepayers. If there were no Regional Project, MCWD would not be able to recover these funds from anyone but its own current or future ratepayers, nor would MCWD be able to sit idly by, paying for nothing until the water was needed as permitted under the Settlement Agreement.

The Commission must recognize that MCWD is attempting to use Cal Am ratepayers to pay for developing a water supply it needs to meet its legal obligation to serve development on the former Fort Ord.

C. MCWRA is not taking on any costs or risk under the Settlement Agreement.

MCWRA claims that it will be taking on a substantial portion of the costs and risks of the Regional Project because it is responsible for financing and would be

²⁶ Id. at p. 5, lines 13-21.

²⁷ Cal Am Opening Brief, pp. 20-21.

encumbered by indebtedness if Cal Am defaulted and did not make its Product Water Payments.²⁸ This alleged “risk” is more apocryphal than a genuine possibility. If the Commission approves the Settlement, Cal Am will be obligated to pay MCWD for the cost of Product Water. Moreover, under the Water Purchase Agreement, Cal Am is obligated to pay for the Regional Project, even if there is never a drop of water produced by the plant.²⁹

Cal Am is a regulated utility. As Cal Am argued in its brief, the Commission has a statutory duty to ensure the financial integrity of Cal Am.³⁰ The chance of Cal Am being unable to pay for the Product Water is not a real risk as MCWRA claims.

Although arguing that it has taken on substantial costs³¹ of the project, the only costs MCWD discusses that it has expended are those that it will get fully reimbursed under the Water Purchase Agreement.³² Moreover, under the Water Purchase Agreement, MCWD even gets to recover the costs that it expended on its own stand-alone desalination plant that it abandoned.³³ MCWD is not taking on substantial costs under the WPA, but rather reaps immediate benefits from the project by being able to recover unrelated sunk costs as soon as bond funds are received and obtaining a guaranteed permanent allocation of 1,700 acre-feet per year to serve its future customers

D. Transfer costs are a subsidy to MCWD.

Cal Am’s argument that “DRA’s characterization of the difference in the cost of water paid by MCWD and Cal Am ratepayers under the Water Purchase Agreement as a ‘transfer cost’ is patently incorrect.”³⁴ This allegation is unbelievable. DRA did not coin

²⁸ MCWD Opening Brief, pp. 39-40.

²⁹ MCWD Ex. 301, § 7.4

³⁰ Cal Am Opening Brief, pp. 53-54

³¹ MCWD Opening Brief, p. 38.

³² MCWD Opening Brief, p. 39.

³³ See Ex. 301, definition of “Pre-Effective Date Costs and Expenses”; see also DRA Opening Brief, pp. 17-19.

³⁴ Cal Am Opening Brief, p. 21.

this term; the Parties themselves created this term and were the ones that used it in their Joint Comparison Worksheet.³⁵ The Parties created a separate line item for the MCWD cost transfer to Cal Am ratepayers. The cost-comparison exhibit even acknowledges “the water transfer cost is an area of concern to the DRA that needs to be resolved.”³⁶ DRA’s analysis of transfer costs used the same methodology as that used in the Joint Comparison Worksheet. Once again, Parties have had to resort to falsities to try to make their case.

If DRA had had a say in the terminology used, it certainly would have suggested a more straight-forward and appropriate term like Subsidy Payment to describe the subsidization of MCWD by Cal Am ratepayers.

VI. THE MCWD “FEES LIMIT” PROVIDES A MAXIMUM CONTRIBUTION TO CAPITAL COSTS, BUT NEITHER REQUIRES NOR ASSURES ANY MINIMUM CONTRIBUTION TO CAPITAL COSTS BY MCWD

As discussed above, the Parties now argue that MCWD may never actually need any Product Water from the desalination plant. MCWRA argues that even if water is later needed for the future development of the former Fort Ord, MCWD has the ability to obtain potable water from groundwater and other sources.³⁷

If it is true that MCWD does not need the water and may never need the water, it is possible that MCWD will not pay *anything* in the way of “fees” for decades. It is also possible it will pay nothing in terms of debt service or reserves for that same period, because it only pays its share of debt service and reserves once it takes its Permanent Allocation or takes water beyond what it is required to take under its Agreed Allocation.³⁸ If MCWD has no need for additional water, it is doubtful that it will take a Permanent Allocation or buy additional water beyond the quantity provided under its

³⁵ Cal Am Ex. 108, p. 1.

³⁶ Id.

³⁷ MCWD Opening Brief, p. 27.

³⁸ Under the WPA, Section 11.6 (a), MCWD only pays its then-current per-acre-foot cost of providing potable groundwater from the Salinas Basin to MCWD’s customers, which is described in WPA Exhibit F as the MCWD Variable Extraction Cost, currently \$148 an acre-foot.

Agreed Allocation. Therefore, it is entirely possible that MCWD could end up owning and controlling the desalination plant without having contributed anything at all to the capital cost.

In addition to owning the desalination plant without necessarily paying anything for it, under the WPA, MCWD would also be fully reimbursed in advance for millions of dollars of "pre-effective date costs."³⁹ Thus, MCWD would receive the assurance, and benefits, of this immediate cash reimbursement from bond proceeds, while Cal Am ratepayers would have no assurance as to whether or when MCWD will contribute anything to the Regional Project.⁴⁰

If and when MCWD does contribute to capital costs (or debt service principal), its contribution is capped at a maximum of the \$22 million Fees Limit. The maximum MCWD will contribute to the Regional Project over the term of the agreement is \$22 million, while it is assured at least \$5.8 million plus whatever it spent on consultants and attorney fees in 2010 as soon as the bonds are issued. Thus, under the WPA, MCWD is guaranteed an immediate benefit in the range of \$5.8 to perhaps \$10 million or more, while its contribution could range from zero to \$22 million. When and if MCWD will contribute to the project capital cost is fuzzy at best given that MCWRA is now saying MCWD may never need the water.

³⁹ The WPA, Exhibit D, lists MCWD Pre-Effective-Date Costs as \$5.8 million and MCWRA Pre-Effective Date Costs at \$.7 million through the end of 2009 for a total of approximately \$6.6 million. Exhibit C estimates a total for Pre-Effective-Date Costs of \$14 million, which would imply up to an additional \$7.4 million in 2010. Under the WPA definitions, " 'Pre-Effective Date Costs and Expenses' means any and all of MCWD's or MCWRA's legal, staff and consulting fees and expenses and any other costs or expenses incurred, prior to the Effective Date, in connection with analysis and development of a desalination project in Monterey County commencing with the Regional Urban Water Augmentation Project (not including the recycled water component thereof) and continuing through CAW's efforts to develop the Coastal Water Project. Such costs shall include, but not be limited to, costs incurred in CPUC proceedings in Application 04-09-019 and Application No. 09-04-015. All such costs and expenses, through and including December 31, 2009, are summarized in Exhibit D attached hereto. MCWD and MCWRA shall within ninety (90) days after the Effective Date, update and supplement Exhibit D to reflect the Pre-Effective Date Costs and Expenses incurred on or after January 1, 2010 through and including the Effective Date."

⁴⁰ Under the WPA, MCWD would get all its Pre-Effective-Date costs, and other sunk costs, reimbursed up front, while clearly stating that it will not need the water for potentially decades and therefore not be required to contribute anything to the project debt service or reserves.

Even if MCWD does not need the desalinated Product Water now, MCWD has reserved a Permanent Allocation of desalinated product water of 1,700 acre-feet under the Water Purchase Agreement. Cal Am has no power under the Agreement to require that this allocation be sold to any other party, even if, decades into the future, MCWD still does not need the water and a buyer has emerged who is willing to pay for that capacity.

While MCWD/MCWRA claim that CAW ratepayers are not subsidizing MCWD, this is not true.⁴¹ In addition to being immediately reimbursed for past expenses that appropriately accrue to MCWD alone as discussed above, MCWD obtains a value to having this option for a future right to 1,700 acre-feet of Product Water. To the extent that the Water Purchase Agreement prohibits this capacity from being offered for sale or sold to other willing buyers in the future, MCWD is receiving a further subsidy from Cal Am.⁴²

DRA is not arguing that MCWD's current ratepayers should contribute to the capital costs of the Regional Project. MCWD has arrangements, or can make additional arrangements, with Fort Ord Reuse Authority ("FORA") for fees or other funds to contribute its fair share to the capital costs of this project. This is an internal rate design issue that MCWD can work out independently from the Water Purchase Agreement. What is fair, however, is that MCWD contribute its 16.2% share of the capital costs and reserves from Day One.⁴³

⁴¹ Cal Am Opening Brief, p. 64.

⁴² See Section V.D.

⁴³ For example, if MCWD paid \$22 million up front, once the final project Indebtedness is known, the Parties could calculate a reduced percentage attributable to MCWD in light of the fact that it had essentially "prepaid" \$22 million up front.

VII. THE PARTIES HAVE NOT PROVEN THAT THE REGIONAL PROJECT IS THE LEAST-COSTLY ALTERNATIVE

MCWD argues that evidence demonstrates that the Regional Project is the least-cost alternative.⁴⁴ In its Table 5, MCWD summarizes the range of costs for the Regional Project, based on nine scenarios shown in its Table 4,⁴⁵ as \$2,600 (Scenario C) to \$5,600 (Scenario 1). MCWD somehow ignores Scenario A, which places the cost of water to CAW at \$8,000 per acre-foot. Thus, the actual range of costs proposed by the Parties for the Regional Project should more appropriately be based on Scenario C at \$2,600 per acre-foot to Scenario A at \$8,000 per acre-foot.

MCWD's Table 5 goes on to list the cost range for the North Marina Alternative as \$7,000 to \$8,200 per acre-foot and the range for Moss Landing as \$7,600 to \$9,000 per acre-foot. Using a range of \$2,600 to \$8,000 per acre-foot as estimates for the Regional Desalination Project cost, it is easy to see there is an overlap in the estimates of all three projects with the Regional Project showing the greatest variance.

Furthermore, MCWD apparently overestimates costs for the North Marina Alternative and Moss Landing projects while disregarding potential litigation costs and any impact that debt equivalence may have on the cost of the Regional Project to Cal Am ratepayers. MCWD's Table 5 has no references for the per-acre-foot calculation of the North Marina and Moss Landing estimates. DRA does not know what financing assumptions and costs went into these calculations. However, if the estimates are based upon the cost shown in MCWD's Table 1,⁴⁶ both North Marina's and Moss Landing's plant costs are overstated by the inclusion of \$14 million in public agency pre-effective-date costs which would not be the responsibility of Cal Am ratepayers if either of these alternatives were selected.⁴⁷ Furthermore, a litigation cost estimate is included for North Marina, but not for the Regional Project when both may be subject to litigation over

⁴⁴ MCWD Opening Brief, p. 51.

⁴⁵ MCWD Opening Brief, Table 4, page 50.

⁴⁶ MCWD Opening Brief, Table 1, page 44.

⁴⁷ MCWD Opening Brief, p. 44, Table 1.

obtaining land to site the intake wells and pipelines and for compliance with the Agency Act.⁴⁸

Additionally, MCWD fails to mention that none of its scenarios account for Cal Am debt equivalence effects which could add up to \$1,600 per acre-foot⁴⁹ and undermine the benefits obtained by public financing. When added to the high-end estimate of \$8,000 per acre-foot for the Regional Project, the resulting estimate (\$9,600/AF) exceeds the high-end estimate of both the North Marina (\$8,200/AF) and the Moss Landing (\$9,000/AF) projects.

DRA notes that the costs of all three alternatives are high, and DRA would also have recommended cost caps and cost control processes for the North Marina or the Moss Landing alternatives. Moreover, if either the North Marina or Moss Landing project were chosen, the Commission would have jurisdiction and oversight to ensure that Cal Am operated either of its alternatives in a least-cost manner, and shareholders would be at risk for any cost disallowances.

Thus, the Parties have not demonstrated that the Regional Project, as presented by them, is the least-cost alternative to Cal Am ratepayers.

VIII. DRA RECOMMENDS COMPLIANCE WITH DEPARTMENT OF PUBLIC HEALTH REGULATIONS ON BORON

A. DRA's recommendation does not put the public health and safety at risk

MCWRA argues that DRA's recommendation regarding boron puts the public health and safety of Cal Am's customers at risk.⁵⁰ This argument is patently false and appears to have been made to distract from the real issue, which is that the Parties are designing a desalination plant that would reduce boron far below the California

⁴⁸ Seaside Public Participation Hearing, Molly Erikson, Ag Land Trust, 17 RT 1970, lines 18-23.

⁴⁹ DRA Ex. 202, p. 4-33, calculated by taking the \$14.3 additional revenue requirement Cal Am states is necessary to offset the negative impacts of the Water Purchase Agreement's commitment of future cash flows (DRA. Ex. 203, Attachment E) divided by 8,800 acre-feet.

⁵⁰ MCWRA Opening Brief, p. 17.

Department of Public Health guidelines at an extra cost to Cal Am ratepayers.⁵¹ A review of the red-lined Water Purchase Agreement that DRA filed on May 27, 2010, shows that DRA proposed no changes to the portion of the Water Purchase Agreement that requires that the Product Water comply with all legal requirements including local, state and federal laws, rules and regulations relating primary and secondary standards and monitoring regulations adopted by the California Department of Public Health and United States Environmental Protection Agency.⁵² DRA's recommendation thus complies with General Order 103 II.2.A., which requires the water to comply with all applicable state and federal laws.

IX. MPWMD AND THE MONTEREY PENINSULA CITIES SHOULD BE PART OF THE REGIONAL PROJECT GOVERNANCE

The Parties argue strongly against modifying the Settlement to allow MPWMD to have voting rights as Party to the Agreement. However, having MPWMD and the Monterey Peninsula Cities as Parties to the Agreement with voting rights would be a good step toward providing accountability to Cal Am ratepayers.

MCWD argues that “MPWMD, which owns no facilities, lacks any operational responsibilities with respect to the Regional Project, and is not subject to any contractual obligations, is differently situated from the three agencies that are the owner-operators of their respective portions of the RDP.”⁵³ MCWD's position that because MPWMD does not “own” any of the facilities that it should not be a voting Party under the Water Purchase Agreement should be dismissed, especially in light of the reality that MCWD's “ownership” of the project is disproportionate to either its financial contributions or its share of the capacity or water under the WPA. As noted above, under the Water Purchase Agreement, MCWD may not have to contribute anything towards the capital costs of the desalination plant. Contrast that with MPWMD – an agency actually elected

⁵¹ See DRA Opening Brief, pp. 19-22 for a more detailed discussion.

⁵² See DRA's Proposed Modifications to the Settlement Agreement, dated May 27, 2010, WPA, § 9.7(a)

⁵³ MCWD Opening Brief, p. 33.

by the Cal Am ratepayers that has had a role in representing their interests in this proceeding. Under the WPA these ratepayers would be paying 100% of the costs and be entitled to 83.8% of the capacity. Furthermore, MPWMD operates an aquifer storage and recovery project, runs extensive demand-side conservation programs and has a key role in rationing measures that all serve to reduce Cal Am's demand on the Carmel River. Moreover, MPWMD's role is integral to Section 9 of the WPA on Water Deliveries.⁵⁴ Surely MPWMD has as much of a right to be a voting Party under the Water Purchase Agreement as any of the other Parties.

MCWD argues that MPWMD should not have a voting governance role on the advisory committee because a purchaser of a commodity does not normally control or operate the facility of the party that it purchases a commodity from.⁵⁵ Specifically, MCWD argues that just because a customer buys a Toyota, the customer is not entitled to become a member of its Board of Directors. However, in this case, the customer is not buying just one car but is buying all of the cars coming out of the factory. Certainly a purchaser of 100 percent of the product from the facility would be able to dictate the terms of facility operations or at a minimum have substantial influence over them.⁵⁶ MPWMD is an appropriate representative for the Cal Am customers who are purchasing the water.

⁵⁴ See WPA, Section 9.4 (c) "Cooperation and Conservation Efforts. MCWD and CAW shall cooperate to permit maximum deliveries of Product Water to CAW during CAW's Peak Demand Period and so that the MCWD Annual Allocations are delivered during other times of the Calendar Year, as described above. During a Critically Dry Year, each of the Parties understand that there will be the need to implement, with respect to delivery of Product Water to each of the MCWD Service Area and the CAW Service Area, a series of water conservation and rationing policies in order to reduce water demand and extend the water supply. Each of MCWD and CAW shall cooperate to implement such policies in order to effectively allocate Product Water deliveries. At all times, not just during Critically Dry Years, each of the Parties have and will continue to stress conservation efforts and implement conservation programs within their respective service areas. Any such conservation efforts may include consideration of joint solutions to enhance conservation efforts, such as collaboration with fish and wildlife agencies on opportunities to provide critical habitat water supplies, methods of addressing shortages in a unified fashion, and other criteria."

⁵⁵ MCWD Opening Brief, p. 34.

⁵⁶ It is well-documented that companies with monopsony power, such as Walmart, dictate terms to their suppliers.

X. PRE-EFFECTIVE DATE COSTS

For the most part, DRA does not take issue with the Parties' proposal to allow MCWRA and MCWD to capitalize their pre-effective-date costs *if* the Commission modifies the Water Purchase Agreement to require MCWD to pay its proportionate share of the project. Although Cal Am ratepayers have to pay for over \$20-\$30 million in preconstruction costs⁵⁷ related to this project, DRA is willing to look past this inequity and allow MCWD and MCWRA to recover some of their pre-effective date costs.

However, DRA strongly opposes Cal Am ratepayers reimbursing MCWD for the costs of their abandoned, stand-alone desalination plant and reimbursing MCWRA and MCWD for legal costs spent opposing Cal Am ratepayers' interests.

A. The Commission should not allow MCWD to recover money it spent on its own stand-alone desalination plant.

The Parties raise numerous arguments in support of their request that the Commission allow the agencies to recover all of their expenses towards pursuing "a desalination plant in Monterey County." However, none of these arguments justify allowing MCWD to recover the costs it spent on its own stand-alone desalination plant.

Cal Am argues that because the Commission told Cal Am to explore a regional partnership, all of the public agency costs are reasonable and prudent and should be included in the costs of the Regional Project.⁵⁸ According to Cal Am, the mere fact that the Commission told Cal Am to consider a regional partnership is sufficient to find all of MCWD and MCWRA costs reasonable and prudent. DRA disagrees.

The Commission must consider what the agencies' costs were for and the time frame in which those costs were incurred. The costs that MCWD spent on its own stand-alone desalination plant (which Mr. Heitzman testified was tossed into the recycle bin) are not reasonable and prudent costs that the Cal Am ratepayers should pay. Moreover,

⁵⁷ Cal Am's preconstruction costs are not "abandoned" costs but include the development of cost estimates for Moss Landing -- estimates used and relied on in developing costs for the Regional Project. Cal Am/Stephenson 12 RT 1103.

⁵⁸ Cal Am Opening Brief, p. 27.

these costs would have existed even if the Commission had not told Cal Am to pursue a regional project.

The Parties' request to reimburse MCWD for the cost of an abandoned project undertaken prior to the inception of the Regional Project, but not to require the Regional Desalination Project to also reimburse Cal Am for its more directly-relevant preconstruction costs⁵⁹ is a double standard. DRA was willing to compromise by agreeing to a cutoff date of January 2009 for the reimbursement of MCWD Regional Desalination Project costs for purposes of administrative simplicity.⁶⁰

Cal Am also argues that the Commission has previously authorized Cal Am to reimburse third-party public agencies like MPWMD for necessary conservation project costs.⁶¹ What Cal Am conveniently failed to disclose was that MPWMD submitted budgets for those projects to the Commission as part of Cal Am's conservation budget, and both MPWMD and Cal Am's budget were reviewed for reasonableness by DRA and subsequently approved by the Commission. This prior reimbursement of MPWMD conservation expenses has no bearing on MCWD's or MCRWA's requests. MPWMD understood the role of the Commission and the need to assure that expenses are reasonable. MPWMD did not argue then that the Commission must trust them and accept all of their expenses based on blind faith

⁵⁹ Cal Am preconstruction costs include the development of cost estimates for Moss Landing (estimates used and relied on in developing costs for the Regional Desalination Project), the development of the North Marina Alternative, much of the pipeline development work, the pilot project at Moss Landing, the Commission's CEQA review, and Cal Am's costs for further technical and environmental work to develop the Regional Project.

⁶⁰ Combined Cal Am's preconstruction costs and MCWD's and MCWRA's pre-effective-date costs may total as much as \$50 million. It would be reasonable and fair for MCWD to contribute 16.2% of this amount or around \$8 million.

⁶¹ Cal Am Opening Brief, p. 29.

B. The Commission should not allow MCWD and MCWRA to recover money spent fighting Cal Am ratepayer interests.

DRA opposes allowing the MCWD and MCWRA to recover legal costs associated with fighting DRA's efforts to protect Cal Am ratepayers. While MCWRA argues that as a public agency it is not a profit-making or loss-incurring entity and must recover its costs from Cal Am's ratepayers,⁶² these agencies had a choice on how aggressively they wanted to oppose DRA and fight against Cal Am ratepayers' interests. While both agencies apparently believe that aggressively fighting against DRA was in their best interest, they do not want to have to pay for doing so. Nor do they want to work within a reasonable legal budget. Even investor-owned utilities do not have an automatic guarantee that their expensive legal budgets will be deemed reasonable and prudent. In fact, utility regulatory expenses (which include legal expenses) are routinely reviewed in the utility's General Rate Case. Cal Am itself had its exorbitant request for regulatory expenses disallowed in a recent General Rate Case.⁶³ At a minimum, Cal Am knows if it spends with abandon on outside legal expenses, its shareholders will pay, and therefore has a greater incentive to control these expenses than it otherwise would have if all legal expenses were automatically reimbursed.

Cal Am's legal expenses in this proceeding will be tracked in the preconstruction cost memorandum account and are subject to reasonableness review and disallowance. However, under the WPA, there is no limit to the pre-effective-date legal costs that will be reimbursed to the agencies. If the Commission considers the agencies like project sponsors, then the Commission should consider the legal budget of all three entities in total. Cal Am ratepayers should not have to pay for legal expenses three times over, nor should they have to pay bills for MCWD or MCWRA that far exceed what would ever be approved for Cal Am alone, let alone the combined legal bill of Cal Am, MCWD and

⁶² MCWRA Opening Brief, p. 29.

⁶³ D.09-07-021, p. 72. In this General Rate Case for its Monterey District, Cal Am requested authorization for \$850,669 annually in regulatory costs, while the Commission approved \$350,000 per year -- \$500,000 per year less than Cal Am requested.

MCWRA. Unfortunately this proceeding has been characterized by redundant and cumulative testimony and rhetoric. Parties could have made joint filings to avoid duplicative efforts and wasteful spending.

The Commission should find that the agency costs associated with opposing Cal Am ratepayers' interest are not reasonable and prudent costs that should be reimbursed. Had the Parties reached an all-party settlement where all interests, including Cal Am ratepayer interests, were adequately represented in a final agreement, DRA's position would be different, and Parties' legal costs would have been far less. However, here Cal Am and the two public agencies have done everything in their powers to extract as much as possible from the Cal Am ratepayers. The Parties should not be further rewarded by requiring Cal Am ratepayers to pay for such efforts.

XI. MCWRA PROVIDES CONFLICTING STATEMENTS REGARDING SLANT WELLS.

In its brief, MCWRA argues that the Commission should reject DRA's recommendation regarding slant wells.⁶⁴ Yet at the Public Participation Hearings, Mr. Collins, a member of the MCWRA Board of Directors, represented that the MCWRA is planning to do exactly what DRA is recommending be done. Mr. Collins stated:

Do slant wells make sense? Yes, they make a great deal of sense. If I had my way, we would build all slant wells. But we need to do our well testing, and that is what we are going to do initially is slant well testing and conventional well testing and determine whether the slant wells work in that area. If they do, we are absolutely in conjunction with people that say slant wells are the way to go.

They are more expensive, they have some problematic operational issues, and it will be up to us to prove that the slant well is the way to go. But you don't have a big fight on your hands with slant wells. If we can build them, we will build them.

. . . .

⁶⁴ MCWRA Opening Brief, pp. vii, 40

And if it works, we will build them because it creates a saltier water, less water has to stay in the Salinas Valley, more water for the Peninsula. The slant wells are a good way to go, and we will go that way if the testing proves it.⁶⁵

So why does MCWRA oppose DRA's recommendation, one that is consistent with the representations it is making to the public? DRA does not know but can only guess that MCWRA does not want to *have* to use slant wells if they are found feasible. DRA has not recommended that an unconditional decision to use slant wells be made today; DRA recommends that the Commission require the Parties to use slant wells unless they are determined to be not feasible after testing.

DRA makes this recommendation because the Water Purchase Agreement leaves the decision on whether to use slant wells up to the discretion of one party, MCWRA. Nothing in the Water Purchase Agreements addresses how the MCWRA will make the decision on the intake well configuration. The Water Purchase Agreement offers no guidance to MCWRA on which well configuration to select if MCWRA determines that both vertical and slant wells would comply with the Agency Act. The criteria the Parties agreed to for the operation of the wells -- that they will be operated to maximize the salinity in the water -- does not apply to the *design or configuration* of the wells.

Given the cost to Cal Am of having to leave water in the Salinas Basin, this decision should not be left solely to one Party unless the Water Purchase Agreement includes defined criteria for making the selection. Moreover, the Water Purchase Agreement should include a requirement that the cost of the alternative selected to Cal Am ratepayers be considered, as shown in the DRA red-lines previously submitted. DRA, therefore, recommends that the Commission modify the Water Purchase Agreement to require the Regional Project to use slant wells, if testing finds them feasible.⁶⁶

⁶⁵ Seaside PPH, Mr. Collins, 17 TR 1879

⁶⁶ See DRA's Proposed Modifications to the Settlement Agreement filed on May 27, 2010, § 8.

XII. REPORTING REQUIREMENTS

In response to the ALJ's request for the Parties to indicate whether they would be willing to provide the Commission with regular, detailed status reports, the Parties propose to have Cal Am use the monthly Project Manager's report required by the Water Purchase Agreement to prepare a quarterly status report for the Commission.⁶⁷ The Parties do not identify what information Cal Am would provide to the Commission in this report.

DRA is perplexed why the Parties would propose to spend additional ratepayer money to have Cal Am prepare a new report rather than just agreeing to provide the Commission with the Project Manager's monthly status reports. The Project Manager reports required by Section 4.5 of the WPA are prepared to inform the Parties of the status of design, permitting and construction of the desalination plant and other issues related to progress of the plant. There is no reason why the Parties cannot provide these reports to the Commission to keep it informed on the project's progress, or why these reports cannot be provided to both the Director of the Division of Water and Audits and DRA, in addition to the Executive Director.

Both MCWRA and MCWD request that the Commission allow Cal Am to provide the proposed quarterly report to the Commission confidentially under P.U. Code Section 583.⁶⁸ For all of the claims by the public agencies of the transparency of their processes, DRA finds it illuminating that they agree to have Cal Am provide status reports if Cal Am can submit the reports confidentially. MCWRA and MCWD provide absolutely no justification as to why any report to the Commission should be provided confidentially and not subject to public review and review by Cal Am ratepayers. DRA opposes allowing Cal Am to provide the status reports confidentially, unless adequate justification is provided. This request is consistent with the Parties' continued effort to limit any type of meaningful accountability for the cost of this project.

⁶⁷ MCWRA Opening Brief 32; MCWD Opening Brief, p. 38; Cal Am Opening Brief, p. 16

⁶⁸ MCWRA Opening Brief. 32, MCWD Opening Brief p. 38.

Finally, Cal Am argues that providing the Commission with periodic status reports on both the construction and operation of the plant assures the Commission *continued oversight*. While DRA supports the idea of the Parties providing the Project Manager’s report to the Commission, DRA is hard-pressed to understand how any report provides the Commission with any oversight of the project. While a status report will allow the Commission to be informed on the projects’ progress, the Commission must adopt the ratepayer safeguards recommended by DRA, because once the Water Purchase Agreement is approved, the Commission will have no continuing oversight of the project.

XIII. BOR DID NOT RECOMMEND CHANGING THE VALUE USED FOR CONTRACTOR OVERHEADS, PROFIT, CONTINGENCIES AND ACCURACY OF ESTIMATES

MCWRA falsely states that DRA’s consultants, the Bureau of Reclamation, recommend changing the value used for contractor’s overhead and profit, contingencies, and accuracy of estimate range.⁶⁹ MCWD erroneously argues that DRA chose to just “cherry pick” those Bureau of Reclamation comments that fit its purpose.⁷⁰ However, if one examines the Bureau of Reclamation’s report, *no such recommendation exists*.⁷¹ In the cite provided by MCWRA, the Bureau of Reclamation compares the adders that the Parties used to those that the Bureau of Reclamation would use at such an early level of design.⁷² Thus the Bureau has not recommended increasing these adders as MCWRA and MCWD falsely argue. As the Bureau of Reclamation explained, it would not seek Congressional Authorization for funding at such an early design level.⁷³ Dr. Shah further explained this issue during hearings. Dr. Shah testified that “The Bureau wouldn't go to Congress for authorization funding. They would do more homework. They would refine the estimates until they are Class 1 or when competitive bidding can occur. They will go

⁶⁹ MCWRA Opening Brief, p. 33 referring to Ex. 204 (DRA/Leitz) pp. 28-30.

⁷⁰ MCWD Opening Brief, p. 76.

⁷¹ DRA Ex. 204, pp. 4-5 listing a full summary of the Bureau of Reclamation’s recommendations.

⁷² DRA Ex. 204

⁷³ DRA Ex. 207

for competitive bids. They would allow the lowest bidder to bid and bring the project in at a lower estimate.”⁷⁴ It is for this reason the Bureau of Reclamation did not make a recommendation to increase any adders at this stage. The Bureau simply does not operate as the Parties are seeking to do -- *i.e.*, seeking approval for a project without firmer cost estimates.

XIV. REASONABLENESS OF REGIONAL PROJECT COSTS IS NOT ASSURED

A. MCWD’s obligations to its customers do not protect Cal Am ratepayers.

Cal Am argues that the Agencies’ costs will be reasonable and prudent because “each agency has an independent legal obligation to incur only reasonable and prudent costs and charge reasonable and prudent rates.”⁷⁵ However, this “legal obligation” is not to Cal Am ratepayers. While MCWD might have a legal obligation to its customers to incur only reasonable and prudent costs and charge reasonable rates, this legal obligation does nothing to protect Cal Am ratepayers under the Settlement Agreement. Because the costs of the desalination plant are not charged to MCWD ratepayers until some future time or maybe never, no obligation to MCWD’s own customers arises which could arguably protect Cal Am ratepayers.

Moreover, what may be reasonable and prudent for one set of customers might not necessarily be reasonable and prudent for another. For example, the Settlement Agreement requires the Parties to build a brine holding tank. However, in August 2009, MCWD’s witness Mr. Melton submitted testimony finding that a holding tank was not necessary for the Regional Project.⁷⁶ While the cost of a brine holding tank is not a reasonable and prudent expenditure for Cal Am ratepayers, it may be reasonable and

⁷⁴ DRA/Shah 14 RT 1537-1539

⁷⁵ Cal Am Opening Brief, p. 11.

⁷⁶ MCWD Ex. 308, p. 4-62 Monterey Regional Water Supply Program: EIR Project Description finding that a brine storage facility is not recommended because there are other options available to address storm-related peak flows.

prudent for future MCWD customers. If MCWD later (or ever) seeks to expand the desalination plant, a brine holding tank would likely be necessary because of the additional brine resulting from a larger plant. Building the brine holding tank now, under the current arrangement may be reasonable and prudent for MCWD ratepayers but not for Cal Am ratepayers.

B. Case law and Commission precedent do not support the notion that partnering with public agencies provides safeguards to Cal Am customers.

Cal Am cites to *Hewitt v. Rincon del Diablo Municipal Water District* (1980) 107 Cal. App. 3d 78 to support its argument that Cal Am’s partnering with the public agencies provides safeguards to Cal Am customers. DRA does not agree.

In *Hewitt*, a group of landowners within the Rincon del Diablo Municipal Water District (“District”) sued for a judgment declaring that a merger between the District and an adjoining city of Escondido (“City”) was void. Under the merger, the City would exclusively manage both water systems as a single, integrated operation. Cal Am states that the Court rejected the landowners’ argument that the City could use its position to abuse or treat unfairly customers of the District.⁷⁷

What Cal Am fails to disclose was the reason behind the court’s conclusion. Specifically, the court found that the merger agreement included a number of specific provisions to insure that the District’s policy of providing efficient and economic water service would be implemented. The merger agreement provided that the rates and charges adopted by the City **would be uniform and would apply equally to customers within the City and the District.**⁷⁸ This safeguard for the District ratepayers is lacking in the Settlement Agreement because the rates Cal Am customers pay are not the same as those charged by MCWD to its customers. Moreover, the merger agreement specifically

⁷⁷ Cal Am Opening Brief, p. 13.

⁷⁸ *Hewitt*, 107 Cal. App. 3d 78, 86.

prohibited the City from making any special or higher rate, charge, or condition of service to any user within the District different from those applicable to the City.

Moreover, the situation here is also not like the facts of *Hewitt* or the *County of Inyo v. Public Utilities Commission* (1980) 26 Cal.3d 134, also cited by Cal Am for the conclusion that MCWD could not use its position of power to treat Cal Am ratepayers unfairly.⁷⁹ *County of Inyo* involved one city acquiring another community's water system. The court found that upon acquisition, the city incurred an obligation to deal fairly with the community's customers because it holds title to the water dedicated for use to the Community. However, under the Water Purchase Agreement, MCWD is not acquiring another city's water system and it has no legal obligation to protect Cal Am ratepayers. The only legal obligation that exists is MCWD's legal obligation to its own customers.

Cal Am also argues that the Commission has previously recognized that costs incurred by governmental agencies are reasonable because the agencies are accountable to the public.⁸⁰ Cal Am cites to the Commission's Community Choice Aggregation decision, D.04-12-046 to support its claim that the Commission has recognized that "costs incurred by governmental agencies are reasonable because the agencies are accountable to the public."⁸¹ However, Community Choice Aggregators ("CCA") are governmental entities formed by cities and counties to serve the energy requirements of their local residents and businesses.⁸² The CCAs are directly accountable to those they provide their service to – their local residents and businesses. Unlike the CCAs, MCWD is not directly or even indirectly accountable to Cal Am's ratepayers. MCWD's Board is accountable to its own ratepayers, and only its own ratepayers can vote out Board members. Thus, Cal Am's cited precedent is not on point,

⁷⁹ Cal Am Opening Brief, p. 13.

⁸⁰ Cal Am Opening Brief, p. 14.

⁸¹ Ibid.

⁸² D.04-12-046, p. 3.

C. The Community Outreach Meetings do not provide adequate oversight and ratepayer protections.

Cal Am also claims that the community outreach meetings will provide meaningful oversight and protect Cal Am’s ratepayers.⁸³ DRA is perplexed with how Cal Am reached such a conclusion. In Section 6.7 of the Water Purchase Agreement, there is nothing that provides members in the community outreach forum with any supervision, control, management, administration, of direction of the project. Perhaps Cal Am has a different definition of “oversight” than the rest of us.

XV. CAL AM-ONLY FACILITIES

Cal Am argues that DRA imposes an arbitrary, low cost cap, well below the most probable cost estimate.⁸⁴ This is not true. DRA recommends that the Commission set the cost cap for the Cal Am-only facilities at the “most probable” cost estimate, which DRA estimates at \$86.6 million.⁸⁵ DRA recommends that the Commission use the “most probable” cost estimate rather than the higher level proposed by the Parties to provide additional ratepayer protections. Setting the cost cap at the “most probable” cost level will help encourage efficient and effective construction management. Given the enormous investment and the unique ratemaking being proposed, it is reasonable for the Commission to provide ratepayers this protection to help keep costs in line with a reasonable, and *most probable* estimate. Setting the cap at any level above this will do nothing to encourage cost containment.

XVI. CAL AM-ONLY FACILITIES RATEMAKING

A. The Advice Letter process for recovery of Cal Am-only Facility costs should allow for a prudency review.

In its Opening Brief, Cal Am again argues that its proposed Advice Letter process for recovering costs associated with the Cal Am facilities will allow the Commission to

⁸³ Cal Am Opening Brief, p. 14.

⁸⁴ Cal Am Opening Brief, p. 35

⁸⁵ DRA increased its estimate from \$70 million to \$86.6 million based upon information provided in Cal Am’s rebuttal testimony. Cal Am’s estimate for the “most probable” costs is \$95 million.

“disallow any imprudent costs during its review”⁸⁶ However, as explained in DRA’s Opening Brief, the process proposed by Cal Am does not allow for any such review.⁸⁷ In fact, Cal Am appears to be well aware that the process it proposes does not allow the Commission to conduct a prudency review as it states that its proposal ensures that customers do not pay for the Cal Am facilities until the “Division of Water and Audits (“DWA”) has validated the costs.”⁸⁸ DRA is sure that Cal Am is well aware that validating an expense is far different from determining whether the expense was prudent.⁸⁹

Cal Am’s inconsistency on this issue is striking. On the one hand it touts the Commission’s prudency review, while at the same time arguing that all costs under a Commission-approved cost cap would be deemed prudent.⁹⁰ Cal Am has not explained how this new position that all costs under the cap would be deemed reasonable complies with the Settlement Agreement or with its prior testimony⁹¹ that states a prudency review of the expenses would occur that would allow the Commission to “disallow any imprudent costs.”⁹²

While Cal Am also argues that its proposed Advice Letter process for its Cal Am facilities is similar to the Advice Letter process adopted by the Commission for Cal Am’s

⁸⁶ Cal Am Opening Brief, p. 36. See also, page 40 where Cal Am states ratepayers would not pay for “costs unless prudently incurred,” and that Cal Am “would only recover prudently incurred costs.” See Cal Am Exhibit 103, the Testimony of David P Stephenson, stating on page 3 that the one and one-half month lag between filing the advice letter and moving the costs into rates “would allow for prudency review.”

⁸⁷ DRA Opening Brief, pp 48-50.

⁸⁸ Cal Am Opening Brief, p. 36, emphasis added. See also page 41 where Cal Am states that DWA would have 45 days to “conduct its verification review.” Cal Am also states that DWA’s review will be a ministerial act to determine only whether the costs are legitimate, which is not a prudency review.

⁸⁹ Resolution W-4749 on Rate Base Offset filings states that DWA reviews expenses to insure they are for the related facilities and for accuracy.

⁹⁰ Cal Am Opening Brief, p. 47. See also page 63 where Cal Am states that the Settlement Agreement “guarantees that the utility’s costs will not be placed in rates until the costs are actually incurred and have undergone a prudency review. (Emphasis added)

⁹¹ Cal Am. Ex. 103, Testimony of David P Stephenson, page 3.

⁹² Cal Am Opening Brief, p. 36

Distribution System Infrastructure Charge (“DSIC”), Cal Am is wrong. The interim DSIC surcharge the Commission authorized in D.07-08-030 was accomplished by a Tier 3 advice letter, a process which permitted the Commission to conduct a full review.²³ Moreover, all DSIC surcharge amounts are reviewed in the next GRC for reasonableness prior to inclusion in ratebase.²⁴ Thus, unlike the process Cal Am proposes now, the process the Commission adopted for the DSIC allowed for a prudence review.

The Parties agreed that only “prudently expended costs related to the construction of the CAW Facilities” would be included in ratebase, yet the Parties do not propose a process that allows the required prudence review to occur.²⁵ Given the substantial size and cost of the Cal Am-only facilities and the unprecedented request to move costs into ratebase before the project is complete, a prudence review of the costs is an appropriate ratepayer protection. The Commission must modify the settlement to allow for a prudence review of the Cal Am facility expenditures as agreed to by the Parties to the Settlement.

B. DRA’s proposed AFUDC rate is reasonable.

Cal Am continues to argue that “actual average cost of capital to fund the CAW Facilities properly reflects the true costs that California American Water must incur to finance the project.”²⁶ Cal Am mischaracterizes and misuses the testimony of DRA’s witness Mr. Rauschmeier in its attempt to persuade the Commission to abandon common sense in response to its emotional appeal.

At its simplest, the selection of an “AFUDC” rate in this case is an exercise in identifying the short-term borrowing cost of California American Water.²⁷ While DRA has amply demonstrated that a two-year corporate bond rate reflective of American

²³ D.07-08-030, p. 51, emphasis added.

²⁴ D.07-08-030, p. 52.

²⁵ MCWD Ex. 300, §§ 9.3 & 9.4.3.

²⁶ Cal Am Opening Brief, pg. 39

²⁷ “AFUDC” under the Settlement Agreement would accumulate for the short-term period of six months per CAW’s proposal or one year as suggested by DRA before costs become part of ratebase.

Water’s credit rating is more than adequate to compensate Cal Am for the brief period between when costs are incurred and recovered at the utility’s authorized rate of return, Cal Am has resorted to rhetoric and a faulty syllogism in arguing its point. In its Opening Brief, Cal Am conveniently highlights the testimony of DRA witness Mr. Rauschmeier that “absolutely, unequivocally, the rate of return should be used,” but the qualifier preceding this statement warrants greater attention, because this statement is accurate only “*if there is an inability to finance a project with anything other than long-term debt and equity.*” Cal Am has been unable to demonstrate this to be the case. Certainly Cal Am can argue that it will need to issue long-term debt and use equity to finance the project, but argument alone does not make it reality.

While Cal Am relies on a vague assertion that a “short-term line of credit is and will continued [sic] to be tied up,”⁹⁸ DRA has testified to the actual dollar amount availability and capacity of this type of credit.⁹⁹ While Cal Am has indicated intention, likelihood and probabilities, DRA has presented and referenced the actual language found in the Parties’ own Settlement Agreement as evidence of what is being requested from the Commission.¹⁰⁰ And while Cal Am is now comfortable with ambiguous, formulaic, *ex post* calculations of AFUDC, DRA posits that such determination should be made in advance to provide the utility with some incentive to truly pursue the lowest-cost financing options available.

XVII. PORTIONS OF MCWD’S BRIEF MUST BE GIVEN NO WEIGHT

A. MCWD’s Opening Brief makes misleading statements and cites to evidence that its own witness corrected.

MCWD’s Opening Brief cites to information that was corrected on the stand to argue against DRA’s proposed cost cap.¹⁰¹ When MCWD witness Dr. Trussell testified,

⁹⁸ Cal Am Opening Brief, pg. 39

⁹⁹ DRA/Rauschmeier 14 RT 1662, lines 16-19

¹⁰⁰ DRA Ex. 202, p. 4-34 to 4-35

¹⁰¹ MCWD Opening Brief, p. 58.

he presented two documents correcting his prior analysis of the costs of various plants in Australia to the Regional Project. These documents were introduced into evidence by Dr. Trussell through MCWD's attorney when Dr. Trussell took the stand to testify.¹⁰² Dr. Trussell had to make these corrections because he had used an unreliable source, Internet website Wikipedia, to obtain the information for his analysis.¹⁰³ Dr. Trussell's corrections resulted in reducing the dollar-per-gallon cost of the South Australia plant from \$47 to \$24 per gallon and reducing the Perth 2 plant from \$66 to \$24 per gallon.

On July 13, 2010, MCWD filed an Amendment to its Opening Brief to correct its "inadvertent" error of citing the un-corrected information. However, MCWD's correction is still not right. MCWD now presents a new number showing that dollar-per-gallon cost of the South Australia plant going up rather than down. Nothing in the record supports this new number, and Dr. Trussell's testimony contradicts it.¹⁰⁴

MCWD's claim that the costs per gallon for the Project Facilities are less than the median cost for the other reported desalination plants in its Table 6¹⁰⁵ is just plain wrong and misleading. The Project Facilities are *above* the median cost for the other plants in Table 6.

MCWD also falsely characterizes the testimony of Dr Shah. MCWD argues that Dr. Shah made admissions concerning certain desalination plants that were used to develop DRA's \$2,200 cost cap. However, a look at the cited transcript shows that this is not the case. Dr. Shah did not admit to the information that MCWD alleges. For example, MCWD states that Dr. Shah admitted that he was aware that the West Basin cost data was for a plant treating recycled water for industrial use and not a seawater

¹⁰² MCWD/Fogelman 15 RT 1682-83

¹⁰³ MCWD/Trussell 13 RT 1691-1694.

¹⁰⁴ DRA assumes that this was not another inadvertent error because MCWD did not correct the false claim that the Project Facilities are less than the median cost for the other desalination plants in its Table, which could only be true if the costs of both plants did not decrease.

¹⁰⁵ MCWD Opening Brief, p. 57.

desalination plant producing potable water.¹⁰⁶ DRA agrees that MCWD's attorney Mr. Fogelman did ask Dr. Shah if he was aware that the costs of the West Basin facilities are associated with treating recycled water for industrial purposes, *but a statement by an attorney does not make that statement a fact or make it evidence in the proceeding.*¹⁰⁷ Moreover, if you look at Dr. Shah's response to Mr. Fogelman's question, Dr. Shah states that there are multiple West Basin plants, and he believed the cost data he relied upon was for seawater desalination and not recycled water. The Water Desalination Report identifies the type of plants in the far right column.¹⁰⁸ The West Basin Plant used by Dr. Shah is identified as a "SWRO" plant --- a Sea Water Reverse Osmosis plant.¹⁰⁹ Dr. Trussell confirmed that there are seawater desalination plants in West Basin.¹¹⁰ There is no evidence in the record concluding that the costs that Dr. Shah relied upon for the West Basin plant are not the costs for the seawater desalination plant. The Commission must disregard all of this argument, which is not based on Dr. Shah's testimony but based upon statements by MCWD's counsel, which are not evidence and which have no support in the record.¹¹¹

Finally, MCWD argues that DRA's reliance on World Health Organization ("WHO") guidelines for boron is misleading because those guidelines are not relevant to California. Again, this is a misleading statement.¹¹² DRA finds it telling that MCWD did not provide any cite for this statement. DRA did not rely on the WHO guideline. DRA provided the WHO guidelines, which are over double the California guideline, solely for

¹⁰⁶ MCWD Opening Brief, p. 54-55

¹⁰⁷ MCWD/Fogelman 14 RT 1484-85

¹⁰⁸ MCWD Ex. 364.

¹⁰⁹ Id.

¹¹⁰ MCWD/Trussell 15 RT 2698.

¹¹¹ The Commission should disregard the last two lines of page 54 through the first paragraph of page 55 of MCWD's Opening Brief.

¹¹² MCWD Opening Brief, p. 73.

informational purposes. DRA has *always* recommended that Regional Desalination plant comply with Department of Public Health guidelines for boron.¹¹³

B. MCWD’s Opening Brief cites to information that is not in the record in this proceeding.

MCWD seems to have ignored the Commission’s rules and cites to documents and information that is not in the record. The Commission must ignore this information.

MCWD cites a document that was stricken by the ALJ. On page 78 of its Opening Brief, MCWD discusses the possibility that the Regional Project will use the Monterey Regional Waste Management District’s co-generation facility as the energy source for the project. MCWD cites two sources, the second of which is LWM-9, a document that is not evidence in this proceeding and which was stricken from the record by the ALJ in her July 21, 2009, Ruling.¹¹⁴ DRA notes that MCWD’s first cite is to the Direct testimony of Lyndel Melton where Mr. Melton states unequivocally that the “desalination facility *would* obtain power from the Monterey Regional Waste Management District.¹¹⁵ Although Mr. Melton provided this testimony, there is nothing in the Water Purchase Agreement that requires this or even addresses any actions that the parties will take to pursue such energy sources.

On page 30 of its Opening Brief, MCWD provides information on FORA that is not in the record, citing to a FORA website. This information must be ignored.

The Commission must also ignore a large portion of MCWD’s Opening Brief rebutting DRA’s recommendation that the desalination plant be designed to meet the California Department of Public Health’s notification level for boron and not some arbitrary higher level. Specifically, the Commission must ignore the discussion starting at the bottom of page 69 discussing energy recovery devices up until the middle of page

¹¹³ See DRA’s Proposed Modification to the Settlement dated May 27, 2010.

¹¹⁴ The ALJ Ruling strikes the “Testimony of Lyndel Melton, - p.22, line 16 beginning with ‘In addition’ through line 20, and Exhibit LWM-9.”

¹¹⁵ MCWD Ex. 306, p. 21.

70 and the discussion on Contra Costa Water District's water supply. This discussion makes arguments alleging facts that are not in the record of the proceeding.

XVIII. MODIFYING THE SETTLEMENT IS NOT CHERRY-PICKING

MCWD appears to argue that if the Commission reviews the settlement and makes changes to specific terms, that it would be “cherry picking,” and that such an approach would be contrary to long-established policy of encouraging settlements.¹¹⁶ However, the Commission can and does make changes to individual terms of settlements and can rightfully do so to assure that the Settlement is in the public interest. In D.03-12-035, the Commission exercised its regulatory authority and struck Paragraph 6 in the proposed bankruptcy settlement. Paragraph 6 was intended to limit the Commission's ability to restrict PG&E and PG&E Corporation from declaring and paying dividends or repurchasing stock. The Commission found that Paragraph 6 was “unreasonable and contrary to the public interest, because it would restrict the Commission from ruling against PG&E concerning allegations of unreasonable dividend or stock repurchasing practices.”¹¹⁷

The Commission's policy is that contested settlements *should be subject to more scrutiny compared to an all-party settlement.*¹¹⁸ As explained in D.02-01-041:

In judging the reasonableness of a proposed settlement, we have sometimes inclined to find reasonable a settlement that has the unanimous support of all active parties in the proceeding. In contrast, ***a contested settlement is not entitled to any greater weight or deference merely by virtue of its label as a settlement; it is merely the joint position of the sponsoring parties***, and its reasonableness must be thoroughly demonstrated by the record.¹¹⁹

¹¹⁶ MCWD Opening Brief, p. 19.

¹¹⁷ *Opinion Modifying the Proposed Settlement Agreement of PG&E*, (D.03-12-035), p. 28

¹¹⁸ D.96-01-011, Finding of Fact (FOF) 5. See D.96-01-011, 1996 Cal. PUC LEXIS 23, 39, 40 “This more detailed review and heightened scrutiny is especially appropriate when the settlement is not all-party.”

¹¹⁹ D.02-01-041, emphasis added.

The Commission must review this Settlement and every contested issue with heightened scrutiny because it is not an all-party settlement. Contested settlements are subject to additional scrutiny to ensure that the contested elements of the settlement fairly balance the interests at stake, are consistent with Commission policy objectives, and comply with Rule 12.1.¹²⁰

DRA agrees with the Parties that the Commission looks at individual terms in the settlement to determine if the settlement as a whole is in the public interest. A review of the individual terms of this Agreement results in the overwhelming conclusion that, while the agreement would provide needed water to Cal Am ratepayers, the agreement has so many inequities that it is not in the ratepayers' interests unless modified.

The Commission must change those terms that require Cal Am ratepayers to subsidize Marina Coast Water District and the future development of the former Fort Ord. It is not in the public interest to have ratepayers in one jurisdiction subsidizing future development in another, unrelated jurisdiction. The Commission can stop the subsidy by requiring MCWD to pay its prorata share of 16.2% of the Project costs.

The Commission must not require Cal Am ratepayers to pay for the agencies' legal costs fighting against ratepayers' interest or subsidize MCWD for the costs of its own abandoned desalination plant. To do so is not in the public interest.

The Commission must set a cost cap for the project that will result in just and reasonable rates for Cal Am ratepayers. This can only happen if the Commission establishes a per-acre-foot cost cap for the Product Water because the Commission has no jurisdiction over the agencies to assure just and reasonable costs. DRA proposes a cap at \$2,200 per-acre-foot and a cost cap.

The Commission should establish a cap of \$86.6 million for the Cal Am-only facilities, adopt an annual process that moves the costs into ratebase only after a prudency review by the Commission and which permits Cal Am to earn AFUDC based upon a two-

¹²⁰ D.07-03-044, p. 257.

year, short-term borrowing rate. To grant Cal Am a higher cap and recovery is not in the public interest.

The Commission must change the unlawful terms, like those deciding ratemaking issues, those binding future commissions, and those that seek to usurp the Commission's powers. A settlement which contains unlawful terms is not only unlawful, but is not in the public interest.

Finally, the Commission must establish a future phase of this proceeding to address the operation of the plant to assure that the plant will provide Cal Am ratepayers with safe and reliable service. It would not be in the public interest, and would leave Cal Am ratepayers vulnerable to substantial future rate increases, to leave the entire operation of the plant undefined.

DRA has filed a red-lined version of the Settlement and Water Purchase Agreements indicating how these changes can be made.

XIX. CONCLUSION

In considering the Water Purchase Agreement and the Regional Project, the Commission must remain mindful of the substantial economic implications of this agreement to Cal Am's ratepayers. What the Parties have proposed could lead to unprecedented water bills for Cal Am's customers; indeed Cal Am's ratepayers would be exposed to rates that could treble from current levels. Given what is at stake with this project, it is imperative that the Commission exercise all of its regulatory authority to ensure that Cal Am's ratepayers are protected from inappropriate risks, improper subsidies to public agencies and unbounded costs. As presented, the Water Purchase Agreement makes Cal Am's ratepayers the ultimate deep pocket. Moreover, the WPA would prevent the Commission from exercising its statutory responsibilities to ensure that Cal Am's water rates in Monterey are just and reasonable. Thus, substantial changes to the Water Purchase Agreement along the lines DRA outlines herein are not only necessary to protect Cal Am's customers but are mandated by statute.

DRA recommends the Commission modify the Settlement Agreement and Water Purchase Agreement as discussed above, in its Comments on the Settlement Agreement

on April 30, 2010 and Proposed Modification to the Proposed Settlement Agreement, issued on May 27, 2010, and in its July 3, 2010, Opening Brief.

Respectfully submitted,

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July 16, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES**” in **A.04-09-019** by using the following service:

E-Mail Service: sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on **July 16, 2010** at San Francisco, California.

/s/ Imelda Eusebio

IMELDA EUSEBIO

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