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 SAN FRANCISCO COUNTY  
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 Deborah Steppe

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(Fee Exempt, Gov. Code § 6103)

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18 Attorneys for Plaintiff, County of Monterey

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

21 COUNTY OF MONTEREY, a political  
 22 subdivision of the State of California,  
 23  
 24 Plaintiff,  
 25  
 26 vs.

CGC-12-521875  
 Case No.:  
**COMPLAINT FOR DECLARATORY  
 RELIEF**  
 (Code of Civ. Proc. §1060)

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

29 Plaintiff alleges:  
 30 1. Plaintiff County of Monterey ("County") is and at all times herein mentioned was a  
 31 political subdivision of the State of California.  
 32 2. Defendant California-American Water Company ("Cal-Am") is and at all times  
 33 herein mentioned was a California corporation organized and existing under and pursuant to the laws

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: June 26, 2012

CHARLES J. MCKEE, COUNTY COUNSEL

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

**NO VERIFICATION REQUIRED**  
**Code of Civil Procedure §446**

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

**vs.**

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

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

**EXHIBIT "A"**

**EXHIBIT "A"**

ORDINANCE NO. 3439

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

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

SECTION 1.

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

Chapter 10.72

DESALINIZATION TREATMENT FACILITY

Sections:

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

10.72.010 Permits Required.

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

10.72.020 CONSTRUCTION PERMIT APPLICATION PROCESS.

All applicants for construction permits required by Section 10.72.010 shall:

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

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

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

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

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

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

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

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

#### 10.72.030 OPERATION PERMIT PROCESS.

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

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

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

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

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

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

10.72.040 INSPECTION.

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

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

10.72.050 TESTING.

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

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

10.72.060 PERMIT - DISPLAY - SURRENDER.

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

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

10.72.070 PERMIT - REVOCATION AND SUSPENSION.

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

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

10.72.080 HEARING PROCEDURE.

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

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

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

#### 10.72.090 FEES.

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

#### 10.72.100 PENALTY FOR VIOLATION.

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

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

#### 10.72.110 SEVERABILITY.

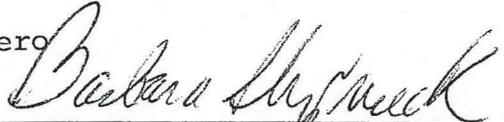
If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the other portions of this chapter. The Board of Supervisors hereby declares that it would have passed this ordinance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

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

AYES: Supervisors Shipnuck, Petrovic, Karas and Strasser Kauffman

NOES: None

ABSENT: Supervisor Del Piero

  
\_\_\_\_\_  
BARBARA SHIPNUCK, Chairwoman  
Board of Supervisors

ATTEST:

ERNEST K. MORISHITA  
Clerk of Said Board

By   
\_\_\_\_\_  
Deputy



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

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

11/28/89

10.72.020

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

10.72.030

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

**STATE OF CALIFORNIA  
COUNTY OF MONTEREY**

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

Ordinance No. 3439 on file in my office.

Witness my hand and seal of the Board of Supervisors.

This 25<sup>th</sup> day of June, 2012

**GAIL T. BORKOWSKI  
Clerk of the Board of Supervisors**

seal

By: [Signature] Deputy