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**BEFORE THE PUBLIC UTILITIES COMMISSION**

**OF THE STATE OF CALIFORNIA**

In the Matter of the Application of California-American Water Company (U 210 W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates

Application No. A.12-04-019  
(Filed April 23, 2012)

**REPLY BRIEF OF THE  
MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY  
REGARDING WATER RIGHTS  
FOR A GROUNDWATER REPLENISHMENT PROJECT**

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Date: July 25, 2012

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**I.**

**INTRODUCTION**

The Monterey Regional Water Pollution Control Agency (MRWPCA) files this Reply Brief in response to the comments of others in their opening briefs on the water rights for a groundwater replenishment (GWR) project.

MRWPCA's Opening Brief provided a substantive evaluation of the water rights, including a quantitative analysis. Responses to the vast majority of the comments made in the opening briefs of others are already contained in MRWPCA's Opening Brief (which the others had not yet had the opportunity to see due to the concurrent filing.) To the extent there may now be substantive responses

to MRWPCA's Opening Brief in the reply briefs of others, MRWPCA will need the opportunity to respond to those reply briefs.

In addition to the content provided in MRWPCA's Opening Brief, below we provide responses on additional issues raised in the opening briefs of others.

## II.

### FURTHER RESPONSES AND CLARIFICATION

A. No Infringement on MCWD or MCWRA Rights. MRWPCA proposes to use water for the GWR project in a manner that does not incur on the water rights of either the MCWD or the MCWRA. During the Initial Term, the bulk of the GWR water – 2,987 AFY or almost 70% of project need - is proposed to be provided from the remainder of MRWPCA's 3,900 AFY right, after deducting the amount MRWPCA committed to the MCWD project referred to as the RUWAP<sup>1</sup>. There is adequate influent to satisfy both the MCWD and MRWPCA rights. Section 3.03 (d) of the 1992 Agreement, as amended, makes it clear that MRWPCA's commitment of its incoming wastewater flows to the SVRP for the CSIP, up to 29.6 million gallons per day, excludes flows to which MCWD and MRWPCA are entitled.

For a 3,500 AFY GWR project, an additional approximately 1,340 AFY would need to come from unused water during the twenty-one years of the Initial Term when the project is anticipated to be

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<sup>1</sup> This is the amount for a 1,485 AFY RUWAP. MCWD currently proposes to proceed with either a 780 AFY RUWAP (see MCWD 2010 Urban Water Management Plan, Table 4.4), or a 1,000 AFY RUWAP (see Coastal Water Project FEIR, Table 5.2), therefore only a portion of the MRWPCA commitment will be needed.

in operation.<sup>2</sup> MRWPCA proposes to use unused flows into the Regional Treatment Plant during a time when (1) the CSIP demand is fully satisfied, and (2) MCWD's firm right is untouched (keeping in mind that MCWD does not have use for more than a fraction of that firm right). MCWD is capped at 300 AF during the six month period from April through September. MCWD can take the amount it deferred taking during these months during the remaining six months of October through March. This means that MCWD has the most supply during months when there is typically far less demand. MRWPCA's use of surplus water during the deepest of these winter months, targeted at November through February, is feasible due to the storage provided by the Seaside Groundwater Basin. This design harms neither of the other two agencies. It has the potential to significantly benefit the Monterey Peninsula community members.

During the Extended Term, no unused water would be required. In this context, opposition to near term use of otherwise unused surplus winter water for a GWR project serves no purpose.

B. MCWD Approval is Not Required Under the Three-Way MOU or Otherwise. In its Opening Brief MRWPCA set forth a conservative analysis of water availability, which assumes that all of MCWD's water is used by MCWD, even though there is no evidence that this will occur, particularly during the remaining approximately twenty-one years of the Initial Term. The analytical approach MRWPCA has employed addresses any legitimate concern of MCWD.

It merits note that MRWPCA has already committed the majority of its most valuable supply to the MCWD RUWAP, in the form of 650 AF of "summer" water that can be used during the period of

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<sup>2</sup> Or a larger portion could easily come from the winter surplus, the lowest amount of which is 3,775 AF (MRWPCA Opening Brief, page 11.)

May through August. MRWPCA's Opening Brief analysis further assumes that MRWPCA will also provide most of the water needed for RUWAP during April and September, another significant contribution to MCWD. Without this MRWPCA water, the MCWD RUWAP would not be feasible.<sup>3</sup> In addition to its own Annexation Agreement water, MCWD now can use the most valuable element of MRWPCA's water right. In spite of all this, MCWD now vehemently objects to MRWPCA's use of the water remaining to it for the benefit of other members of the region. This is true even though the use is proposed to be undertaken in a manner fully respecting MCWD's Annexation Agreement amount, only a portion of which can actually be used by MCWD; and in spite of the severe need on the Monterey Peninsula for that water. This is contrary to the public interest, and conflicts with the Constitutional requirement to maximize the reasonable and beneficial uses of water.

MCWD does not have approval rights over any MRWPCA (or MCWRA) use of water pursuant to the 2009 Three-Way MOU. MCWD asserts that:

“ . . . [MCWD]'s 2009 Three-Way Recycled MOU<sup>4</sup> with MRWPCA and MCWRA governs the terms and conditions under which replenishment and recycling projects may be undertaken with recycled water provided by MRWPCA, and the MOU requires MCWD's approval for any such project or project components.” (MCWD Opening Brief, page 14.)

To the contrary, this MOU is now moot. Even if it were not, MCWD mischaracterizes the MOU, as set forth below.

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<sup>3</sup> Theoretically, MCWD could undertake the RUWAP using winter water if it constructed sufficient storage. However, this is very expensive infrastructure with some considerable operational challenges.

<sup>4</sup> The MOU is actually entitled “Monterey Regional Water Supply Program Recycled Water Three-Way Memorandum of Understanding,” entered into on June 1, 2009. A copy is attached hereto as Exhibit A.

The 2009 Three-Way MOU recitals make clear that the predicate for the MOU was the Regional Water Supply Program (also known as the Regional Project or Regional Desalination Project, or RDP<sup>5</sup>), and that the MOU focus would be on planning-level activities relating to the RDP. Those recitals state in relevant part:

“WHEREAS, the Regional Water Supply Program is an alternative analyzed in California-American Water Company’s (Cal-Am) Coastal Water Project (CWP) Draft Environmental Impact Report (DEIR), and has recycled water elements identified for urban reuse to benefit Cities on the Monterey Peninsula, the northern communities of Monterey County, agricultural interests and the United States Army; and,

WHEREAS, the recycled water elements of the Regional Water Supply Program appear to be cost effective for ratepayers and to reduce recycled water cost to the agricultural community; and,

WHEREAS, the Participating Entities believe it is necessary and appropriate and that there is an urgency to review and analyze the technical, managerial, financial and environmental feasibility of the recycled water elements for a Final Environmental Impact Report for the Regional Water Supply Program through the CWP process (FEIR); and,

WHEREAS, evaluation of the feasibility of the Regional Water Supply Program recycled water elements requires coordination and collaboration between the Participating Entities; and,

WHEREAS, the Participating Entities signatory to this MOU desire to cooperatively engage in recycled water supply planning and jointly analyze proposed project elements ....”

The MOU is specific that its very purpose is to review and analyze “*recycled water elements for a Final Environmental Impact Report for the Regional Water Supply Program through the CWP Process. . .*” and that “*evaluation of the feasibility of the Regional Water Supply Program recycled water elements requires coordination and collaboration between the Participating Entities. . .*” The MOU is dated after the Regional Water Supply Program DEIR was completed in January 2009. The

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<sup>5</sup> The Regional Water Supply Program is also known as the Regional Project, or the RDP. See attached “Memorandum of Understanding Regarding Cooperative Planning and Joint Analysis for a Monterey Regional Water Supply Program,” entered into on June 1, 2009, fourth recital. A copy is attached hereto as Exhibit B.

Final EIR was completed in October 2009. This process, referred to as the CWP Process in the MOU, has been terminated. (CPUC Decision 12-07-008, July 18, 2012, regarding Application 04-09-019.)

The basis for the MOU no longer exists. The MOU can no longer serve its intended purpose, and is without further force and effect.<sup>6</sup> This is reinforced by the fact that one of the three “Participating Entities” is opposing rather than participating in the current proposal, and is the only entity insisting that the MOU has ongoing vitality.

Assuming solely for argument’s sake that the MOU retains some viability, MCWD offers no support for its position that the MOU “governs” terms and conditions of projects, and that MCWD “approval” is required for the other parties’ recycled water projects. The MOU was actually a planning level MOU, to coordinate the parties’ recycled water efforts in the context of the RDP and the Coastal Water Project. MCWD’s interpretation of the MOU to entitle MCWD to control, and have veto power over<sup>7</sup>, the other two parties’ projects would be an invalid and clearly unintended delegation of the parties’ rights held per those existing agreements.

The MOU was not intended to change any existing agreements. The existing agreements speak for themselves as to the rights, obligations, limitations, and responsibilities of the parties. Those

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<sup>6</sup> Where an assumption necessary to a contract no longer exists through no fault of a party seeking to avoid performance, three closely related defenses work to excuse performance: an implied condition of the contract not met; performance is impossible; purpose of the contract has been frustrated by an unanticipated supervening circumstance to the extent that value of performance is substantially destroyed. *Habitat Trust for Wildlife, Inc. v. City* (2009) 175 Cal.App.4<sup>th</sup> 1306, 1335-1336; *La Cumbre Golf and Country Club v. Santa Barbara Hotel Co.* (1928) 205 Cal. 422, 425-426; *H. Hackfeld & Co., Ltd. v. Castle* (1921) 186 Cal. 53, 57-58.

<sup>7</sup> In its May 25, 2012 filing entitled “Marina Coast Water District’s Response in Opposition to the Motion of California-American Water Company (U 210 W) to Deny Marina Coast Water District Party Status,” at page 7, footnote 7, MCWD states, “MCWD has an equal seat at the table in developing analytical criteria under the MOU.” MCWD thus acknowledges that the criteria need to be developed, that they are “analytical” criteria, and that MCWD has an equal role. In MCWD’s present assertion of unilateral control MCWD has ramped up the “equal seat” to the status of first among equals.

agreements govern, and the MOU is explicit that it does not amend them.<sup>8</sup> Projects must be measured by their consistency with those agreements and other applicable law. If the committee or members thereof were to attempt something more, such as assertion of the control MCWD claims, MRWPCA would have no choice but to terminate its participation in MOU process.

There is no support for MCWD's position. The MOU is null and void.

C. Use of the SVRP. Some parties have expressed concern regarding MRWPCA's use of the SVRP for the GWR project. MRWPCA does not propose to use the SVRP for the GWR project. A different treatment train, to be provided at a new advance treatment facility, would be used for the GWR project, as set forth in our Opening Brief. This produces water of a quality eligible for injection into the Seaside Basin.

### **III.**

#### **OUTFALL AGREEMENT**

MCWD asserts that it has priority rights to the full amount of capacity provided in the outfall agreement for the RDP. The issues regarding that outfall agreement are addressed in the Cal Am Opening Brief.

### **III.**

#### **CONCLUSION**

The GWR project has the potential to contribute significantly to a solution for the Monterey Peninsula. To the extent reasonable, MRWPCA is willing to put its resources to work in furtherance of

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<sup>8</sup> See 7<sup>th</sup> Whereas clause in Exhibit A.

a successful project. Those resources are the bulk of what is needed, but not all that is needed. Whether the others whose collaboration is needed will collaborate is yet to be seen. If they do, a GWR project should be eminently feasible.

Dated: July 25, 2012

Respectfully submitted,

/s/ Martha H. Lennihan

Martha H. Lennihan  
LENNIHAN LAW  
A Professional Corporation  
Attorney for Monterey Regional Water Pollution  
Control Agency

## ATTACHMENTS

Exhibit A – Monterey Regional Water Supply Program Recycled Water Three-Way  
Memorandum of Understanding

Exhibit B – Memorandum of Understanding Regarding Cooperative Planning and Joint Analysis  
for a Monterey Regional Water Supply Program

All correspondence, pleadings, orders and notices in this proceeding should be directed to the following:

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## EXHIBIT A

**Monterey Regional Water Supply Program  
Recycled Water Three-Way  
Memorandum of Understanding**

**DUPLICATE  
ORIGINAL**

This Memorandum of Understanding (hereinafter referred to as "MOU") is made and entered into as of the first day of June 2009, among the Monterey Regional Water Pollution Control Agency (MRWPCA), Marina Coast Water District (MCWD), and Monterey County Water Resources Agency (MCWRA), referred to collectively in this MOU as the "Participating Entities."

**WHEREAS**, the Regional Water Supply Program is an alternative analyzed in California-American Water Company's (Cal-Am) Coastal Water Project (CWP) Draft Environmental Impact Report (DEIR), and has recycled water elements identified for urban reuse to benefit Cities on the Monterey Peninsula, the northern communities of Monterey County, agricultural interests and the United States Army; and,

**WHEREAS**, the recycled water elements of the Regional Water Supply Program appear to be cost effective for ratepayers and to reduce recycled water cost to the agricultural community; and,

**WHEREAS**, the Participating Entities believe it is necessary and appropriate and that there is an urgency to review and analyze the technical, managerial, financial and environmental feasibility of the recycled water elements for a Final Environmental Impact Report for the Regional Water Supply Program through the CWP process (FEIR); and,

**WHEREAS**, evaluation of the feasibility of the Regional Water Supply Program recycled water elements requires coordination and collaboration between the Participating Entities; and,

**WHEREAS**, the Participating Entities signatory to this MOU desire to cooperatively engage in recycled water supply planning and jointly analyze proposed project elements; and,

**WHEREAS**, Participating Entities have previously entered into bi-lateral agreements with each other concerning recycled water; and,

**WHEREAS**, Participating Entities recognize a need to memorialize a common interpretation of their existing agreements without changing any existing agreements, to facilitate analyzing the feasibility of proposed recycled water projects.

**WHEREAS**, this MOU is intended as a preliminary agreement for planning-level activities relating to the Regional Water Supply Program. This Agreement is not intended to and shall not be interpreted to constitute, directly or indirectly, a commitment by the Parties to undertake any project or action, including but not limited to a project or action involving any element of the Regional Water Supply Program. The Parties acknowledge and agree that no commitment to undertake any project or action may occur until environmental review has been completed in accordance with CEQA. The Parties specifically intend to avoid any commitments or actions that would, in light of all surrounding circumstances, commit the Parties as a practical matter to any project or project element prior to the completion of environmental analysis in accordance with CEQA.

**NOW, THEREFORE, BE IT RESOLVED**, that for purposes of evaluating the feasibility of urban recycled water project elements of the Regional Water Supply Program for the FEIR, the Participating Entities will use and encourage others to use the recycled water demand schedules for irrigation season (typically March through October) recycled water supply and for recycled

water supply during the non-irrigation season (typically November through February as shown on Exhibit A and the schedule water for urban reuse as shown on Exhibit B (exclusive of the MCWD 300 acft irrigation season allocation); and,

**BE IT FURTHER RESOLVED**, that the recycled water elements of the Regional Water Supply Program shall be consistent with the Regional Urban Water Augmentation Project Environmental Impact Report certified by MCWD on October 27, 2004, Addendum No. 1 to the RUWAP EIR certified on November 15, 2006, and Addendum No. 2 certified on February 14, 2007; and,

**BE IT FURTHER RESOLVED**, that in evaluating the feasibility of future urban recycled water projects, the Participating Entities shall use and shall encourage others to use the concept that in addition to the demand schedules shown on Exhibits A and B each of the Participating Entities shall be able to make use of the available recycled water (approximately 6,500 afy currently and up to approximately 10,000 afy at plant capacity) from the remainder of the irrigation and non-irrigation season available recycled water consistent with all other agreements associated with recycled water allocations made between MCWD, MCWRA and MRWPCA. Preference shall be given in analysis of future projects for expansion of urban reuse to include groundwater replenishment projects, additional irrigation project storage, or other urban reuse projects. So long as non-irrigation season water is not used for urban reuse, then MCWRA may plan and analyze the feasibility of using such water to develop additional irrigation projects including storage for expansion of the existing Castroville Seawater Intrusion Project and other prospective agricultural irrigation projects; and,

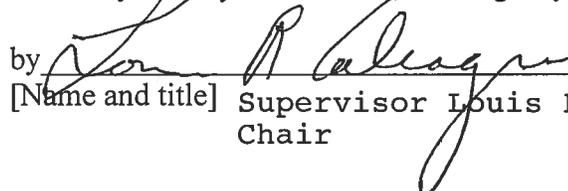
**BE IT FURTHER RESOLVED**, that for planning and feasibility analysis, each proposed project that would use recycled water not allocated in schedules shown on Exhibits A and B shall be required to satisfy criteria jointly developed by a committee consisting of the Board Chair and General Manager from each Participating Entity that would include but not be limited to 1) confirming customers for the recycled water, 2) having a completed project description, 3) having completed environmental review under CEQA and 4) having an approved financing mechanism for the prospective project. Every two years the joint committee will review and recommend priorities and schedules for feasibility analysis; and,

**BE IT FURTHER RESOLVED**, that the payment of costs shall be consistent with Exhibit C (actual costs will be paid by the customers who use recycled water whether MCWD or MRWPCA) with the clarification that all infrastructure debt service paid prior to the date recycled water is delivered for prospective projects described above will also be subject to the same provisions for ongoing debt service payments identified in sections 3 and 4, of debt service paid by MCWRA for the Salinas Valley Reclamation Project bridge financing. The Committee, as referenced above, will review and clarify these costs to assure equity between all parties; and,

The Effective date shall be the date this MOU is last executed by any of the Parties.

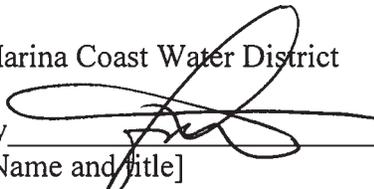
Dated: 6/18, 2009

Monterey County Water Resources Agency

by   
[Name and title] Supervisor Louis R. Calcagno  
Chair

Dated: 7/10, 2009

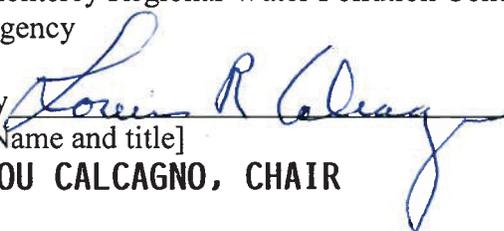
Marina Coast Water District

by   
[Name and title]

**HOWARD GUSTAFSON, PRESIDENT**

Dated: 7/10, 2009

Monterey Regional Water Pollution Control  
Agency

by   
[Name and title]

**LOU CALCAGNO, CHAIR**

APPROVED AS TO FORM AND CONTENT

CHARLES J. MCKEE, General Counsel, Monterey County Water Resources Agency

By 

Irv Grant, Deputy General Counsel

**EXHIBIT A**

**MCWRA DEMAND SCHEDULE**

<b>MONTH</b>	<b>REGIONAL PLANT WASTEWATER AVAILABLE FOR RECYCLING AT PLANT CAPACITY (IN ACRE-FEET)</b>	<b>MCWRA'S DEMAND SCHEDULE FOR RECYCLED WATER</b>
<b>JANUARY</b>	<b>2,390</b>	<b>190</b>
<b>FEBRUARY</b>	<b>2,440</b>	<b>480</b>
<b>MARCH</b>	<b>2,410</b>	<b>1,620</b>
<b>APRIL</b>	<b>2,410</b>	<b>2,410</b>
<b>MAY</b>	<b>2,490</b>	<b>2,490</b>
<b>JUNE</b>	<b>2,480</b>	<b>2,480</b>
<b>JULY</b>	<b>2,500</b>	<b>2,500</b>
<b>AUGUST</b>	<b>2,520</b>	<b>2,520</b>
<b>SEPTEMBER</b>	<b>2,520</b>	<b>2,520</b>
<b>OCTOBER</b>	<b>2,490</b>	<b>1,650</b>
<b>NOVEMBER</b>	<b>2,450</b>	<b>340</b>
<b>DECEMBER</b>	<b>2,370</b>	<b>250</b>
<b>TOTAL</b>	<b>29,470</b>	<b>19,450</b>

1. Source: (MRWPCA/MCWRA – 6/16/92 - Exhibit B)

2. Exception for irrigation season shown in Exhibits B

**EXHIBIT B**  
**SEASONAL CAP ON URBAN**  
**TERTIARY TREATED WASTE WATER ALLOCATION**

<b>MONTH</b>	<b>TYPICAL MONTHLY SEASONAL SPREAD (AF)</b>	<b>CUMULATIVE SEASONAL ALLOCATION (AF)</b>
<b>MAY</b>	<b>163</b>	<b>766 AF*</b>
<b>JUNE</b>	<b>202</b>	
<b>JULY</b>	<b>218</b>	
<b>AUGUST</b>	<b>183</b>	

- EXCLUSIVE OF MCWD 300 AF ALLOCATION.
- \*EXHIBIT B IS THE DESIGN NUMBER, SEASONAL VARIATION MAY INCLUDE 11% VARIANCE

REV. 12/20/01

## EXHIBIT C

### CALCULATION OF PAYMENTS FOR URBAN RECYCLED WATER PURSUANT TO THIS MOU

Urban Recycled Water customers (URWC) shall pay the Actual Costs of tertiary treated water to which it takes delivery for its use. The Actual Costs will be calculated from the cost components which comprise MRWPCA's existing budget and actual spreadsheet model(s) for the annual SVRP and CSIP costs.

The four cost elements that comprise the Actual Costs will be computed as follows:

- (1) **SVRP O&M Costs:** The SVRP O&M budget will be calculated based on the Total Tertiary Treated Water Production needed to serve both the CSIP and M&I uses of tertiary treated water. The amount to be paid by URWC will be computed using the formula below, in which:
- A = Total Tertiary Treated Water Production, AFY
  - B = Tertiary Treated Water Production delivered to URWC for URWC use, AFY
  - C = Total O&M Expenditures from the SVRP O&M budget, excluding debt service
  - D = Amount to be paid by URWC

$$D = \frac{B \times C}{A}$$

- (2) **Supplemental Well Pumping Cost:** The amount to be paid by URWC will be computed as indicated in Section 2.G. of Amendment No. 3 of the Agreement between MRWPCA and MCWRA.

S = Amount to be paid by URWC

- (3) **SWRCB Loan Contract Debt Service:** The amount to be paid by URWC will be computed using the formula below, in which:

- A = Total Tertiary Treated Water Production, AFY
- B = Tertiary Treated Water Production delivered to URWC for its use, AFY
- E = SVRP SWRCB Loan Debt Service
- F = Amount to be paid by URWC

$$F = \frac{B \times E}{A}$$

- (4) **Bureau Loan Contract Debt Service:** The amount to be paid by URWC will be computed using the formula below, in which:

- A = Total Tertiary Treated Water Production, AFY
- B = Tertiary Treated Water Production delivered to URWC for its use, AFY
- G = SVRP Bureau Loan Debt Service, computed pursuant to Article 9 (b) (1) and 9 (c) of Bureau Loan Contract
- H = Additional interest charged by the Bureau for the Bureau loan on the SVRP pursuant to Article 9 (b) (2) of Bureau Loan Contract
- I = Amount to be paid by URWC

$$I = \frac{B \times G}{A} + H$$

## EXHIBIT B

**MEMORANDUM OF UNDERSTANDING  
REGARDING  
COOPERATIVE PLANNING AND JOINT ANALYSIS  
FOR A  
MONTEREY REGIONAL WATER SUPPLY PROGRAM**

This Memorandum of Understanding (“MOU”) is made and entered into as of June 1, 2009, by and between the Monterey Regional Water Pollution Control Agency (“MRWPCA”), Marina Coast Water District (“MCWD”), and Monterey County Water Resources Agency (“MCWRA”) (collectively, the “Parties”).

**RECITALS**

WHEREAS, MCWRA is the lead agency and MRWPCA and MCWD are responsible agencies for adopting this planning MOU; and

WHEREAS, the California Public Utilities Commission (“CPUC”) is presently considering a proposal from California American Water Company to construct the Coastal Water Project (“CWP”), and a Draft Environmental Impact Report (“DEIR”) has been prepared for that project and is now under consideration by the CPUC for preparation and certification of a Final Environmental Impact Report (“FEIR”); and,

WHEREAS, the CPUC is currently conducting two parallel proceedings for water supply in Monterey County, an environmental impact report process and a rate proceeding (CPUC proceeding number A.04-09-019 (“**Proceeding**”)), and the Parties believe that the establishment of a planning framework in accordance with this MOU will facilitate the resolution of issues now pending before the CPUC; and

WHEREAS, the Monterey Regional Water Supply Project (“**Regional Project,**”) has been identified in the DEIR as an alternative to the CWP, with components that may benefit cities on the Monterey Peninsula, the communities of North Monterey County; agricultural interests in North Monterey County, and the United States Army; and

WHEREAS, the Parties believe that the Regional Project has potential for the most benefit, least cost and least environmental impact of the alternatives being considered in the DEIR; and

WHEREAS, the DEIR states that the Regional Project has the support of staff at the CPUC; and

WHEREAS, the Parties support a collaborative institutional and political approach to facilitating analysis of the environmental, technical, managerial and financial feasibility of the Regional Project to foster and promote cost-effective, regionally beneficial and environmentally sensitive regional water supply planning; and

WHEREAS, the Parties recognize that water supply issues confronting north Monterey County and the Monterey Peninsula are significant, and require focused technical and cooperative political effort to resolve; and,

WHEREAS, the Parties further recognize that there is an urgency to identify and adequately analyze and plan, fully in accordance with all applicable laws, a water supply solution for North Monterey County, the MCWD service area and the Monterey Peninsula; and,

WHEREAS, the Parties have, the ability to furnish financial resources and in-kind assistance in support of the cooperative planning and joint analysis contemplated by this MOU ; and,

WHEREAS, the Parties wish by this MOU to provide a common planning framework to conduct planning-level analysis for the Regional Project and elements of the Regional Project, excepting surface water diversion and/or groundwater for use outside MCWRA Zone 2C, as to which the Parties have not yet analyzed and come to a common position; and

WHEREAS, nothing in this MOU is intended to infringe upon or otherwise restrict the independent authority of each Party; and,

WHEREAS, this MOU is intended as a preliminary agreement for planning-level activities relating to the Regional Project. This Agreement is not intended to and shall not be interpreted to constitute, directly or indirectly, a commitment by the Parties to undertake any project or action, including but not limited to a project or action involving any element of the Regional Project. The Parties acknowledge and agree that no commitment to undertake any project or action may occur until environmental review has been completed in accordance with CEQA. The Parties specifically intend to avoid any commitments or actions that would, in light of all surrounding circumstances, commit the Parties as a practical matter to any project or project element prior to the completion of environmental analysis in accordance with CEQA.

NOW, THEREFORE, in consideration of the mutual agreements made herein, and the mutual benefits to be provided, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The Parties will negotiate in good faith agreements to analyze the feasibility of a) brackish water supply wells for a potential desalination plant; b) ocean outfall brine disposal; and, c) urban reuse of recycled water so that the FEIR can be used for future decisions by the Parties. The Parties' respective governing bodies may consider adoption of these agreements within thirty (30) days after the Effective Date.

2. If the CPUC certifies an FEIR for the Regional Project and approves a project based on the certified FEIR, the Parties may cooperate and use the certified FEIR as the basis for analyzing and acting on the implementation of a regional water supply project if in compliance with all applicable laws.

3. The Parties shall further negotiate a cost sharing agreement for the equitable sharing of expenses for technical support and provision of in-kind assistance necessary to implement this MOU, the approval of such agreement to be a condition precedent to further performance pursuant to their MOU. Such negotiations shall commence immediately upon the Effective Date and either successfully conclude or terminate within sixty ( 60) days after the Effective Date.

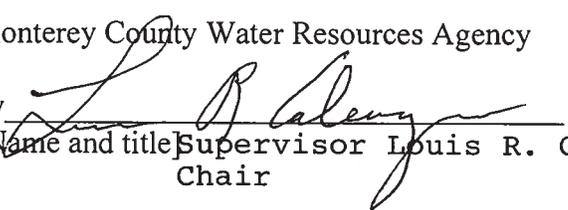
4. The Parties support the negotiation and execution of an agreement between MRWPCA and MCWD to implement the project described in the environmental impact report certified by MCWD on October 27, 2004, by Resolution 2004-56 ("RUWAP EIR") for the Regional Urban Water Augmentation Project in accordance with CEQA, and Addendum No. 1 to the RUWAP EIR certified on November 15, 2006, and Addendum No. 2 certified on February 14, 2007.

5. The Effective date shall be the date this MOU is last executed by any of the Parties.

Dated: 6/18, 2009

Monterey County Water Resources Agency

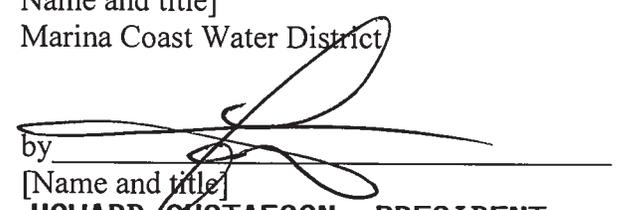
by

  
[Name and title] Supervisor Louis R. Calcagno  
Chair

Dated: 7/10, 2009

Name and title]  
Marina Coast Water District

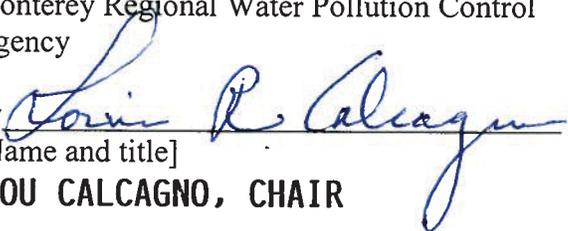
by

  
[Name and title]  
**HOWARD GUSTAFSON, PRESIDENT**

Dated: 7/10, 2009

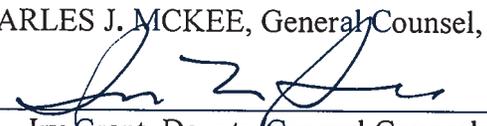
Monterey Regional Water Pollution Control  
Agency

by

  
[Name and title]  
**LOU CALCAGNO, CHAIR**

APPROVED AS TO FORM AND CONTENT

CHARLES J. MCKEE, General Counsel, Monterey County Water Resources Agency

By   
Irv Grant, Deputy General Counsel