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APPENDIX A

Findings of Fact

1. Cal-Am is a Class A investor-owned water utility, regulated by this Commission. Its Monterey District serves most of the Monterey Peninsula, including Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside, as well as the unincorporated areas of Carmel Highlands, Carmel Valley, Pebble Beach, and the Del Monte Forest; [service to these areas is considered as service to the Monterey District Main System.](#)

2. Cal-Am supplies the Monterey District [Main System](#) with surface water and groundwater from the Carmel River System and the coastal subarea of the Seaside Groundwater Basin (also known as the Seaside Basin). Cal-Am also operates three small independent water systems along the Highway 68 corridor east of Monterey that draw water from the Laguna Seca subarea of the Seaside Basin; [and services 4 subsystems that pump water from other water basins.](#)

3. Water supply has long been constrained due to frequent drought conditions on the semi-arid Monterey Peninsula, which obtains its water supply solely from rainfall. In addition, as described in the FEIR, seawater intrusion and excess diversion have existed for decades, first identified in the late 1930s and documented by the State of California in 1946.

4. According to the FEIR, as of 1995, Cal-Am served approximately 105,000 customers in its Monterey District, supplying them with approximately 17,000 afy. Of this amount, approximately 14,106 afy was supplied from the Carmel River system and 2,700 afy was supplied from the Seaside Basin. Today, there are approximately 39,000 metered connections in the Monterey District.

5. In 1995, the SWRCB issued its Order No. WR 95-10, which concluded that although Cal-Am had been diverting 14,106 afy from the Carmel River, it has a legal right to only 3,376 afy from the Carmel River system, including surface water and water pumped from the Carmel Valley wells.

6. The SWRCB ordered Cal-Am to replace what SWRCB determined to be unlawful diversions of 10,730 afy from the Carmel River with other sources and through other actions, such as conservation to offset 20 percent of demand.

7. In 2006, the Monterey County Superior Court issued a final decision regarding adjudication of water rights of various parties who use groundwater from the Seaside Basin. (*California American Water v. City of Seaside et al.*, Case No. 66343). The court's decision established physical limitations to various users' water allocations to reduce the drawdown of the aquifer and prevent additional seawater intrusion and set up a Watermaster to administer and enforce the Court's decision.

8. Cal-Am is currently ~~allocated~~allowed to pump up to an operating safe yield of 3,504 afy from the Coastal subarea of the Seaside Basin and 345 afy from the Laguna Seca ~~subareas~~subarea. These allocations will be reduced over time until they eventually reach 1,474 afy from the overall Seaside Basin. Prior to the Seaside Basin adjudication, Cal-Am's allocation for the Coastal subarea was 4,000 afy.

9. In 2006, the MPWMD issued a technical memorandum, updating the demand in Cal-Am's service territory. In sum, the replacement water supply required to meet total updated demand is 12,500 afy.

10. The Carmel River provides a habitat for the California red-legged frog and the South Central California Coast steelhead trout, both of which are listed as threatened under the Federal Endangered Species Act.

11. Both the USFWS and NOAA Fisheries contend that any entity that pumps water from the Carmel Valley Aquifer may be liable for a "take" because such pumping may alter the riparian habitat, affect the steelhead's ability to migrate, and affect the red-legged frog's ability to mature.

12. Cal-Am has entered into a Conservation Agreement with NOAA Fisheries, with the long-term goal of procuring an alternative water supply source to reduce withdrawals from the Carmel Valley Aquifer.

13. The focus of Phase 2 of this proceeding is the selection of a long-term water supply solution to address the water shortfall for Cal-Am's Monterey District and to explore a regional alternative to Cal-Am's Coastal Water Project, as directed in D.03-09-022.

14. An EIR is an informational document to inform the Commission, responsible and trustee agencies, and the public in general, of the environmental impacts of the proposed project and alternatives, design a recommended mitigation program to reduce any potentially significant impacts, and identify, from an environmental perspective, the preferred alternative.

15. In addition to this Commission, many federal, state, and local agencies are involved in the regulation of water, water rights, and water supply on the Monterey Peninsula, including, but not limited to, the State Water Resource Control Board, the Monterey Peninsula Water Management District, the Marina Coast Water District, the Monterey County Water Resources Agency, the Monterey Regional Water Pollution Control Agency, the Monterey Regional Waste Management District, and the Seaside Groundwater Basin Watermaster.

16. [Marina Coast Water District \(MCWD\) is a County Water District, organized and operating under and in accordance with the County Water District Law codified in Part 5 of Division 12 of the Water Code \(Water Code, §§ 30000 et seq.\). MCWD is a special district and a political subdivision of the State of California. MCWD is governed by five directors elected at-large from within MCWD's jurisdictional boundaries and the Board of Directors exercises the powers enumerated in the County Water District Law.](#)

17. ~~16. The Marina Coast Water District~~MCWD's service territory is north of and adjacent to Cal-Am's service territory in the Monterey Peninsula. MCWD provides water and sewer service to the City of Marina and the former Fort Ord community, from its existing facilities.

18. [The Monterey County Water Resources Agency \(MCWRA\) is a public agency organized and operating under and in accordance with the Monterey](#)

County Water Resources Agency Act found in Chapter 52 of the Appendix to the California Water Code, whose jurisdiction covers the territory of Monterey County that lies within the exterior boundaries of the County of Monterey. MCWRA enforces the prohibition in the Monterey County Water Resources Agency Act against exportation of groundwater from the Salinas Valley Groundwater Basin for use outside that basin, except that use of water from that basin on any part of Fort Ord is not deemed such an export.

19. ~~17.~~ The Monterey Regional Water Pollution Control Agency operates the regional wastewater treatment plant located north of Marina and also operates the regional recycling treatment plant located at the same facility.

20. ~~18.~~ Under contract to the ~~Monterey County Water Resources Agency~~ MCWRA, the Monterey Regional Water Pollution Control Agency distributes recycled water to agricultural customers for irrigation on 12,000 acres in Castroville. This recycled water has been paid for by the agricultural customers in the Salinas Valley and is known as the Castroville Seawater Intrusion Program.

21. ~~19.~~ The Monterey Regional Waste Management District (MRWMD) operates the solid waste management facilities adjacent to the proposed Regional Project. In conjunction with the Monterey Regional Water Pollution Control Agency, the Waste Management District captures landfill gas and uses it as fuel in an existing cogeneration facility.

22. ~~20.~~ Many of the Public Agencies charged with managing water resources on the Monterey Peninsula have inter-related missions and, to a certain extent, overlapping supervisory boards.

23. ~~21.~~ No party disputes the need to find an alternative water supply to replace Cal-Am's water supplies that are drawn from the Carmel River, in order to ensure that Cal-Am complies with State Water Resource Control Board SWRCB

Order 95-10, the Seaside Basin adjudication, and the State Water Resource Control Board [Order 09-60](#), the Cease and Desist Order.

24. ~~22.~~ There is a need for additional water supply, over and above any water savings that can be accomplished through conservation, use of recycled water, or prohibition of potable water for landscape irrigation.

25. ~~23.~~ Past efforts to solve the long-standing water supply issues on the Monterey Peninsula have not been successful, including the proposed New Los Padres Dam and Reservoir proposed by the Monterey Peninsula Water Management District in 1989, but turned down by the voters in 1995 and the Carmel River Dam proposed by Cal-Am in 1997, which was effectively halted by AB 1182 (Stats. 1998, Ch. 797).

26. ~~24.~~ In 2002, the Commission completed a water supply contingency plan, known as “Plan B,” which concluded that a combination of desalination and aquifer storage and recovery could produce 10,730 afy. Cal-Am determined that the Carmel River Dam was no longer a viable project and, in 2004, filed the instant application, which was amended in 2005.

27. ~~25.~~ When the Coastal Water Project is online, Cal-Am generally plans to utilize the majority of its Carmel River right to provide a base supply for the system during the winter. The Seaside groundwater allocation would provide a base supply in the summer.

28. ~~26.~~ Excess Carmel River water and desalinated water would be injected and stored in the Seaside Basin aquifer storage and recovery system in the winter for extraction during the summer to meet summer average and peak day demands. Desalinated water would be then used to supplement remaining demand.

29. ~~27.~~ Desalinated water is extremely expensive, both in terms of capital costs and in terms of ongoing operations and maintenance costs.

30. ~~28.~~ We continue to encourage parties to search for all possible water supplies that can reduce the need for desalinated water, as the additional components of the Regional Project, Phase 2 are studied and analyzed.

31. ~~29.~~ The FEIR sets forth three water supply projects that have been analyzed at an equal level of detail, each of which can satisfy the following project objectives:

- Satisfy Cal-Am's obligations to meet the requirements of State Water Resource Control Board Order 95-10;
- Diversify and create a reliable drought-proof water supply;
- Protect the Seaside basin for long-term reliability;
- Protect listed species in the riparian and aquatic habitat below San Clement Dam;
- Protect the local economy from the effects of an uncertain water supply;
- Minimize water rate increases by creating a diversified water supply portfolio;
- Minimize energy requirements and greenhouse gas emissions per unit of water delivered to the extent possible;
- Explore opportunities for regional partnerships, consistent with D.03-09-022; and
- Avoid duplicative facilities and infrastructure.

32. ~~30.~~ In addition to the primary objectives described above Phase I of the Regional Project is designed to address the following objectives and opportunities:

- Satisfy MCWD's obligations to provide a water supply adequate to meet the approved redevelopment of the former Fort Ord;
- Satisfy MCWRA's obligation to maintain hydrologic balance of the Salinas Groundwater Basin;
- Satisfy MCWRA's obligation to protect agricultural water users' utilization of water resources;

- Maximize regional reliability;
- Maximize use of recycled and freshwater sources;
- Maximize funding opportunities through regional cooperation; and
- Integrate urban, agricultural and environmental objectives.

33. ~~31.~~ While each of the three projects analyzed in the FEIR would provide the majority of water required, none would meet total demand on their own. There are certain other project components and measures that are assumed to be operational under all of the alternatives studied in the FEIR.

34. ~~32.~~ The Moss Landing Project would be sited on 16 acres at the Moss Landing Power Plant and would be owned and operated by Cal-Am. The proposed project includes a desalination plant sized to produce 10 mgd of desalinated water. The proposed project also includes a seawater intake system using source water supplied from the existing Moss Landing Power Plant once-through cooling water return system, an open-water brine discharge system through the Moss Landing Power Plant, and a variety of conveyance and storage facilities, including approximately 28 miles of pipeline and an aquifer storage and recovery system. The aquifer storage and recovery system consists of two existing and two proposed injection/extraction wells.

35. ~~33.~~ The proposed project would produce 8,800 afy of desalinated water in non-drought years (and 10,900 afy in drought years) that would be delivered to Cal-Am's Terminal Reservoir for distribution to its customers.

36. ~~34.~~ The Moss Landing Project's open intake and once-through cooling design is environmentally controversial and subject to increasingly restrictive regulations.

37. ~~35.~~ The proposed project and the alternative projects include certain storage, delivery and distribution components that would be owned and

operated by Cal-Am. Because these elements are common to all projects, these are known as “common” components, or the Cal-Am only facilities.

38. ~~36.~~ The There are a number of infrastructure overlaps between the North Marina alternative ~~consists of much of the same infrastructure described~~ for and the Moss Landing Project.

39. ~~37.~~ The North Marina alternative would be owned and operated by Cal-Am, but the desalination plant would be sited on 10 acres at the Armstrong Ranch and sized to produce 11 mgd of desalinated water.

40. ~~38.~~ The North Marina alternative utilizes a seawater intake system consisting of six new subsurface beach slant wells, an open-water brine discharge system through the existing Monterey Regional Water Pollution Control Agency outfall, a project water conveyance and storage infrastructure, including several miles of pipeline and an aquifer storage and recovery system, as described above. The main differences between the Moss Landing Project and the North Marina alternative are location and size of the desalination plant, the intake technology, and the outfall.

41. ~~39.~~ The North Marina alternative would produce 8,800 afy of desalinated water in non-drought years (and 10,900 afy in drought years) that would be delivered to Cal-Am customers. The desalination plant is larger, because any source water that originated from the Salinas Valley Groundwater Basin would be returned to the Basin through deliveries to the Castroville Seawater Intrusion Project.

42. ~~40.~~ Because groundwater modeling indicates that source water pumped from the slant wells over the long term could include a small amount of intruded groundwater from the Salinas Valley Groundwater Basin, the North Marina alternative includes a provision for excess desalinated water to be returned to the Salinas Valley Groundwater Basin via the Castroville Seawater Intrusion Project’s storage pond. Thus, desalinated water would be delivered to the Cal-Am

Terminal Reservoir for distribution to its customers and to the storage pond for distribution to the Salinas Valley Groundwater Basin.

43. ~~41.~~The Regional Project analyzed in the environmental documents was developed after extensive public input through the establishment of several community-based working groups, in a process initiated by DRA and now known collectively as the Water for Monterey County Coalition.

44. ~~42.~~The Regional Project has been envisioned as having two phases, and Phase 1 is analyzed at a level of detail consistent with the proposed project and the North Marina alternative.

45. ~~43.~~Due to the legal constraints on diversions from the Carmel River and the Seaside Basin, Phase 1 of the Regional Project would provide “regulatory replacement” water supply of 15,200 afy (12,500 afy to Cal-Am customers and 2,700 afy of water supply to the Ord Community); therefore, Phase 1 is the first priority for project implementation.

46. ~~44.~~Phase 1 of the Regional Project includes previously analyzed and permitted water supply projects that will be undertaken whether or not the Coastal Water Project is implemented. These projects include the Sand City desalination plant, the Regional Urban Water Augmentation Project, and two existing aquifer storage and recovery wells, as well as potential demand offset of up to 1000 afy from conservation.

47. ~~45.~~New aspects of Phase 1 of the Regional Project that were analyzed in the environmental documents include a 10-mgd desalination plant, to be owned and operated by MCWD and six vertical intake wells to provide source water. The desalinated water (8,800 afy in non-drought years and 10,900 afy in drought years) would be delivered to the Cal-Am Terminal Reservoir system for distribution to its customers and to the MCWD system (approximately 1,700 afy in non-drought years) for distribution to its customers. We refer to these new components as the Regional Project in this decision.

48. ~~46.~~ Phase 2 of the Regional Project has been studied at a more general or programmatic level, consistent with the information that is available at this time. As explained in the FEIR, the components of Phase 2 of the Regional Project have been included for context and for informational purposes; they would not function as an alternative that would meet the project objectives and are not subject to our approval at this time.

49. ~~47.~~ A set of CEQA Findings of Fact are attached as Appendix B, and accurately reflect the independent analysis contained in the FEIR, the Commission's policy decisions, as well as other information in the record, and are supported by substantial evidence in the administrative record.

50. ~~48.~~ As to the Cal-Am portion of the Regional Project, we find that changes or alterations have been required in, or incorporated into, the Regional Project which avoid or substantially lessen the significant environmental effects identified in the FEIR.

51. ~~49.~~ As to the non Cal-Am portions of the Regional Project, we find that the applicable and feasible mitigation measures described in the CEQA Findings ~~can and should be (and in most cases, already have been) imposed as conditions of approval~~ could appropriately be included in the Mitigation Monitoring and by MCWD, MCWRA and/or MRWPCA on the Regional Project.

52. ~~50.~~ We further find that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives that are not required in, or incorporated into, the Regional Project.

53. ~~51.~~ Implementation of the No-Project Alternative would eliminate all of the impacts for the three projects analyzed in the FEIR. However, the resulting water supply deficit would lead to severe rationing and likely water shortages. These conditions, in turn, would likely have significant effects on the local economies within the Monterey Peninsula.

54. ~~52.~~ The No-Project Alternative would fail to meet any of the Coastal Water Project objectives, including the objective to protect the local economy from the effects of an uncertain water supply.

55. ~~53.~~ The alternatives considered in the FEIR include several basic elements: a desalination plant, a water intake mechanism, a brine outfall mechanism, desalinated water conveyance and storage infrastructure, and aquifer storage and recovery.

56. ~~54.~~ In selecting the environmentally superior alternative, the FEIR considered the environmental impact of each project, which of the projects evaluated in the FEIR had the fewest significant-and-unavoidable impacts, and which, if any, of the proposed alternatives would lessen or eliminate any significant-and-unavoidable or potentially-significant-but-mitigable impacts.

57. ~~55.~~ The FEIR has identified the North Marina Alternative as environmentally superior to the Moss Landing Project in terms of the scope of the environmental effects.

58. ~~56.~~ The North Marina Alternative and the Regional Project are nearly equal in their level of environmental impacts. There are two impacts that factor into the determination of the environmentally-superior alternative: operation-related greenhouse gas emissions and construction-related particulate matter greater than 10 microns (PM10).

59. ~~57.~~ Because ~~Marin~~Marina Coast Water District and Monterey County Water Resources Agency would implement the Regional Project and because these Public Agencies are not under this Commission's jurisdiction, the FEIR reasonably concludes that we cannot ensure compliance with the mitigation efforts to ensure that the outcome would result in less-than-significant impacts.

60. ~~58.~~ The FEIR classifies the greenhouse gas emissions and the construction-related particulate matter impacts as significant and unavoidable, and also concludes that if the Public Agencies agree to implement all of the

mitigation measures, the Regional Project, would be the environmentally superior alternative.

~~61. 59.~~ Because of the Cease and Desist Order, we find that time is of the essence, in terms of developing a new water supply to replace unauthorized withdrawal of water from the Carmel River.

~~62. 60.~~ The Marina Coast Water District has certified ~~the FEIR for its use~~ that it has considered the FEIR pursuant to Sections 15050(b) and 15096(f) of the CEQA Guidelines and issued a Statement of Overriding ~~Consideration, because it cannot assert control over all aspects of the project, and because of the cumulative effects of the Regional Project, related to construction (as to air quality and noise) and operation (as to air quality), when considered with several other projects underway or soon to be underway in the Monterey Peninsula~~ Considerations, because the need for water overrides potentially significant, unavoidable impacts related to air quality from construction and operation of the MCWD facilities for the Regional Project.

~~63. 61.~~ The Monterey County Water ~~Resource~~ Resources Agency has issued a Statement of Overriding Considerations ~~as to the potentially considerable and significant cumulative impacts on air quality and noise, and because of~~ with respect to the following environmental impacts: (1) the emission of criteria pollutants during construction activities; (2) the net increase of PM10 associated with construction activities; and (3) potential conflict with the goal of reducing greenhouse gas emissions in California to 1990 levels, consistent with the requirements of AB 32 (Stats. 2006, ~~Ch. 488~~ ch. 488), California Global Warming Solutions Act of 2006, and covering cumulative air quality and noise impacts.

~~64. 62.~~ Because we have determined that the mitigation measures for construction-related particulate matter greater than 10 microns for any of the projects are infeasible due to the urgency of the need for a new water supply, we

consider only the greenhouse gas emissions in considering the environmentally superior project.

65. ~~63.~~ On balance, we concur with the FEIR's identification of the North Marina Alternative as the environmentally superior alternative, albeit by a very narrow margin, because of the greenhouse gas emissions associated with operations of the desalination plant.

66. ~~64.~~ As required by CEQA, we cannot approve the proposed project or an alternative unless we find that the project has been modified to mitigate or avoid each significant effect on the environment or that specific considerations make the mitigation measures or alternatives identified in the FEIR infeasible; and specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

67. ~~65.~~ We find that the Regional Project is the only feasible alternative that provides a viable solution to the water constraints on the Monterey Peninsula, given the adverse social and economic consequences associated with taking no action or delayed action, in the timeframe imposed by the State Water Resource Control Board's Cease and Desist Order, already includes ownership of a suitable site for the desalination plant, meets the restrictions on ownership of a desalination plant in Monterey County⁷; and satisfies the prohibitions on exporting water from the Salinas Basin, and certain technological factors.

68. ~~66.~~ Because we are approving the Regional Project and do not have jurisdiction over ~~The Marina Coast Water District or the Monterey County Water Resources Agency~~ MCWD or MCWRA, this Commission cannot guarantee that the Public Agencies involved will comply with the mitigation measures adopted in this decision.

69. ~~67.~~ Significant and unavoidable environmental impacts will result from operation of the Regional Project; however, the Commission has adopted all feasible mitigation measures, as set forth in Appendix C.

70. ~~68.~~ The FEIR includes the Addendum to the FEIR, issued on March 24, 2010, and received into evidence on June 14, 2010.

71. ~~69.~~ The Addendum was issued to address errata in the text of the FEIR. None of the errata recommend any changes to the project or to the level of significance of impacts or to mitigation measures. The Addendum also presents and responds to seven additional comment letters that were inadvertently omitted from the published FEIR. None of the letters or responses have raised or identified any issues that would require changes to the FEIR as published.

72. ~~70.~~ The benefits of the Regional Project outweigh and override its significant and unavoidable impacts, for the reasons set forth in the statement of overriding considerations in the CEQA Findings.

73. ~~71.~~ The Marina Coast Water District and the Monterey County Water Resources Agency recognize the importance of the mitigation measures identified in the FEIR and acknowledge their intention that development, construction, and operation of the Regional Project ~~must~~should occur in accordance with ~~the~~any mitigation measures adopted by their respective agencies.

74. ~~72.~~ The Settlement Agreement states that the Regional Project provides the most expeditious, feasible and cost-effective alternative to address the water supply constraints on the Monterey Peninsula.

75. ~~73.~~ The Settling Parties maintain that time is of the essence, both because of the pending Cease and Desist Order and because there are financing opportunities that may be lost if the Regional Project is delayed.

76. ~~74.~~ The Monterey County Water Resources Agency will construct, own, operate, and maintain the brackish source water wells that will provide the feedwater for the desalination facility, as well as the conveyance pipeline to the desalination facility.

77. ~~75.~~ The Marina Coast Water District will construct, own, operate, and maintain the desalination plant and transport the desalinated water to a delivery

point within its service territory. At that point, [in accordance with the terms of the Water Purchase Agreement](#), the Marina Coast Water District will receive a portion of the water and Cal-Am will receive a portion of the water.

~~78. 76.~~ Cal-Am will construct, own, maintain, and operate three large diameter conveyance pipelines, two distribution storage reservoirs, and aquifer storage and recovery facilities; all of these facilities will provide the infrastructure to serve its customers with the desalinated water (also known as product water).

~~79. 77.~~ The brine from the desalination plant would be discharged through the outfall owned and operated by the Monterey Regional Water Pollution Control Agency.

~~80. 78.~~ ~~The~~ [On June 30, 2010, the](#) Marina Coast Water District ~~has exercised an executed option to annex portions of the Armstrong Ranch, where the desalination plant is proposed to be located, and the Marina Coast Water District facilities are located within the Salinas Valley.~~ [option which it held and acquired 224 acres of land on the Armstrong Ranch north of Marina, adjacent to the regional wastewater treatment plant operated by the Monterey Regional Water Pollution Control Agency and the regional landfill operated by the Monterey Regional Waste Management District, shown in the FEIR as the proposed location for the desalination plant for the Regional Project](#)

~~81. 79.~~ Because the source water cannot be exported from the Salinas Valley, this factor becomes a critical component to the Regional Project.

~~82. 80.~~ The Monterey County Water Resources Agency must satisfy the requirements of the Agency Act and protect the farmers and agribusinesses that participate in and fund the Salinas Valley Reclamation Project, Castroville Seaside Intrusion Project, and the Salinas Valley Water Project.

~~83. 81.~~ The Settlement Agreement includes two implementing agreements: a Water Purchase Agreement and an Outfall Agreement. The Water Purchase Agreement provides extensive detail as to each parties' rights and responsibilities,

and addresses the design, construction, and permitting of the components of the proposed Regional Project.

~~84. 82.~~ The Water Purchase Agreement has an initial term of 34 years, and, in accordance with its terms, 6 automatic renewal terms of 10 years each.

~~85. 83.~~ The Water Purchase Agreement requires the construction of test wells, the data from which will be analyzed by the Monterey County Water Resources Agency ~~to, in accordance with the terms of the Water Purchase Agreement, to, among other things,~~ ensure compliance with the Agency Act.

~~86. 84. The~~ In accordance with the terms of the Water Purchase Agreement, Marina Coast Water District and the Monterey County Water Resources Agency will endeavor to secure cost-effective financing for the Regional facilities, including low-cost SRF loans, as well as grants, where available, which will lower the cost of the Regional Project. Cal-Am will provide shortfall financing for the project, if necessary.

~~87. 85.~~ Pursuant to the Outfall Agreement, the Marina Coast Water District will connect and use capacity in the ocean outfall components of the Monterey Regional Water Pollution Control Agency's regional treatment plant to carry the reject water and brine discharged from the desalination plant.

~~88. 86.~~ The ~~Marina Coast Water District will pay all~~ costs related to the construction of a connection ~~to its~~ from Marina Coast Water District's facilities ~~and to~~ a brine receiving facility that connects to Monterey Regional Water Pollution Control Agency's outfall facilities are included in the costs of the Regional Project to the extent they are attributable to and used for the discharged brine from the Regional Project.

~~89. 87.~~ The Outfall Agreement also provides for a one-time capacity charge ~~that Marina Coast Water District will pay to the Monterey Regional Water Pollution Control Agency and,~~ an annual usage fee, a reimbursement for fair and reasonable operation and maintenance costs attributable to the use of the

brine-receiving facility and the outfall discharge, as well as capital repair and replacement costs. All costs incurred by the Marina Coast Water District under the Outfall Agreement, including the costs above, are included in calculating the cost of the Regional Project's desalinated product water.

~~88. The term of the Outfall Agreement is 34 years, with 6 automatic 10-year renewals.~~

90. ~~89. Whether the~~ Although various facilities of the Regional Project are owned and operated by ~~the Public Agencies~~ each of MCWD, MCWRA or Cal-Am, the costs of the ~~entire project~~ Regional Project are expected to be borne by ~~Cal-Am ratepayers~~ the ratepayers of both MCWD and Cal-Am in accordance with the allocation of such costs as set forth in the Water Purchase Agreement.

91. ~~90.~~ The Marina Coast Water District's and the Monterey County Water Resources Agency's costs of constructing and operating their portions of the Regional Project facilities will be included in the ~~calculation of the costs of the desalinated water (or product water), which will be charged to Cal-Am under various provisions of the Water Purchase Agreement.~~ Indebtedness or O&M Costs, as defined in and as applicable under the Water Purchase Agreement, for the Regional Project.

~~91. All costs incurred by the Marina Coast Water District under the Outfall Agreement will be included in the cost of the product water.~~

92. The Indebtedness and O&M Costs incurred by each of MCWD and MCWRA in connection with the Regional Project shall be included as part of the calculation of the cost of the desalinated water (or product water), which will be charged to the ratepayers of both MCWD and Cal-Am in accordance with the allocation of such costs among the ratepayers as set forth in the Water Purchase Agreement.

93. The Water Purchase Agreement is a contractual obligation of each of the Parties and each of the Parties are expected to comply with their obligations.

~~94. 92. Costs for the Regional Project include~~ Under and as set forth in the Water Purchase Agreement, the cost for the desalinated product water from the Regional Project will be calculated based on the costs incurred by each of MCWD, MCWRA and Cal-Am in accordance with the terms of the Water Purchase Agreement, including capital costs, financing costs, costs of obtaining indebtedness, project related expenses, a reserve fund for needed replacements, contingency costs, and operations and maintenance costs.

95. Pursuant to the Settlement Agreement, Cal-Am will fund these costs through an escrow account and will then recover the costs through the Modified Cost Balancing Account – essentially a balancing account already established to record and recover in rates the costs of purchased water.

~~96. 93.~~ Cal-Am will include costs related to the construction of its facilities in rate base, either as Construction Work in Progress or Utility Plant in Service. Settling Parties propose that all project costs will earn a return on the carrying costs for the project as AFUDC until such time as they are allowed in rate base.

~~97. 94.~~ As proposed, each entity is responsible for the permitting, design, and construction of the facilities they will own.

~~98. 95.~~ In order to ensure coordination, the parties plan to jointly select and hire a project manager to manage the permit, design, engineering, and construction process, and to ensure that ~~the~~ proper coordination of these processes takes place.

~~99. 96.~~ Cal-Am, Marina Coast Water District ~~and,~~ Monterey County Water Resource Agency will form an Advisory Committee to ensure coordination with respect to Resources Agency shall form a four member Advisory Committee, composed of a representative of each of Cal-Am, Marina Coast Water District, Monterey County Water Resources Agency and a Municipal Advisor (whose two representatives shall be appointed by the cities of Carmel-by-the Sea, Del Rey Oaks, Pacific Grove, Sand City and Seaside).

100. Pursuant to the terms of the Water Purchase Agreement, the function of the Advisory Committee will include working with the project manager, in order to consult and advise each of Cal-Am, Marina Coast Water District and the Monterey County Water Resources Agency, in connection with coordinating the permitting, design, and construction~~of the Regional Project.~~, and to coordinate operations, maintenance, repairs and replacements of the Regional Project. The Advisory Committee has no decisional authority over the Regional Project. Such authority is allocated to each of the Parties as set forth in the Water Purchase Agreement.

101. ~~97.~~ The Settling Parties request that the Commission approve a capital cost cap of \$297.47 million (escalated to mid-2012 \$) that excludes interest during construction and any debt service coverage required to obtain financing for the Regional Project.

102. ~~98. We concur that the bidding~~The selection of potential contractors, procurement process, and evaluation of proposals described in Sections 4.2 and 4.3 of the Water Purchase Agreement and the additional cost management features described in Section 4.3 are reasonable provisions that will help ensure that the Regional Project is as cost-effective as possible.

103. ~~99. The Settling Parties~~Pursuant to the terms of the Water Purchase Agreement, Cal-Am, Marina Coast Water District and Monterey County Water Resources Agency have agreed to hire a certified value engineer to review plans at particular points. As defined, value engineering is a specialized cost control technique in which the owner or operators meet and confer with a certified value specialist to conduct a systematic and creative analysis of the functions of a project or operation to determine how best to achieve the necessary function, performance, and reliability of the project at the minimum life cycle cost.

104. ~~100.~~ In addition to the detailed contracting provisions and cost management goals, the Water Purchase Agreement provides a detailed roadmap

for hiring of a project manager, preparing preliminary design documents, obtaining required permits, and establishing milestones for each of the facilities. Section 4 also provides for a Constructability Review (§ 4.6) and Inspection and Audit Rights (§ 4.11).

~~101. Under the Water Purchase Agreement, the cost of the desalinated water will have two components: the debt service associated with financing the capitalized costs of the facilities owned by the Public Agencies (including design, permitting, construction, and pre-effective date costs) and the costs of operating and maintaining these facilities.~~

~~102. Pursuant to the Settlement Agreement, Cal Am will fund these costs through an escrow account and will then recover the costs through the Modified Cost Balancing Account—essentially a balancing account already established to record and recover in rates the costs of purchased water.~~

105. ~~103.~~ Based on the record before us, we cannot find that a \$2,200 per-acre-foot cost cap is reasonable or would serve the public interest, because the evidence does not demonstrate that DRA included all necessary costs associated with desalination plants in developing its estimated cost cap. Moreover, a per acre-foot cost cap is not workable due to unpredictable and unknown variations in interest rates.

106. ~~104.~~ Because of the public financing opportunities, we find that the Public Agencies bring benefits to the Regional Project that would not be achieved by Cal-Am ownership of either the Moss Landing Project or the North Marina Project; in addition, litigation related to private ownership of the desalination plant and compliance with the Agency Act is likely to ensue with either the Moss Landing Project or the North Marina Project.:

107. ~~105.~~ The preponderance of the evidence demonstrates that MCWD does not need the desalinated water now, nor is it clear when it may be needed in the

future. We find that there are reasonable checkpoints built into the WPA to ensure that Cal-Am will receive its needed allocation of water, including requirements to notify Cal-Am and the Advisory Committee regarding the planned water supply and deliveries of water.

108. ~~106.~~ The \$297.5 million proposed capital cost cap represents the Settling Parties' approximation of the various cost components of the Regional Project facilities, assuming that slant wells are used as source water intake facilities.

109. ~~107.~~ The costs of the various components have been assessed and analyzed in various forums and that parties – while perhaps not agreeing – have had the opportunity to understand and debate the derivation of the cost components.

~~108. ——— We set the initial capital cost cap at the most probable estimated cost of \$224.4 million, which is the “most probable capital cost with contingency” for the Regional Project, or \$240.3 million, plus \$9 million to account for the costs of obtaining indebtedness, as set forth in Exhibit C to the Settlement Agreement, and less \$25 million, which represents the amount Marina Coast Water District has agreed to provide in connection fees, plus \$3 million in associated intangible benefits.~~

110. The \$297.5 million cost cap as set forth in Exhibit C to the Water Purchase Agreement is reasonable and the CPUC Settlement Cost Cap is set at \$297.5 million.

111. The “Fees Limit” concept which is set forth in §11.14 of the Water Purchase Agreement reflects a carefully negotiated compromise of the Settling Parties which accounts for the balances of the contributions provided by each of the stakeholders and the corresponding \$22 million Fees Limit is reasonable in light of the evidence in the record.

112. ~~109.~~ ~~It is reasonable to apply the \$22 million in “buy-in” fees up front and to eliminate the concept of a “fees limit.” Instead, as~~ As the

former Fort Ord community is developed, connection fees ~~should be applied to offset the indebtedness that Cal-Am ratepayers are funding. No reduction to the \$22 million buy-in amount should be allowed, whether or not Marina Coast Water District obtains grants.~~ designated to be applied towards water augmentation through capital facilities for desalination which are collected by FORA and received by Marina Coast Water District shall, in accordance with the terms of the Water Purchase Agreement, be applied to offset either the indebtedness or the O&M costs of the Regional Project.

~~110. — The Marina Coast Water District will receive intangible benefits from its participation in the Regional Project, including lower cost of water, no refurbishment and replacement costs associated with the Regional Project facilities and no requirement to remediate or replace contaminated wells in the former Fort Ord to serve new connections. It is reasonable for MCWD to contribute an additional \$3 million to reflect the value of these benefits. It is reasonable to apply this contribution up front.~~

~~111. — Should Cal-Am need to file an application to request additional ratepayer recovery, it is reasonable that the Commission have the opportunity to review the various components of the project, recognizing that there is an overall 25% contingency factor.~~

113. There are numerous benefits received by each of Cal-Am, Marina Coast Water District and Monterey County Water Resources Agency due to each party's participation in the Regional Project, that, despite being difficult to quantify precisely, are reflected in the record and were carefully considered by the Settling Parties in crafting the Settlement Agreement and the Water Purchase Agreement.

114. ~~112.~~ It is reasonable to require Cal-Am to provide updated cost estimates for each component of the Regional Facilities.

~~113. As set forth in Exhibit 320, the Settling Parties contemplated an up front contribution of fees from MCWD in assessing the “most probable cost with contingency” for the Regional Project, assuming all vertical wells.~~

~~114. It is reasonable to assign benefits to the Public Agencies’ participation in the Regional Project, although those benefits cannot be quantified precisely at this time.~~

115. The Settling Parties acknowledge that a financing package is not finalized and explain that they are evaluating several options for obtaining a financing package that will reduce the costs of indebtedness, including accessing State Revolving Fund (SRF) financing and federal grants.

116. It is our understanding that ~~the Settling Parties~~ each of Cal-Am, Marina Coast Water District and Monterey County Water Resources Agency intend to analyze the final financing package ~~at the end of 2010~~ within 120 days of the Effective Date of the Water Purchase Agreement and will advise ~~their Boards~~ sits governing Board to approve a package based on the total amount of funding, cost of the funding, (including interest rate, term, and reserve requirements), flexibility, and any restrictions imposed by particular financing alternatives.

117. ~~Use~~ In accordance with the terms of the Water Purchase Agreement, the receipt of low-interest SRF loans and federal grants would reduce the overall cost of indebtedness associated with the Project Facilities. Any financing alternative that reduces the overall cost of ~~Project~~ indebtedness associated with the Project Facilities will flow through to the ratepayers of both MCWD and Cal-Am by reducing the cost of the desalinated water in accordance with the allocation of such product water costs as set forth in the Water Purchase Agreement.

118. While use of SRF loan and grant opportunities ~~are~~ is not guaranteed, Cal-Am would not have the ability to access such funding opportunities without the participation of the public agencies. This is a potential benefit to ratepayers that we cannot ignore.

119. Depending on the length of the construction period and the financing plan that is eventually in place, the Regional Project may not necessarily be the least-cost alternative, but it is the only feasible project that will ensure a replacement water source in a timely manner, i.e., prior to the enactment of the water restrictions in the Cease and Desist Order.

120. While the Settling Parties have stated concerns that establishing a capital cost cap could impact the competitive bidding process and could also impact the cost of financing, they acknowledge that a capital cost cap is one way to ensure that the Settlement Agreement is in the public interest.

121. We concur that a capital cost cap is required and find that ~~adopting a capital cost cap of \$224.4~~, in conjunction with the cost savings provisions of the Water Purchase Agreement, adopting a CPUC Settlement Cost Cap of \$297.5 million will provide the proper motivation to ensure that the Regional Project facilities ~~Facilities~~ are designed and constructed as cost-~~effective as possible~~. effectively as possible. We must retain our ability to protect Cal-Am ratepayers by ensuring that we have the ability to conduct a reasonableness review for costs exceeding this amount.

122. The Commission shall review costs as proposed in the Settlement Agreement. Such review of costs by the Commission related to the Regional Project shall not affect the obligation of Cal-Am to make payment for desalinated product water in accordance with the terms of the Water Purchase Agreement.

123. ~~122.~~ We encourage parties to thoroughly assess cost allocation and rate design methodologies that can be considered to protect Cal-Am's customers.

124. ~~123.~~ Because a significant increase in rates may well affect demand, Phase 3 of this proceeding will be the appropriate forum to consider elasticity of demand and various protections that must be put into place.

125. ~~124.~~ While capital costs, annual operating costs, and financing costs, as well as the number of acre-feet of water purchased, must all be considered in

calculating the unit cost of water, we are not persuaded that setting a very low per-acre foot cost cap will appropriately protect ratepayers.

126. ~~125.~~ Even the lowest-cost scenario developed jointly by the parties estimate a unit cost of \$2,600 per acre-foot (excluding Cal-Am facilities, but including the cost of delivery to the Cal-Am receiving point); this scenario is based on a capital cost of \$204.3 million (which assumes a project cost of \$227 million and then deducts \$22 million from MCWD buy-in fees) and is still \$400 per acre-foot over the amount proposed by DRA.

127. ~~126.~~ The ~~\$224.4~~297.5 million capital cost cap that we impose today will yield a per-acre-foot cost of approximately ~~\$3,425~~4,300 (excluding Cal-Am owned facilities), assuming ~~that~~there is a 3 ½ year construction period, initial bond financing is acquired at 6%, and the Settling Parties can obtain the low-cost SRF financing that is planned.

128. ~~127.~~ Given these scenarios, we do not find that the per-acre-foot cost cap proposed by DRA is viable. If we were to adopt DRA's proposal, Cal-Am would soon be before us with a new application seeking relief and it is unlikely that the project could go forward in a timely way.

~~128. ——— Setting both an initial capital cost cap and a cost cap ceiling beyond which cost recovery would only be allowed under extraordinary circumstances, provides the correct incentive to manage costs, assurance that a reasonableness review will not be conducted if the capital costs do not exceed the limits we set today, and establishes ratepayer protections.~~

~~129. ——— It is reasonable to establish an initial capital cost cap for the Regional Project facilities of \$224.4 million. We must retain our ability to protect Cal-Am ratepayers by ensuring that we have the ability to conduct a reasonableness review for costs exceeding this amount.~~

~~130. It is reasonable to establish a capital cost ceiling of \$272.5 million, the capital cost cap requested by the Settling Parties, less the \$25 million contribution by the Marina Coast Water District.~~

~~131. Cal Am ratepayers should only be responsible for costs exceeding the cost cap ceiling if these costs are due to extraordinary circumstances. Requests for recovery above the cost cap ceiling will be subject to a heightened level of scrutiny and review.~~

~~132. We have determined that the \$25 million contribution will be applied upfront.~~

~~129. 133.~~ As the economy recovers and the former Fort Ord is developed, each of FORA and the Marina Coast Water District will assess and collect new connection fees towards water augmentation through capital facilities for desalination. We cannot determine when this will occur, but it is reasonable that the Marina Coast Water District ~~contributes these~~ shall, in accordance with the terms of the Water Purchase Agreement, apply such fees to offset either the indebtedness to reduce overall or the O&M costs of the project and will further reduce costs to Cal Am ratepayers. ~~The~~ Regional Project. Each of FORA and Marina Coast Water District ~~should structure its new connection fees to capture the maximum economically feasible benefit that is fair and reasonable~~ will structure their new connection fees towards water augmentation through capital facilities for desalination for the Regional Project Facilities in accordance with their standard practices and procedures and as part of any future rate studies.

~~130. 134.~~ The Parties ~~to~~ in accordance with the terms of the Water Purchase Agreement plan to finance all costs included in the project facility estimated costs, including initial capital costs, pre-effective date costs and expenses,

preconstruction development, permitting fees and expenses, and pre-acceptance defense costs.

131. ~~135.~~ If there is not a less costly method of obtaining financing of any shortfall, the Water Purchase Agreement provides that Cal-Am or an affiliate will loan up to \$17.5 million to the Public Agencies. In addition, Cal-Am or an affiliate will make available a credit line of \$8 million to manage short-term financial liquidity needs of the Public Agencies.

132. ~~136.~~ The Water Purchase Agreement provides that to the extent the costs of the loan or credit line provided by Cal-Am are not recovered in the price of the Product Water, the principal and interest shall be recoverable in rates, i.e. the Public Agencies will repay the loans, but the costs of such repayment will be passed onto Cal-Am's ratepayers.

133. ~~137.~~ Because the Water Purchase Agreement is structured such that Cal-Am essentially commits future cash flows to funding the debt committed to the Regional Project, it is possible that the Water Purchase Agreement may be considered either a capital lease or a take-or-pay contract by its external auditors and that rating agencies may impute debt and consider such leveraging in their analysis and rating of Cal-Am.

134. ~~138.~~ While DRA does not object to the use of least-cost financing, DRA is concerned that any advantages that the Public Agencies may obtain by accessing lower cost financing tools may be eroded by a premature assertion that the Commission will guarantee Cal-Am's financial viability.

135. ~~139.~~ The low-cost financing opportunities that the Public Agencies may be able to access are at the core of the benefits of the Regional Project.

136. ~~140.~~ Based on the Unified Financing Model the parties jointly developed, Exhibit 113 considers and takes into account the impact of varying interest rates, a single issuance of private activity bonds, issuance of tranches of private activity bonds, and the interaction of such bonds with SRF loans and federal grants.

137. ~~141.~~ Assuming a “best case scenario” utilizing the Unified Financing Model, where ~~the~~ capital cost ~~cap~~ of \$227.4 million is achieved for the Regional Facilities, the capital cost ~~cap~~ for Cal-Am facilities is \$95 million, the Project is constructed within 3.5 years, assuming bond financing is obtained at 6% interest, and the Public Agencies are able to access low cost financing, the cost-per-acre-foot will be approximately \$~~4,800~~5,000 per acre foot and the first year revenue requirement will be approximately \$~~44.1~~45.7 million.

138. ~~142.~~ Assuming a “worst case scenario” ~~such that the both capital cost ceilings are in place and~~ utilizing the Unified Financing Model, where the capital cost of the Project Facilities is \$297.5 million and the capital cost of the Cal-Am owned facilities is \$106.875 million, there is a 4 ½ year construction period, the Public Agencies are ~~not able~~unable to obtain low-cost financing, and using an interest rate of 8.67%, the cost-per-acre-foot could equal \$~~10,500~~9,600 and the first year revenue requirement could equal \$~~95~~86.6 million.

139. ~~143.~~ Although we have not adopted DRA’s proposed cost-per-acre-foot approach, which ~~includes~~ as proposed would be inclusive of all costs, we have established ~~both an initial~~a capital cost cap ~~and a capital cost ceiling~~ for both the Regional Project facilities ~~and~~ based on the Cost Estimate contained in Exhibit C to the Water Purchase Agreement and for the Cal-Am only facilities. ~~To the extent that Cal-Am must apply for additional authorization for rate recovery, we intend to carefully review the financing plans that are in place based on the midway point between the most probable cost estimate and the high-cost scenario.~~

140. ~~144.~~ ~~Given~~ Despite the Settling Parties’ own projections of a possible spread of \$40 million related to financing, ~~we cannot simply assume~~ based on the myriad cost containment measures incorporated into the Water Purchase Agreement, the legal obligation of the public agencies to “obtain the maximum

financing of the Project Facilities at the lowest overall total cost given then existing and anticipated market conditions,” along with the review of the project manager, Advisory Committee, and the potential for independent, third-party expert review, the Commission is comfortable that the financing plan will be ~~per se~~ reasonable per se.

141. ~~145.~~ It is premature to weigh in on the debt equivalence issue at this time; because we must balance the needs of ratepayers and shareholders, we will consider the issue of debt equivalency when we can develop a full record, as we believe the Settling Parties have acknowledged.

142. ~~146.~~ We find that no modifications are required with regard to the debt equivalency issue. When Cal-Am files the appropriate pleading, we will address the debt equivalency issue in detail.

143. ~~147.~~ As contemplated by the Settling Parties and set forth in Section ~~66.1~~ of the Water Purchase Agreement, the Advisory Committee would consist of four members, including a representative from each of Cal-Am, MCWD, and MCWRA, ~~each of whom would have full decision-making authority~~ and a Municipal Advisor which will consist of two representatives elected by the cities of Carmel-by-the Seal, Del Rey Oaks, Pacific Grove, Sand City and Seaside.

~~148. ——— Consensus would be sought, but to the extent that differences could not be resolved, the participants on the Advisory Committee have the right to seek dispute resolution by a neutral third party.~~

144. ~~149.~~ The purpose of the Advisory Committee is to provide a formal means for the parties to coordinate the design, permitting requirements, construction, operations, maintenance, repairs, and replacement of the various components of the Regional Project, in consultation with the selected project manger.

~~145. 150.~~ Providing the Monterey Peninsula ~~Cities~~cities with a meaningful advisory role on the Advisory Committee in the form of the Municipal Advisor provides adequate ratepayer protection.

~~146. 151.~~ There is no need for duplicative roles. Elected Monterey Peninsula City officials will coordinate on the appointment of the Municipal Advisor and there is some overlap of governance between the Monterey Peninsula Water Management District and the Monterey County Board of Supervisors.

~~147.~~ As set forth in Sections 6.4 and 6.5 of the Water Purchase Agreement, each of Cal-Am, MCWD and MCWRA will make decisions with respect to construction and operational procedures of the Regional Project in consultation with the Advisory Committee.

~~148.~~ Each of the Parties to the Water Purchase Agreement hopes to achieve consensus decisions with respect to construction and operational procedures of the Regional Project. To the extent that Cal-Am, MCWD and MCWRA can not reach unanimity with respect to any approval, consent or determination required under Sections 6.4 and 6.5 of the Water Purchase Agreement, any of the Parties has the right to seek binding dispute resolution by an independent third-party with appropriate expertise to address the issue or issues requiring resolution.

~~149. 152.~~ The Settling Parties have stated their willingness to authorize the Commission to direct Cal-Am to provide regular, detailed status reports to the Commission and these should be provided on a quarterly basis to the Executive Director and the Director of the DWA and a copy should be provided to the Director of DRA.

~~150. 153.~~ Cal-Am has agreed to meet quarterly with DRA and DWA staff should be included in these meetings. ~~Detailed information should be provided~~ If necessary, Cal-Am shall supplement the status reports contemplated under the Water Purchase Agreement and prepare reports with detailed information to the Commission as to progress on the Regional Project,

particularly with regard to financing plans, construction bids, and permitting, ~~as is contemplated in the Water Purchase Agreement.~~

151. ~~154.~~ Transparency is essential; therefore, there is no reason that information provided in these reports and meetings should be confidential unless there is a particular and specific reason for requesting confidentiality.

152. ~~155. Assuming that~~ Based on the Settling Parties ~~agree~~ willingness to authorize the Commission to direct Cal-Am to provide a copy of the ~~detailed~~ quarterly status reports (as supplemented by Cal-Am) to DRA and that Cal-Am meets with DRA and DWA on a quarterly basis, we are satisfied with the status report arrangements and see no reason to modify the Settlement Agreement or the Water Purchase Agreement, in this regard.

153. ~~156.~~ A major component of the Settlement Agreement and the Water Purchase Agreement is the provision that the Settling Parties will maximize the intake of seawater on a cost-effective basis in a way that ensures compliance with the requirements of the Agency Act.

154. ~~157.~~ Because a relatively small amount of source water is expected to be pumped from the Salinas Valley Groundwater Basin, that water cannot be exported from the Salinas Valley.

155. ~~158.~~ Maximizing the seawater content assists as a proxy for determining whether source water is seawater or groundwater, based on salinity or Total Dissolved Solids, but we must also consider the volume of groundwater in the basin.

156. ~~159.~~ Because of seawater intrusion, according to the FEIR, we can assume that the salinity of the seawater and the salinity of the brackish ~~groundwater~~ source water are approximately equal.

157. ~~160.~~ The water to be desalinated is water which has a TDS concentration high enough to make it unsuitable for human consumption or agricultural use

unless it is treated. This is the brackish source water, which will be produced by new wells to be owned by the Monterey County Water Resources Agency.

158. ~~161.~~ The Under the Water Purchase Agreement, Monterey County Water Resources Agency is charged with taking the necessary steps to both comply with the Agency Act and to deliver brackish source water to the desalination plant sufficient to produce up to 10-mgd of desalinated water.

159. ~~162.~~ The 10-mgd plant will be operated to produce 10,500 afy of desalinated water, which would then provide 8,800 afy to Cal-Am and up to 1,700 afy to Marina Coast Water District.

160. ~~163.~~ Marina Coast Water District requires 2,700 afy from Phase 1 of the Regional Project. The permanent allocation of ~~1700 AFY~~ 1,700 afy to MCWD from the desalination plant would be supplemented with the 1,000 afy of recycled water provided to Marina Coast Water District by the Regional Urban Water Augmentation Project.

161. ~~164.~~ The 10 mgd-capacity plant could provide Cal-Am's peak needs of ~~10,900~~ 9,500 afy, and still meet the simultaneous Marina Coast Water District demand of 1,700 afy, when that permanent allocation is required, because Marina Coast Water District would rely on its groundwater well pumping capacity to meet its own peak needs.

162. ~~165.~~ The desalination plant could produce up to 11,200 afy assuming operation at full capacity.

163. ~~166.~~ The calculations of the amounts of product water that are to be delivered to Cal-Am and to MCWD are based on groundwater and hydrologic modeling, and parties recognize that some variance will occur.

164. ~~167.~~ Based on modeling, the Settling Parties have determined that the Marina Coast Water District "agreed allocation" will be calculated by multiplying the amount of desalinated water produced by the desalination plant during a

calendar year by the average percentage of the amount of Salinas Basin Water included in the Brackish Source Water.

~~165. 168. Each~~For each calendar year, Marina Coast Water District ~~will receive its's~~ annual allocation of ~~the~~ desalinated water ~~–shall be the greater of~~ either the “agreed allocation” or the permanently allocated water, ~~whichever is greater.~~

~~166. 169.~~For purposes of determining the Marina Coast Water District “agreed allocation,” the average percentage of Salinas Basin water in the source water will be deemed not to exceed 15% during the first five years of operation of the Regional Project.

~~167. This averaging approach allows Cal-Am to receive an average of 8,800 afy of water from the desalination plant.~~

~~168. 170. This averaging approach allows Cal-Am to receive an average of 8,800 afy of water from the desalination plant. The Settling Parties also recognize that Cal-Am requires additional water during peak periods and in critically dry years.~~After the first five years of operation, the calculation of annual allocations and agreed allocations will be derived according to the formulas in Exhibit E of the Water Purchase Agreement.

~~169. Under the terms of the Water Purchase Agreement, Cal-Am may also be entitled to additional water during peak periods and in critically dry years.~~

~~170. 171. Permanently~~Under the Water Purchase Agreement, permanently allocated product water refers to the quantity of water needed to satisfy Marina Coast Water District customers’ demand that cannot be satisfied by its potable groundwater limits. This term refers to the limits for the withdrawal of water from the Salinas Valley Groundwater Basin imposed by law or agreement on Marina Coast Water District for the development of the former Fort Ord. As provided for in Section 9.4(d) of the Water Purchase Agreement, Marina Coast

Water District is required to notify Cal-Am when it requires permanently allocated product water.

171. ~~172.~~ Section 8.2(a) of the Water Purchase Agreement requires that at least one vertical test well and one slant well be drilled to obtain more precise data regarding the operation of the wells and the salinity of the water extracted from the wells.

172. ~~173.~~ If Under the Water Purchase Agreement, if test well development reveals that Cal-Am will not be able to receive its full allocation of desalinated water, Monterey County Water Resources Agency must prepare a written report; parties are to meet and confer to develop a plan of action; and Cal-Am may seek additional Commission approval, to the extent that expenditure of additional funds are required. If necessary, a contingency plan would be prepared by a mutually-acceptable engineer.

173. ~~174.~~ The Advisory Committee is to meet at least every quarter to review the prior quarter's quantity of pumped brackish source water, the average TDS and chloride concentrations, and the elevation of the Salinas Basin, and to discuss and recommend the current quarter's pumping and delivery of source water to ensure that both Cal-Am and Marina Coast Water District receive the proper allocations of desalinated water. The Advisory Committee will also meet quarterly to plan deliveries of product water that ensures that the allocations are fully met, recognizing Cal-Am's need for the full allocation of product water during its peak demand period.

174. ~~175.~~ The Settling Parties have recognized the need for accurate measurement of the volume of brackish source water deliveries from the wells to the desalination plant and of product water deliveries from the desalination plant to the Marina Coast Water District meter and the Cal-Am meter, and have spelled out details in the Water Purchase Agreement to ensure precise measurement of these quantities.

175. ~~176.~~ If feasible, DRA states that slant wells should be used because this technology will minimize the potential that Cal-Am ~~won't~~will not receive the water its customers are paying for, ~~will avoid costs associated with vertical wells required to ensure that the groundwater percentage is below 16.2%, and will avoid more costly energy costs associated with vertical well operation.~~

176. ~~177.~~ DRA and Monterey Peninsula Water Management District maintain that limiting the amount of groundwater that must remain in the basin ~~subject~~subjects the Regional Project to potential failure and risk of litigation.

177. ~~178.~~ There is little practical experience with slant wells, and drilling and operating both a vertical test well and a slant test well should provide important information.

178. ~~179.~~ We will not require the modification of the Settlement Agreement or the Water Purchase Agreement to require the use of slant wells, because we find that the test well approach that is carefully outlined in the Water Purchase Agreement is adequate.

179. ~~180.~~ Groundwater pumping for municipal and irrigation supply has led to a drop in groundwater levels and concomitant seawater intrusion.

180. ~~181.~~ Seawater has been migrating gradually into the Salinas Valley Groundwater Basin since the 1940s and was first documented by the Department of Water Resources in 1946.

~~182. ——— Parties have elected to use salinity as a proxy for determining the amount of source water that is seawater and the amount of water that is groundwater, but we cannot consider the salinity calculation in isolation.~~

~~183. ———~~

181. ~~184.~~ Parties have elected to use salinity as a proxy for determining the amount of source water that is seawater and the amount of water that is

groundwater, but we cannot consider the salinity calculation in isolation. As described in the Water Purchase Agreement, and in order to comply with the Agency Act, the Monterey County Water Resources Agency will monitor levels of Total Dissolved Solids in the source water, by taking into account the salinity of the seawater, the salinity of the brackish water, and the amount of brackish water supplied from the brackish water source wells, in order to determine the average percentages of seawater and Salinas Basin water delivered to the plant as feed water.

182. ~~185.~~ Based on the analysis of hydrology and groundwater modeling in the FEIR, we are persuaded that the volume of water [available for desalination and delivery to Cal-Am](#) will not be diminished, although the water that originates from the Salinas Valley Groundwater Basin may well become purer, because pumping the wells (whether vertical or slant wells) will not only draw seawater towards the coast, but the saline-intruded groundwater will also be drawn towards the coast, which in essence reverses the seawater intrusion dynamic, and reduces the salinity of the groundwater portion of the intake supply but does not change the volume.

~~186. ——— Based on the analysis of hydrology and groundwater modeling in the FEIR, we are persuaded that the volume of water will not be diminished, although the water that remains in the Salinas Valley Groundwater Basin may well become purer, because pumping the wells (whether vertical or slant wells) will not only draw seawater towards the coast, but the saline intruded groundwater will also be drawn towards the coast, which in essence reverses the seawater intrusion dynamic and reduces the salinity of the groundwater portion of the intake supply.~~

183. ~~187.~~ The existing Castroville Seawater Intrusion Project also reduces demand on groundwater and will help to stabilize groundwater pumping.

~~184. 188.~~ The Castroville Seawater Intrusion Project distributes recycled water through the Salinas Valley Recycling Project to agricultural users in the northern Salinas Valley Groundwater Basin and also helps to alleviate groundwater extraction in those areas.

~~185. 189.~~ The Salinas Valley Water Project (which consists of modifying the Nacimiento Dam spillway and reoperating the storage and release schedules of the Nacimiento and San Antonio reservoirs) and the Salinas River Diversion Facility will direct Salinas River water for delivery to Castroville Seawater Intrusion Project customers to replace the current use of groundwater that is delivered with the recycled water. The Salinas River Diversion Facility became operational in 2010. All of these projects and redistribution of water resources help to provide a form of “in-lieu” groundwater recharge, according to the FEIR analysis.

~~186. 190.~~ We are satisfied that the volume of water retained in the Salinas Valley Groundwater Basin will be adequate to ensure that Cal-Am receives its full water allocation, even if vertical wells are ultimately determined to be the best source water technology.

~~187. 191.~~ We see no reason to modify the language in the Water Purchase Agreement that describes the test well approach and we see no reason to require the use of slant wells – an admittedly more expensive and untested technology—
~~at this time.~~

~~188. 192.~~ We are satisfied that Settling Parties will ensure that a Water Contingency Plan is developed, to the extent that both slant wells and vertical wells prove to be infeasible.

~~189. 193.~~ Because of the Municipal Advisor, and because of the status reports we ~~require~~ will receive from Cal-Am, and because of the community outreach that is built into the Settlement Agreement and the Water Purchase Agreement, the Settling Parties are – as they should be – fully accountable to develop the

source wells. If the Monterey County Water Resources Agency determines that this is not feasible for some reason, we will be duly informed. Based on the requirements of the Cease and Desist Order, we have no doubt that Cal-Am will petition for additional relief, if the Regional Project appears to be infeasible.

~~190. 194.~~ The ~~parties~~ Settling Parties estimate total annual O&M costs at \$12.9 million, while DRA estimates that the annual costs will be \$14.270 million (based on a start date of 2015). ~~These annual costs are significant and because the Water Purchase Agreement is anticipated to last for 94 years, we concur with DRA that it is important to developing consumer protections and cost savings.~~ Despite these differences in annual costs, we are confident that Cal-Am, Marina Coast Water District and Monterey County Water Resources Agency will work to contain and control costs in compliance with their legal mandates, the requirement under the Water Purchase Agreement that “all costs of the Parties . . . shall be reasonably and prudently incurred,” and the provisions of the Water Purchase Agreement that deal specifically with O&M costs – particularly Sections 6.4(l), 6.5(h), 6.5(k), and 6.6.

~~195. — The parties will have a greater understanding of the O&M costs as the desalination plant is permitted and constructed.~~

191. It is unnecessary to have a future phase of this proceeding or a successor proceeding to address O&M costs and expenses as the provisions of the Water Purchase Agreement provide the Commission with comfort that they will work to contain and control costs; the Commission lacks jurisdiction over the Public Agencies; including any contracts by the Public Agencies with contract service providers; the open and transparent nature of the Public Agencies; and the fact that California law requires that MCWD’s rates and charges shall be reasonable and reasonably related to the cost of providing water.

~~192. 196.~~ If Cal-Am elects not to take its full allocation of product water, MCWD would have the right of first refusal ~~of that~~ for any such excess water, but

would pay full price for that excess water, pursuant to the ~~WPA~~terms of the Water Purchase Agreement.

~~193. 197.~~ Although DRA objects to ~~Cal-Am ratepayers funding~~ the costs of a partial second pass reverse osmosis technology, it is not unreasonable to exceed the current minimum legal requirements for this major infrastructure investment.

~~194. 198.~~ It is not clear that additional pilot plant testing would ~~not~~ provide additional information that cannot be ascertained from the test wells, and such testing would add delay and expense to the process.

~~195. 199.~~ A 12-month pilot test was previously conducted for the Moss Landing project, as all parties have acknowledged, and we see no reason to delay this project any further, despite the potential differences in groundwater chemistry from the seawater that was tested at MLPP.

~~196. 200.~~ Given the sensitivity analysis in DRA's testimony, it is clear that a delay in the construction period will add to the costs of the project and we are not convinced that implementation costs will be correspondingly reduced.

~~197. 201.~~ Although we are not requiring specific changes to the Settlement Agreement or the Water Purchase Agreement regarding technical issues, given BOR's experience with desalination projects, it is reasonable that Settling Parties consider their recommendations ~~carefully, and address the recommendations in their quarterly status reports to the Commission.~~

~~198. 202.~~ The Cal-Am facilities consist of three large diameter conveyance pipelines (the Transfer Pipeline, the Seaside Pipeline, and the Monterey Pipeline, which also includes the Valley Greens Pump Station) two distribution storage reservoirs (the Terminal Reservoirs), and aquifer and storage recovery facilities.

~~199. 203.~~ After the permitting and design process, assuming there are no unexpected delays in the permitting of the Regional Project, actual construction of the Cal-Am facilities is anticipated to begin in late 2011 and would be completed by summer of 2014.

200. ~~204.~~ The estimated capital costs for the Cal-Am facilities range from \$82.61 million to \$118.75 million, with the most probable cost estimated at \$95 million.

201. ~~205.~~ The Settling Parties recommend a capital cost cap of \$106.875 million for Cal-Am facilities, while DRA proposes \$8.4 million in cost reductions based on the most probable estimate of \$95 million.

202. ~~206.~~ Based on the estimates before us, it is reasonable to adopt ~~the most probable~~ a capital cost ~~estimate~~ cap of \$106.875 million for the Cal-Am facilities, ~~which both provides for ratepayer protection and does not impose restrictions that could lead to permitting delays.~~

203. ~~207.~~ It is reasonable to establish a capital cost cap ~~ceiling~~ for the Cal-Am owned facilities of \$106.875 million, the amount requested by the Settling Parties, in order to provide certainty for ratepayers and investors.

204. ~~208.~~ We do not agree that DRA's proposed reduction of \$3.25 million to the aquifer storage and recovery facilities should be based on the Monterey Peninsula Water Management District's actual costs to establish the Phase 1 aquifer storage and recovery facilities, because of differences in wells and design criteria.

205. ~~209.~~ The Settling Parties and DRA appear to agree that contingencies will be adjusted as the Regional Project becomes more certain, which is standard practice and provided for in See Section 6.4(j) of the Water Purchase Agreement.

206. ~~210.~~ ~~The~~ Any status report provided to the Commission by Cal-Am should contain the most complete and updated information available, including, to the extent available, the updated construction budget for the Regional Project ~~should include,~~ revised and updated components and contingency factors ~~and should be included in the status reports.~~

207. ~~211.~~ No party raises strong objections to the Settlement Agreement's proposed approach to treating the Cal-Am facilities (other than the transfer

pipeline) as used and useful as soon as they are constructed); while this approach is unusual, we see no reason to modify the Settlement Agreement.

~~212. Under the Water Purchase Agreement, the cost of the desalinated water will have two components: the debt service associated with financing the capitalized costs of the Public Agency owned facilities (including design, permitting, construction, pre-effective date costs) and the costs of operating and maintaining the facilities.~~

208. ~~213.~~ Pursuant to the Settlement Agreement, we agree that the costs of the product water would be recovered through the Modified Cost Balancing Account – essentially a balancing account already established to record and recover in rates the costs of purchased water.

~~214. When Cal Am files its Tier 3 advice letters for recovery of product water costs, each advice letter should provide detailed workpapers on the financing costs, O&M costs, and average acre feet of water supplied to Cal Am during the period addressed.~~

~~215. Staff should process these Tier 3 advice letters within 120 days, and should review the impact of the financing plans and the O&M costs that will be considered in a separate phase of this proceeding, and should inform the Commission of the unit cost of water for this Project. Staff should also review the workpapers to ensure that the Public Agencies do not include any of their normal costs of doing business in costs allocated to the Regional facilities.~~

209. ~~216.~~ We must consider the rate applied to AFUDC in connection with the risks incurred by Cal-Am and the amount of time its funds will be used.

210. ~~217.~~ Because we are not altering the semi-annual approach to rate recovery for the Cal-Am facilities and because we have adopted an initial capital

cost cap without requiring a reasonableness review, we find that Cal-Am has little risk of disallowance.

211. ~~218.~~ Cal-Am should ~~only~~ be compensated for its actual carrying costs.

212. ~~219.~~ The proposed AFUDC rates on the record do not reflect the current economic environment and would likely result in an over- or under-collection.

213. ~~220.~~ It is reasonable to adopt an initial AFUDC rate that is more representative of current rates, and allow this rate to be trued-up to reflect actual carrying costs.

~~221. ——— It is reasonable to allow our staff adequate time to review what are likely to be extensive filings, to require Cal-Am to include detailed work papers for recovery of the costs of its facilities, and to file Tier 3 advice letters, rather than Tier 2 advice letters.~~

214. ~~222.~~ We agree with Cal-Am and the Settling Parties that it is reasonable to allow the proposed Tier 2 semi-annual advice letter filings and that a true-up process is reasonable. This approach will provide some certainty as to cash flow, and can be adjusted to the extent any costs are disallowed, as Cal-Am recognizes.

215. In order to provide the Public Agencies with further certainty of cash flow as well as to provide assurances for the lenders, Cal-Am shall make all Product Water Contract Payments under the Water Purchase Agreement when due in accordance with the terms of the Water Purchase Agreement.

216. In the absence of certainty of cash flow, the Regional Project is unlikely to be financeable and, even if financeable, the financing will most likely be at a higher rate.

217. The Commission does not have authority to review, question, attempt to prevent or prevent the Public Agencies' recovery of any of their costs incurred in connection with the Regional Project that are incorporated into the desalinated product water costs.

~~218. 223.~~ Cal-Am has agreed to proceed in the most cost-effective manner in constructing its own facilities, and to provide a summary of costs and detail the expenditures made in the prior quarter. ~~Cal-Am should also file a progress report and timeline that provides a detailed report on the permitting, construction, budget, timeline and progress report on each component of the Cal-Am facilities.~~

~~224.~~ DWA staff has the discretion to compare progress made on the Regional Project with the planned budget and to consider whether sufficient progress is being achieved on the Cal-Am facilities. Cal-Am should also provide workpapers that delineate the competitive procurement process, the contracting terms, project management goals, and milestones achieved for each aspect of the project. MCWD must provide detailed workpapers to demonstrate that all costs associated with its desalination plant project were reasonably incurred and are relevant to the Regional Project. These should be provided in the Status Reports.

~~219. 225.~~ Requiring a The Tier ~~32~~ 32 advice letter ~~to be filed~~ process will allow DWA staff to fully verify the costs associated with the Cal-Am facilities, and to determine that these costs were properly incurred for the particular component of the project.

~~226.~~ Assuming that Cal-Am adheres to the initial capital cost cap that we have established today, we will not require a backward looking reasonableness review of these costs. However, to the extent that staff has questions about particular aspects of the advice letter filing that cannot be resolved within the 120-day period, staff may proposed that the Commission hold back approval of the disputed portion of the costs in question.

220. ~~227.~~ It is reasonable to require Cal-Am to update DRA and DWA staff on the design and refined cost estimates of the Cal-Am only facilities, ~~because this approach will help to ensure that Cal-Am explains and justifies the project costs that are included in each Tier 3 advice letter.~~ Cal-Am should meet with DRA and DWA on a quarterly basis.

221. ~~228.~~ The ratemaking approach we authorize today eliminates the need for the Special Request 2 Surcharge authorized in D.06-12-040.

222. ~~229.~~ No party disagrees that the Regional Project is the preferred project, and no party disagrees that the Public Agencies are required participants in the Regional Project.

223. ~~230.~~ We find that the Public Agencies' participation in the Regional Project is vital to the success of this project, and therefore, the pre-effective costs incurred to date, including the legal costs, should be recoverable.

224. ~~231.~~ The pre-effective date costs are included as a line item in the calculation of the most probable estimated cost included in Exhibit C to the Settlement Agreement, and are not expected to exceed \$14 million. ~~with approximately half of those costs incurred through year end 2009.~~

225. ~~232.~~ We cannot anticipate every contingency, but at this point, we would be reluctant to authorize recovery of pre-effective date costs greater than \$14 million. We will carefully review such requests if Cal-Am files an application for additional capital cost recovery and will expect thorough documentation and detailed workpapers to be provided. ~~MCWD must provide detailed workpapers to demonstrate that all costs associated with its desalination plant project were reasonably incurred and are relevant to the Regional Project. These should be provided in the Status Reports.~~

226. ~~233.~~ At the request of the assigned ALJ, DRA has proposed certain actions to the extent that the Settling Parties do not agree with the modifications we adopt today; however, it is premature to address these now.

227. ~~234.~~ Cost allocation and rate design will be addressed in Phase 3 of this proceeding and will be coordinated with Cal-Am's current GRC for the Monterey District, A.10-07-007.

~~235. O&M expenses will be addressed in a future phase of this proceeding, or a successor proceeding.~~

Conclusions of Law

1. Cal-Am is a water corporation as defined in Pub. Util. Code § 241, and may not proceed with the Coastal Water Project, or an alternative, absent our certification that the present or future public convenience and necessity require this project.

2. We have considered how the widely-recognized need may best be met by various water supply alternatives, as evaluated according to the statutory framework established by Pub. Util. Code. § 1001 et seq.

3. As the basis for granting a CPCN, the Commission must consider the need for the project, community values, recreational and park areas, historical and aesthetic values, and the influence on the environment, as set forth in Pub. Util. Code § 1002(a).

4. The review process established by CEQA is the primary vehicle for the environmental review.

5. As determined in D.03-09-~~022,022~~ and D.09-12-017, the Commission is the lead agency for ~~CWQA~~CEQA review of the Coastal Water Project.

6. CEQA precludes the lead agency from approving a proposed project or project alternative unless that agency requires the project proponent to eliminate or substantially lessen all significant effects on the environment where feasible,

and determines that any unavoidable remaining significant effects are acceptable due to overriding considerations.

7. CEQA requires that, prior to approving the project or a project alternative, the lead agency must certify that the EIR was completed in compliance with CEQA, that it reviewed and considered the EIR prior to approving the project or a project alternative, and that the EIR reflects our independent judgment. (Pub. Res. Code § 21082.1(c)(3), CEQA Guidelines § 15090.) Here, the final EIR was certified by the Commission in D.09-12-017.

8. [MCWD and MCWRA as parties to this proceeding and responsible agencies under CEQA have each conditionally entered the Settlement Agreement and Water Purchase Agreement, contingent upon our subsequent approval of the Settlement Agreement and Water Purchase Agreement without material modification and our selection and approval of the Regional Project.](#)

9. [This order constitutes final project approval of the Regional Project under CEQA.](#)

10. ~~8.~~ If the federal agencies were to prosecute Cal-Am for “takes,” under the Endangered Species Act, enforcement actions could include further reduction of the water supply and heavy fines.

11. ~~9.~~ The Marina Coast Water District (MCWD) was organized in 1960 and operates in accordance with the County Water District Law (Water Code §§ 30000 *et seq.*). MCWD is governed by five directors elected at-large from within MCWD’s jurisdictional boundaries.

12. ~~10.~~ The Monterey County Water Resources Agency (MCWRA) is a public agency, which was created by the Monterey County Water Resources Agency Act (Agency Act), as codified in Chapter 52 in the California Water Code Appendix.

13. ~~11.~~ Pursuant to the Agency Act, no groundwater from the Salinas Basin may be exported for use outside the basin, with limited exceptions for Fort Ord,

and MCWRA may obtain ~~an~~ injunctive relief from the court prohibiting the exportation of such groundwater.

14. ~~12.~~ The Monterey County Board of Supervisors is ex officio the Board of Supervisors of MCWRA. The Board of Supervisors appoints a nine-member Board of Directors for MCWRA. Each of the five supervisors of Monterey County appoints one director and the other four are appointed by majority vote of the supervisors from nominees submitted by various agricultural groups.

15. ~~13.~~ The Monterey Regional Water Pollution Control Agency (MRWPCA) is governed by a Board of Directors, consisting of a Monterey County Supervisor, a director of MCWD, mayors and city council members of various cities served by the Pollution Control Agency, and members of various sanitation districts.

16. ~~14.~~ The Monterey Peninsula Water Management District (MPWMD) was created in 1977 for purposes of managing and regulating the use, reuse, reclamation, conservation of water, and financing public works projects.

17. ~~15.~~ MPWMD is governed by a seven member board of directors. Five of the directors are elected directly, one member is an elected Monterey County Supervisor, and one member is a member, councilmember, or city manager appointed by the mayors of the six cities within the boundaries of the MPWMD: Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside.

18. ~~16.~~ In D.09-07-021, we have previously ordered Cal-Am to reduce leaks and to carefully account for previously-unaccounted for water and to explore the use of non-potable water to serve non-agriculture landscaping needs.

19. ~~17.~~ The timing associated with water supply constraints have become more critical with the issuance of the State Water Resources Control Board's (SWRCB) WR 2009-0060, its final Cease and Desist Order, issued on October 20, 2009.

20. ~~18.~~ SWRCB Order WR 2009-0060 requires Cal-Am to undertake additional measures to reduce its diversions from the Carmel River and to terminate all such diversions no later than December 31, 2016. A court order temporarily stayed the Cease and Desist Order, but the Superior Court of Santa Clara County lifted the stay on April 22, 2010.

21. ~~19.~~ Pursuant to Rule 13.9, which provides that “[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.,” it is reasonable to grant Cal-Am’s uncontested request for official notice of SWRCB Order WR 2009-0060 and the Superior Court’s Order dissolving the stay.

22. ~~20.~~ Based on the mandatory cumulative annual reductions, the estimated operational yield from the ASR project, the estimated afy supplied by the Sand City desalination plant, and the estimated Coastal Water Project output, the Cease and Desist Order finds that the total amount diverted from the Carmel River must not exceed Cal-Am’s water rights of 3,376 afy by the 2016-17 water year.

23. ~~21.~~ Because permitting and building the approved desalination plant and associated infrastructure will take a significant amount of time, it is reasonable to approve the Regional Project without delay in order to ensure that the required water supply is available to the Monterey Peninsula by the 2016-17 water year, as required by the SWRCB.

24. ~~22.~~ We concluded in D.09-12-017 that the FEIR for the Coastal Water Project complied with CEQA, and found that the FEIR is the competent and comprehensive informational tool that CEQA requires it to be.

25. ~~23.~~ Because we determined that the FEIR was completed in compliance with CEQA, that the FEIR has been presented to the Commissioners (the decision-making body of the Commission), and has been reviewed, considered, and applied prior to action on the project, and that the FEIR reflects the

Commission's independent judgment and analysis, we certified the FEIR on December 17, 2009 in D.09-12-017.

26. ~~24.~~ The No-Project Alternative would not satisfy the requirements of Order 95-10, would not protect the Seaside Basin, would not result in a drought-proof water supply, and would not protect the listed species in the riparian and aquatic habitat below the San Clemente dam; therefore the No-Project Alternative is not a tenable option.

27. ~~25.~~ Because of the lengthy history of the Coastal Water Project, the FEIR alternatives analysis entailed consideration of many alternatives in the context of several different proposed projects and various related documents, including the New Los Padres Dam and Reservoir EIR (originally proposed by the Monterey Peninsula Water Management District in 1989 and defeated by voters in 1995), the Carmel River Dam and Reservoir Project (considered in A.97-03-052, precluded by AB 1182, and dismissed in D.03-09-022), and the Commission's Water Supply Contingency Plan Evaluation and Coastal Water Project EIR (prepared in response to AB 1182 and known colloquially as Plan B).

28. ~~26.~~ It is reasonable to require Cal-Am to implement the mitigation measures set forth in Appendix C as a condition of the approval of its participation in the Regional Project and as a condition for issuing the CPCN.

29. ~~27.~~ Pursuant to Rule 12.1(d), the Commission must ensure that a settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

30. ~~28.~~ According to the provisions of Monterey County Code Chapter 10.72.30(B), private ownership of a desalination plant is prohibited.

31. ~~29.~~ The Outfall Agreement commits sufficient capacity in the existing Monterey Regional Water Pollution Control Agency's outfall such that Marina Coast Water District can discharge the brine, but does not require approval by this Commission.

~~32. 30.~~ It is reasonable to set the capital cost cap ~~at~~ for the Project Facilities at \$297.5 million, which represents the most probable estimated cost, including a 25% cost contingency ~~factor, because this approach to capital cost recovery strikes a fair balance that will allow certainty in project financing and protection for Cal-Am ratepayers. We require Settling Parties to adopt this modification and revise the Settlement Agreement and Water Purchase Agreement accordingly.~~

~~31. It is reasonable that we apply the Marina Coast Water District fees to the total capital cost of the project, before establishing the capital cost cap; this is a reasonable modification to the Settlement Agreement and the Water Purchase Agreement that provides an incentive to the parties to reign in costs and also ensures that Marina Coast Water District has a minimal investment in the project at the outset~~ plus the design development allowance.

~~33. 32.~~ We do not agree with DRA's assertion that only a per-acre-foot cost cap will allow us to approve just and reasonable rates; ~~although we are not setting rates today, the modification we adopt provide reasonable bounds to the Regional Project.~~

~~34. 33.~~ The infrastructure associated with the Regional Project is required to ensure that Cal-Am can continue to provide adequate water supplies and service to its customers, consistent with the requirements of Pub. Util. Code § 789.1(c).

~~34. In D.05-11-026 and D.05-12-040, the Commission's decisions considering the steam generator replacements for the Diablo Canyon and SONGS nuclear plants, respectively, the Commission adopted cost caps for these major infrastructure projects, determined that a reasonableness review would be conducted, to the extent that PG&E and SCE sought recovery of costs over the authorized cost cap, and also determined that~~

~~there was an absolute ceiling beyond which the Commission would not authorize ratepayer recovery.~~

35. Adopting ~~both~~ a capital cost cap ~~and a capital cost ceiling~~ for the Cal-Am owned facilities should allow the financing required that will allow Cal-Am to comply with Pub. Util. Code § 789.1(c) ~~and is consistent with the requirements of § 1005.5.~~

36. ~~The fees limit language in § 11.4 of the Water Purchase Agreement should be revised to provide that \$22 million in connection fees will be applied upfront to the Regional Project and that connection fees connected with ongoing development will be applied to reduce the costs charged to Cal-Am's ratepayers.~~ In order to provide the Public Agencies with further certainty of cash flow as well as to provide assurances for the lenders, Cal-Am shall make all Product Water Contract Payments under the Water Purchase Agreement when due in accordance with the terms of the Water Purchase Agreement

37. ~~The Marina Coast Water District should be required to contribute \$3 million for the intangible benefits it receives from participating in the Regional Project.~~ We shall conduct cost verification through review of cost information provided by Cal-Am to the commission in accordance with the processes set forth in the Settlement Agreement.

38. ~~It is reasonable to require modifications to Section 7.1 (c)(iv), which provides that our approval of the Water Purchase Agreement establishes that we have authorized the financing and deemed the terms set forth in §§ 7.1(c)(i), (ii), and (iii) as reasonable and prudent. This section must be revised to require Cal-Am to file and serve the financing plan in this proceeding, once that plan is final. To the extent that the financing plan includes cost of debt that is equal to or less than 6%, debt service coverage~~

~~of 1.0, a construction period of 3.5 years, and the use of State Revolving Funds or grants, we will not review the financing plan for reasonableness.~~The Commission shall review costs as proposed in the Settlement Agreement. Any review of costs by the Commission related to the Regional Project shall not effect the obligation of Cal-Am to make payment for desalinated product water pursuant to the terms of the Water Purchase Agreement.

39. ~~To the extent that the financing terms exceed the terms outlined in Conclusion of Law 37, it is reasonable that parties have the opportunity to comment on the proposed financing plan and that the Commission have the opportunity to consider the impact on Cal-Am ratepayers.~~The Commission does not have authority to review, question, attempt to prevent or prevent the Public Agencies' recovery of any of their costs incurred in connection with the Regional Project that are incorporated into the desalinated product water costs.

40. ~~While not asserting jurisdiction over the costs the Public Agencies incur, because Cal-Am ratepayers provide recovery for these costs in rates, we find that the Commission must have some ability to review the costs Cal-Am plans to recover through its purchased water balancing account, and ensure that the costs passed on to the Cal-Am ratepayers are cost-based and reflect only the actual costs of the Regional facilities.~~

40. 41. ~~The Commission must retain its authority to ensure that Cal-Am ratepayers are paying cost-based rates related to the Regional Project, and we must have the discretion to verify that these costs are appropriate, are project based, and do not include any costs that would otherwise be paid by the Public Agencies in the normal course of business.~~ The Public Agencies have their own transparent processes and procedures. To the extent

that these agencies, in exercising their duties to be accountable to their constituencies, find that particular aspects of the Regional Project are not reasonable and cost-effective, it is reasonable to require Cal-Am to bring this issue to the Commission for its review and consideration, by filing the appropriate pleading.

41. ~~42.~~ It is reasonable to ~~require~~allow Cal-Am to ~~file Tier 3 advice letters, consistent with the requirements of General Order 96.B, to~~ request recovery of product water costs through its Modified Cost Balancing Account and to allow Cal-Am in its discretion to file a Tier 1 advice letter to adjust consumer rates as needed to match the actual cost of product water.

42. ~~43.~~ We intend to fully consider the debt equivalence issue when Cal-Am files an application addressing this issue; however, we are fully cognizant of the need for the investor-owned utilities we regulate to remain financially viable, as set forth with particularity in Pub. Util. Code § 727.5(e).

43. ~~44.~~ While the Commission must consider the Settlement Agreement as a whole, we must also ensure that the various provisions of the Settlement and the Water Purchase Agreement are in the public interest.

44. ~~45.~~ On balance, it is reasonable to add a Municipal Advisor to the Advisory Committee.

45. ~~46.~~ As Public Agencies, both the Marina Coast Water District and the Monterey County Water Resources Agency are subject to the requirements of the Brown Act (Government Code Sections 54950 et seq.) and the California Public Records Act (Government Code Sections 6250 et seq.).

46. ~~47.~~ ~~We do~~Whether or not ~~find that~~ the Advisory Committee must be subject to these same requirements is a matter of law and does not require specific amendment or modification to the Water Purchase Agreement. The procedures we have adopted today, along with the procedures that the Public Agencies must

adhere to, provide sufficient information for the public and adequate avenues for public participation in the governance of the Regional Project.

~~47. 48.~~ Because the Marina Coast Water District is located within the Salinas Valley Groundwater Basin, it will take an ~~annual~~agreed allocation of desalinated water for distribution within its service territory; this approach allows the Regional Project to comply with the Agency Act.

~~48. 49.~~ Compliance with the Agency Act is within the Monterey County Water Resources Agency's jurisdiction and it is reasonable that this agency would determine the particular types of wells to drill based on analysis of the data and after consultation with the Marina Coast Water District and Cal-Am.

~~49. 50. It~~In accordance with its authority under the Agency Act, it is reasonable ~~that~~for the Monterey County Water Resources Agency ~~would also~~to determine as provided in Section 8.2(a) of the Water Purchase Agreement whether the Marina Coast Water District's "agreed allocation" ~~(i.e., up to 1,700~~ ~~afy based on the assumption of an average of 15% groundwater in the~~ ~~brackish source water)~~ can be delivered and still meet the requirements ofin compliance with the Agency Act. Given the importance of the water allocation issue, it is reasonable to require Cal-Am to submit a report after the first five-year period that provides updated information on the water supply obligations and deliveries addressed in Section 9 of the Water Purchase Agreement. Cal-Am must submit this report to DRA and DWA, and serve all parties in this proceeding.

~~50. 51.~~ For the Cal-Am facilities, it is reasonable to determine that, once constructed, the conveyance, pumping, and reservoir facilities will be designated as used and useful for ratemaking purposes, even if the Regional Project is delayed for some reason.

~~51. 52.~~ The transfer pipeline used to deliver desalinated water downstream from the delivery point to the Cal-Am facilities throughout its distribution system will not be deemed used and useful until the Regional Project is completed.

~~52. 53. Because O&M costs are significant, and without asserting jurisdiction over the~~ We find that in light of the detailed processes in the Water Purchase Agreement that are designed to ensure the reasonableness of O&M costs of the two Public Agencies, ~~we find that~~ it is ~~reasonable to consider O&M~~ not necessary to review those costs in a future phase of this proceeding, or a successor proceeding.

53. We shall have continuing authority to review cost information provided by Cal-Am to the Commission

54. For an infrastructure project of this magnitude, the Commission must be apprised of the impact on rates and must have the ability to understand and monitor the costs involved; therefore, we will hold the Settling Parties accountable to the provisions outlined in the Settlement Agreement and the Water Purchase Agreement, as set forth in Section 4.3, Cost Management.

~~55. Because we require Cal-Am to file an application requesting recovery of capital costs incurred above the capital cost cap of \$95 million, the Settlement Agreement must be modified to revise the procedure for the final advice letter filing. To the extent that costs for the Cal-Am facilities are equal to or less than \$95 million, Cal-Am may file a final advice letter. To the extent that those costs exceed \$95 million but are less than the \$106.875 million cost cap ceiling, Cal-Am must file an application to request recovery of the incremental costs. Recovery of costs greater than \$106.875 million will only be approved for ratepayer recovery upon a showing that these costs were the result of extraordinary circumstances and subject to a heightened level of scrutiny.~~

~~55. 56.~~ Any sale of excess water should inure to the benefit ~~of both MCWD's~~ and Cal-Am's ratepayers, who are both providing the funding for ~~this Regional Project and should correspondingly benefit from any sales of the product water.~~ the Regional Project in accordance with the allocation of such costs among the ratepayers as set forth in the Water Purchase Agreement.

~~56. 57.~~ It is reasonable and consistent with the public interest that the Water Purchase Agreement requires use of a partial second-pass reverse osmosis technology in order to protecting public resources and the health and well-being of humans and plants.

~~57. 58.~~ We must consider overall feasibility of the project, including the Cal-Am facilities, in our assessment of the Regional Project. A project of this magnitude will require substantial time for permitting and review by local authorities. Given the exigencies of the Cease and Desist Order, it is not reasonable to place additional permitting constraints on the Cal-Am facilities.

~~58. 59.~~ While we do not assert jurisdiction over the Public Agencies, we must retain our constitutional duty to ensure that the rates for jurisdictional Cal-Am ratepayers eventually established are just and reasonable.

~~60. It is reasonable to modify the Settlement Agreement and Water Purchase Agreement to require Cal-Am to file Tier 3 advice letters to request authority to recover product water costs and to require detailed workpapers to justify the costs, as set forth herein. We will do so through review of cost information provided by Cal-Am to the Commission.~~

~~59. 61.~~ It is reasonable to adopt an initial AFUDC rate of 4.00% to compensate Cal-Am for its carrying costs and allow for a true-up to reflect actual carrying costs. ~~The Settlement Agreement should be so modified.~~

~~62. As we determined in D.07-08-031, effective regulatory oversight and the magnitude of this infrastructure investment deserves thoughtful~~

~~consideration by the full Commission, as costs are rolled into rates.~~ This is not a material modification to the Settlement Agreement as the percentage utilized therein was illustrative.

~~60. 63.~~ The Special Request 2 Surcharge authorized in D.06-12-040 should be eliminated.

~~61. 64.~~ It is reasonable to require the Public Agencies to repay the portion of the pre-effective date costs that are addressed in the Reimbursement Agreement approved in D.10-08-008.

~~62. 65. With the modifications we adopt in this decision, the~~ The Settlement Agreement and Water Purchase Agreement which we consider are the Settlement Agreement and Water Purchase Agreement attached to the Motion to Approve the Settlement filed on April 7, 2010, as modified by the changes set forth in the "Notice of Agreed-Upon Revisions to WPA" filed by MCWD, MCWRA, and Cal-Am on May 19, 2010, as further modified by the changes set forth in Appendix A to "Marina Coast Water District's Concurrent Reply Brief" filed on July 16, 2010, and as further modified by the changes set forth in the "Joint Reply Comments on the Article 6 Changes" filed by MCWD, MCWRA and Cal-Am on August 4, 2010. The Settlement Agreement and Water Purchase Agreement are reasonable in light of the entire record, in compliance with the law, and in the public interest. We agree with the Settling Parties: time is of the essence to ensure that the Regional Project can be permitted, financed, and constructed.

~~63.~~ The terms and conditions of the Settlement Agreement and Water Purchase Agreement shall govern the development, construction and operation of the Regional Project.

~~64.~~ The Water Purchase Agreement is a contractual obligation of each of the Parties and each of the Parties are expected to comply with their obligations.

65. ~~66.~~ The Settlement Agreement and the Water Purchase Agreement we approve today have far-reaching consequences. While we cannot bind future Commissions, we are guided by the Commission's findings in D.06-09-040.

66. ~~67.~~ Commission precedent establishes that we cannot bind the actions of future Commissions; however, ~~with the modifications we adopt today,~~ we believe the settlement is a fair, just, and reasonable compromise of the many long-standing, difficult, and costly issues involved in solving the water supply constraints on the Monterey Peninsula and ensuring that the restrictive water reductions set forth in the State Water Resources Control Board Cease and Desist Order can be avoided if the Regional Project is built.

67. ~~68.~~ It is reasonable to state our intent that all future Commissions recognize and give full consideration and weight to the fact that this settlement and implementing agreements, ~~as modified,~~ have been approved based on the expectations and reasonable reliance of the parties and this Commission that all its terms and conditions will be implemented by future Commissions.

68. ~~69.~~ Because of the timing of the State Water Resources Control Board Cease and Desist Order, this decision should be effective today, in order to allow the Regional Project to be financed, permitted, and constructed as soon as practicable.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement and Water Purchase Agreement, filed on April 7, 2010, and updated by the Settling Parties on August 31, 2010 ~~must be modified as follows~~ are approved without any material modifications

2. Although the Commission is not seeking any material modifications to either the Settlement Agreement or the Water Purchase Agreement, the Commission makes the following non-material modifications, which should not require any revisions to either the Settlement Agreement or the Water Purchase Agreement:

- a) ~~The capital cost cap~~CPUC Settlement Cost Cap for the ~~Regional Project facilities shall be limited to \$224.4 million.~~Project Facilities shall be established at \$297.5 million.
- ~~i. We calculate this amount as follows: \$240.4 million (the most probable estimated cost, as delineated in Exhibit C to~~
- b) Because the financing plans are not final, we instruct California-American Water Company to engage the services of an independent third-party to review, advise and consult with California-American Water Company in connection with the proposed financing plan options to be considered under the Water Purchase Agreement; ~~plus \$9 million, the amounts identified in Exhibit 319 as the reserve amount and the amount estimated for obtaining indebtedness, less \$25 million, which represents the \$22 million estimated by the Marina Coast Water District for connection fees, plus \$3 million in associated intangible benefits.~~
- ~~ii. We set a cost cap ceiling of \$272.5 million, beyond which cost recovery from California American Water Company ratepayers will be allowed upon a showing of exceptional circumstances and subject to a rigorous reasonableness review. This ceiling is calculated by subtracting \$25 million (Marina Coast Water District contribution) from \$297.5 million, the capital cost cap requested by the Settling Parties in Exhibit C to the Settlement Agreement.~~
- ~~b) We remove the idea of a fees "limit" and conclude that any fees charged by Marina Coast Water District for new connections as the former Fort Ord area is developed should be contributed to offset the indebtedness of the Regional Project, which will reduce overall costs to California American Water Company ratepayers.~~
- ~~c) Because the financing plans are not final, we modify the Settlement Agreement and Water Purchase~~

~~Agreement to require California American Water Company to file and serve the financing plans in this proceeding. To the extent that the financing plan determines that the cost of debt will not exceed 6%, the debt service coverage is set at 1.0 and that State Revolving Fund loans or grants can be accessed, we shall accept the filing without further review. If the terms of the financing plan exceed these limits, parties shall have the opportunity to comment on the financing plan and the Commission shall review and approve the financing plan. In this case, we direct the assigned Commissioner and assigned Administrative Law Judge to expeditiously set a schedule for expeditious consideration of this matter.~~

- d) ~~We adopt a capital cost cap of \$95 million for the California American Water Company only facilities, the most probable estimated cost of construction. Similar to our approach with the desalination plant and intake well facilities, we set a cost cap ceiling of \$106.875 million, beyond which recovery from ratepayers will be allowed upon a showing of exceptional circumstances and subject to a rigorous reasonableness review. and to prepare a report regarding its analysis, a copy of which report shall be provided by California American Water Company to the Division of Water and Audits.~~
- c) We adopt a capital cost cap of \$106.875 million for the California-American Water Company only facilities.
- e) ~~We revise the~~ d) California American Water should use 4.00% as the initial interest rate applied to the Allowance for Funds Used During Construction to reflect the actual cost of borrowing. We authorize an initial rate of 4.00%. This amount shall be ~~trued-~~ up to reflect California- American Water ~~Company~~'s actual carrying costs.
- f) ~~To the extent that the capital costs exceed the initial caps we establish today but are less than the cost cap ceilings we place on the Regional Facilities and the California American Water Company owned~~

~~facilities, we require California American Water Company to file an application to justify why ratepayers should pay for additional costs. These applications must be fully documented and supported. We will review any such requests carefully and will review the impact of financing on the overall cost of the Regional Project in those proceedings.~~

- ~~g) If the capital costs for the Regional Facilities or the Cal-Am owned facilities exceed the cost cap ceilings established by this decision, California American Water Company shall file an application to explain the extraordinary circumstances under which these costs have been incurred and justify why they should be recovered from ratepayers. These applications must be fully documented and supported and shall be subject to a heightened level of scrutiny.~~
- ~~h) We require three modifications to the advice letter procedure proposed by the Settling Parties:
 - ~~i. California American Water Company shall file Tier 3 advice letters to recover its purchased water costs. We do not assert jurisdiction over the Public Agencies' costs; however, because California American Water Company ratepayers are paying for these facilities, we must have the ability to ensure that California American Water Company ratepayers are paying cost-based rates. We provide 120 days for staff to process these advice letters.~~
 - ~~ii. For Cal-Am facilities, California American Water Company shall file Tier 3 advice letters and we require 120 days for staff processing of these advice letters. California American Water Company shall include detailed work papers with the advice letters and to provide quarterly updates to the Division of Ratepayers Advocates and staff on the design and refined cost estimates~~~~

~~of the California American Water Company only facilities.~~

~~iii. Because we require California American Water Company to file an application requesting recovery of capital costs incurred above the capital cost cap of \$95 million, the Settlement Agreement must be modified to revise the procedure for the final advice letter filing. To the extent that costs for the California American Water Company facilities are equal to or less than \$95 million, California American Water Company may file a final advice letter. To the extent that those costs exceed \$95 million, California American Water Company must file an application to request recovery of the incremental costs.i) The Operation and Maintenance costs shall be reviewed in a separate phase of this proceeding, or in a successor proceeding.~~

3. ~~2.~~ Beginning January 15, 2011, California-American Water Company shall submit quarterly status reports on the permitting, financing, design, bidding, and construction of the Regional Project to the Executive Director and to the Director of the [Division of Ratepayer Advocates](#). California-American Water Company shall meet quarterly with Division of Ratepayer Advocates and staff. No modification to the Settlement Agreement is required to effectuate this requirement. ~~The Marina Coast Water Management District must provide detailed workpapers to demonstrate that all costs associated with its desalination plant project were reasonably incurred and are relevant to the Regional Project and shall provide these workpapers to California American Water Company, which shall include them in the Status Reports.~~

~~3. Each Tier 3 advice letter that California American Water Company files for recovery of costs associated with product water shall specifically~~

~~delineate details as to the acre-feet supplied by the Regional Project, the operations and maintenance costs, and the financing costs, and shall supply detailed workpapers supporting the advice letter filing. Staff shall prepare resolutions for the Commission's consideration that provide detailed information as to costs of the product water.~~

~~4. Each Tier 3 advice letter that California American Water Company files for recovery of costs associated with its facilities shall include specific details as to the competitive procurement process, cost-containment measures, contracting terms, project management, and the milestones achieved for each aspect of the project. The progress reports shall be included, and staff shall be included in the Inspection and Audit Protocols set forth in Section 4.11 of the Water Purchase Agreement. This information shall also be provided in the quarterly meetings that California American Water Company convenes with Division of Ratepayer Advocates and staff.~~

4. ~~5.~~ To the extent that the Public Agencies, in exercising their duties to be transparent and accountable to their constituencies, find that particular aspects of the Regional Project are not reasonable and cost-effective, then California-American Water Company must bring this issue to the Commission for its review and consideration, by filing the appropriate pleading.

5. ~~6.~~ After the first five-year period of the Water Purchase Agreement, California-American Water Company shall submit a report ~~after the first five-year period~~ that provides updated information on the water supply obligations and deliveries addressed in Section 9 of the Water Purchase Agreement. California-American Water Company must submit this report to Division of Ratepayer and Advocates and Division of Water and Audits, and serve all parties in this proceeding

~~7. Within 30 days of the effective date of this decision, the Settling Parties shall file and serve a conformed Settlement Agreement and Water Purchase Agreement that contain the modifications adopted today.~~

6. ~~8. With the modifications we adopt today, we~~We approve the Regional Project and issue a Certificate of Public Convenience and Necessity to California-American Water Company for the following components of the Regional Project: the Transfer Pipeline, the Seaside Pipeline, the Monterey Pipeline, including the Valley Greens pump station, the Terminal Reservoirs, and the Aquifer Storage and Recovery facilities, subject to California-American Water Company complying with all feasible mitigation measures identified in the Final Environmental Report and the Mitigation Monitoring and Reporting Program contained in Appendix C of this decision.

7. ~~9.~~ The Mitigation Monitoring and Reporting Program in Appendix C is adopted herein.

8. ~~10.~~ The California Environmental Quality Act Findings of Fact for the Regional Project in Appendix B accurately reflect the independent analysis contained in the Final Environmental Impact Report and are supported by substantial evidence in the administrative record, and are incorporated as findings herein.

9. ~~11.~~ We certify the Addendum to the Final Environmental Impact Report issued on March 24, 2010 and received into evidence on June 14, 2010.

10. In compliance with the Commission's lead agency obligations under CEQA, staff is directed to file a Notice of Determination with the state Office of Planning and Research within five days of the date of issuance of this order reflecting our approval of the Regional Project.

11. ~~12.~~ The Special Request 2 Surcharge authorized in Decision 06-12-040 is no longer applicable.

12. ~~13.~~ Marina Coast Water District and the Monterey County Water Resources Agency shall ~~repay to California American Water Company the portion of the pre-effective date costs included in~~ comply with the terms of the Reimbursement Agreement approved by the Commission in ~~Decision 10-08-008,~~ as provided for in that Reimbursement Agreement. D.10-08-008.

13. ~~14.~~ Application 04-09-019 remains open to address other issues, including but not limited to cost allocation and rate design, operations and maintenance costs related to the Cal-Am owned facilities, intervenor compensation, and pending petitions for modification.

This order is effective today.

Dated _____, at San Francisco, California.