

Decision 11-06-034 June 23, 2011

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

In the matter of the application of California American Water Company (U210W) for a certificate of public convenience and necessity to construct and operate its Coastal Water Project to resolve the long-term water supply deficit in its Monterey District and to recover all present and future costs in connection therewith in rates.	Application 04-09-019 (Filed September 20, 2004; amended July 14, 2005)
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**DECISION AWARDING INTERVENOR COMPENSATION TO  
THE PUBLIC TRUST ALLIANCE FOR  
SUBSTANTIAL CONTRIBUTION TO DECISION D.10-12-016**

<b>Claimant: The Public Trust Alliance (PTA)</b>	<b>For contribution to D.10-12-016</b>
<b>Claimed: \$184,006.54<sup>1</sup></b>	<b>Awarded: \$127,019.20 (reduced 31%)</b>
<b>Assigned Commissioner: Michael R. Peevey</b>	<b>Assigned ALJ: Angela K. Minkin</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision:</b>	Decision approved Regional Project, adopted Settlement Agreement and issued Certificate of Public Convenience and Necessity for California American Water facilities.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:**

<b>Claimant</b>	<b>CPUC Verified</b>	
<b>Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	March 13, 2009	Correct
2. Other Specified Date for NOI:	April 13, 2009	Correct
3. Date NOI Filed:	April 12, 2009	April 13, 2009

<sup>1</sup> See Footnote #3.

4. Was the NOI timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	A.04-09-019	Correct
6. Date of ALJ ruling:	December 9, 2010	Correct
7. Based on another CPUC determination		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	A.04-09-019	Correct
10. Date of ALJ ruling:	December 9, 2010	Correct
11. Based on another CPUC determination:		
12. Has the Claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.10-12-016	Correct
14. Date of Issuance of Final Decision:	December 3, 2010, but PTA’s time was extended per Rule 17.3 re: filing of application for rehearing addressing issues on which PTA believes it made significant contribution.	Correct
15. File date of compensation request:	2/1/2011	Correct
16. Was the request for compensation timely?		Yes

### C. Public Trust Alliance’s Comments on Part I:

<b>PTA Comments</b>
<p>On May 15, 2009, PTA filed supplemental information regarding its relationship to its parent organization Resource Renewal Institute (RRI), to assist ALJ Minkin in determining whether PTA met the definition of a customer. On May 29, 2009, ALJ Minkin issued a ruling finding that the environmental and ratepayer perspectives were adequately represented by other parties to the proceeding and finding PTA ineligible for intervenor compensation on the ground that its contribution was likely to be duplicative. Judge Minkin made no finding on PTA’s status as a customer or on issue of financial hardship. On December 9, 2010, in response to PTA’s request to reconsider her finding of ineligibility, ALJ Minkin reversed her decision regarding duplicative participation and made findings that PTA/RRI qualified as a customer and that its participation as an intervenor would represent a financial hardship absent compensation.</p>

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Claimant’s description of its contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059):**

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. Addressing public health impacts related to boron and second pass technology.	Settlement agreement at.16: “The Parties further agree that intervenor PTA has made a substantial contribution to this Proceeding in areas vital to public health and safety.”  PTA argument accepted in D.10-12-016, at 120-122.	Yes
2. Public Trust impacts to be considered.	Water Purchase Agreement (WPA) section 6.7 D.10-12-016 at 97.	Yes
3. PTA argued for municipal advisor role rather than voting membership for Cities and no voting participation by Monterey Peninsula Water Management District.	Same position adopted in D.10-12-016 (reference to parties’ arguments, no specific reference to PTA arguments).	Yes
4. PTA was an active participant in negotiations and an active supporter of the Settlement Agreement. The Commission adopted the Settlement Agreement as proposed with no significant modifications.	D.10-12-016 at 57.	Yes
5. PTA consistently supported the Regional Project as the alternative that best serves the public and the environment. The Commission found that the Regional Project “best serves . . . the environment.”	D.10-12-016 at 57 and Appendix B at 4-5.	Yes
6. PTA consistently argued for the Regional Project as the best and most timely alternative to resolve the water constraints addressed in the Cease and	D.10-12-016at 169, finding 72.	Yes

<p>Desist Order implemented by the State Water Resources Control Board. The Commission concluded “The Regional Project provides the most expeditious, feasible and cost-effective alternative to address the water supply constraints on the Monterey Peninsula.”</p>		
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**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

Claimant		CPUC Verified
<p>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</p>	<p>Yes</p>	<p>Correct</p>
<p>b. Were there other parties to the proceeding?</p>	<p>Yes</p>	<p>Correct</p>
<p>c. If so, provide name of other parties: See Service List. Other parties with similar interests were Surfrider Foundation and Citizens for Public Water.</p>		<p>Correct</p>
<p>d. Claimant’s description of how Claimant coordinated with DRA and other parties to avoid duplication or of how Claimant’s participation supplemented, complemented, or contributed to that of another party:</p> <p>DRA: We took positions in opposition to DRA on issues relating to boron and second-pass desalination on the ground that a greater margin of safety was more consistent with public trust concepts. In briefing and in workshops, we consistently addressed contracting concepts from a different perspective than DRA.</p> <p>Surfrider and Citizens for Public Water: We consulted with these parties throughout the proceedings, supporting their concerns about public participation and briefing them on public trust doctrine principles relevant to those concerns. We complemented Surfrider’s focus on ocean and coastal resources with our concern for river ecosystems. We complemented Surfrider’s perspective with our knowledge of proceedings at the State Water Resources Control Board proceedings addressing the water supply deficit in Monterey County. We addressed fish survival issues outside of the scope of these parties’ organizational missions.</p>		<p>We make no reduction to PTA’s claim for duplication of effort with other parties. PTA’s timesheets verify that it coordinated with other parties to supplement, complement or contribute to the work of the other active parties in this proceeding.</p>

**C. Additional PTA Comments on Part II:**

<b>PTA Comments</b>
The settlement agreement filed by the parties implementing the Regional Project notes that “The Parties further agree that intervenor PTA has made a substantial contribution to this Proceeding in areas vital to public health and safety.” Settlement Agreement at 16.
PTA educated other parties involved in the proceedings about the importance of the public trust doctrine, enabling them to be more effective in formulating their positions. This kind of consultation is demonstrated by our timesheet entries and those of other parties such as Surfrider and S. Kasower.

**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<b>Explanation by Claimant of how the cost of Claimant’s participation bore a reasonable relationship with benefits realized through participation</b>	<b>CPUC Verified</b>
<p><b>In re Public Gas and Elec. Co.</b> 2007 WL 3052687, Calif. Pub. Util. Code 2007 notes that “D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.”</p> <p>The Public Trust Alliance advocated for ratepayer interest, which went beyond short-term pocketbook impacts. It is by nature difficult to assign a dollar value to avoided public health impacts related to boron. Nevertheless, D.10-12-016 recognized that a concern for future generations and the avoidance of negative health impacts are valid concerns, which provide real benefits to the citizens of Monterey.</p> <p>It is similarly difficult to assign a precise value to the ecosystem impacts avoided by the implementation of the most expeditious of the water supply alternatives proposed. Nevertheless, these are real and tangible benefits that PTA helped to bring about by supporting the Regional Project and the settlement agreement that implements the project.</p> <p>In re Public Gas and Elec. found that an intervenor that could not identify precise monetary benefits to ratepayers nevertheless was a productive participant in the proceedings and that savings attributed to its participation would greatly exceed its compensation request. The Commission also accepted that participation providing intangible benefits, while hard to quantify, can be productive.</p> <p>This principle has been specifically applied to environmental benefits, as</p>	<p>We agree that monetary benefits to ratepayers are difficult to quantify, given a proceeding of this nature involving environmental issues and costs. We make reductions and adjustments to PTA’s claim in areas described in detail in Part III, Section C of this claim.</p> <p>After the reductions and disallowances we make to PTA’s claim, the remaining hours and costs demonstrate that PTA’s participation was productive and reasonable, and should be compensated.</p>

<p>Surfrider notes in its request for compensation [citing D.10-06-045 at 16].</p> <p>In order to keep the time spent by PTA on the case to reasonable levels, we did not conduct discovery for information that was more than adequately pursued by other parties. We also cut hours spent on legal research where the research was not sufficiently productive. We believe that the effort we expended on briefing was commensurate with the complexity of the issues and was necessary because we addressed issues from a perspective that would not otherwise have been expressed. Although the time PTA spent on this case was more than initially estimated, it was necessitated by the contentious nature of several issues and the added dimension of extended settlement and Alternate Dispute Resolution (ADR) and the difficulty of estimating costs and other impacts of a novel project.</p>	
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**B. Specific Claim\*:**

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
M. Warburton	2009 <sup>2</sup>	83.4 <sup>3</sup>	\$535	Requested in Claim	44,619.00	2009	78.70	\$300	23,610.00
M. Warburton	2010	85.0	\$535	Requested in Claim	45,475.00	2010	85.0	\$300	25,500.00
M. Warburton	2011	2.0	\$535	Requested in Claim	1,070.00	2011	2.00	\$300	600.00
P. Nelson	2009	43.4	\$280	Requested in Claim	12,152.00	2009	43.40	\$280	12,152.00
P. Nelson	2010	175.01	\$280	Requested in Claim	49,002.80	2010	167.96	\$280	47,028.80
<i>P. Nelson originally classified 7.19 hours in 2010 as attorney work; however we find such work to be paralegal in nature and compensate them as such. See also Section C.</i>						2010	7.19	\$110	790.90
P. Nelson	2011	13.9	\$280	Requested in Claim	3,892.00	2011	13.90	\$280	3892.00
<b>Subtotal: \$158,224.00</b>						<b>Subtotal: \$113,573.70</b>			

<sup>2</sup> Public Trust Alliance submitted hours grouped together across years. We have broken the hours out across the appropriate year worked. In the future, Public Trust Alliance should submit hours in this manner. Failure to do so will result in claim reductions.

<sup>3</sup> Public Trust Alliance requested compensation for 179.9 hours for Michael Warburton. Our review of the detailed hours shows that Warburton worked 180.9 hours resulting in \$96,781.50 in claims. Included in M. Warburton’s claim are 10.5 hours related to preparation of PTA’s Notice of Intent (NOI). We compensate intervenor compensation claim preparation (including the NOI) at ½ the professional rate. We move the 10.5 hours to the table titled “Intervenor Compensation Claim Preparation,” but caution PTA that future claims that do not properly breakdown hours appropriately will be reduced.

<b>OTHER FEES (Travel and Paralegal)</b>									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
M. Warburton	2009	40.6	\$267.50	½ rate requested in claim	10,860.50	2009	38.1	\$150	5,715.00
M. Warburton	2010	4.0	\$267.50	½ rate requested in claim	1,070.00	2010	4.0	\$150	600.00
P. Nelson	2010	13.6	\$140.00	½ rate requested in claim	1,904.00	2010	13.6	\$110	1,496.00
P. Nelson	2011	1.2	\$140	½ rate requested in claim	168.00	2011	1.2	\$110	132.00
<b>Subtotal: \$14,002.50</b>						<b>Subtotal: \$7,943.00</b>			
<b>INTERVENOR COMPENSATION CLAIM PREPARATION **</b>									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
P. Nelson	2009	14.2	\$140	½ rate requested in claim	1988.00	2009	6.95	\$140	973.00
P. Nelson	2010	13.1 <sup>4</sup>	\$140	½ rate requested in claim	1834.00	2010	13.1	\$140	1,834.00
P. Nelson	2011	6.7	\$140	½ rate requested in claim	938.00	2011	6.7	\$140	938.00
M. Warburton	2009	10.5	\$535	½ rate requested in claim	5,617.50	2009	3.25	\$150	487.50
<b>Subtotal: \$10,377.50</b>						<b>Subtotal: \$4,232.50</b>			
<b>COSTS</b>									
Travel Costs	Detail				Amount \$	Amount \$			
M. Warburton	Travel to WFMC Meeting (Marina, CA). (7 trips in 2009)				885.50	\$885.00			
M. Warburton	Travel to Monterey PPH (1 trip in 2009)				132.00	\$0.00			
M. Warburton	Travel to Meet and Confer Session (Marina, CA) (1 trip in 2009)				126.50	\$126.50			
M. Warburton	Travel to CalAm & AmWater Meeting (Pacific Grove, CA) (1 trip in 2009)				132.00	\$132.00			
M. Warburton	Travel to MPWMD Board Meeting (Marina, CA) (1 trip in 2009)				126.50	\$126.50			
<b>Subtotal: \$1,402.50</b>						<b>Subtotal: \$1,270.00<sup>5</sup></b>			
<b>TOTAL REQUEST: \$184,006.50</b>						<b>TOTAL AWARD: \$127,019.20</b>			

<sup>4</sup> As stated above, Public Trust Alliance originally requested 48.8 hours of compensation for Patricia Nelson relating to intervenor compensation claim preparation, however, 13.6 of the requested hours for 2010 are for work at the paralegal level and unrelated to the preparation of the intervenor compensation claim. These hours have been subtracted out of this category and added into the "Other Fees" category, which is the appropriate place to note paralegal hours. In future claims, PTA should separate paralegal hours and place them in the "Other Fees" category. Failure to do so may result in deductions.

<sup>5</sup> Per D.10-04-024, travel to and participation in a public hearing is not covered by intervenor compensation.

\* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant’s records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

\*\* We compensate travel and compensation preparation time at ½ professional hourly rate.

**C. CPUC Adoptions, Disallowances & Adjustments:**

<b>Adoptions</b>	
<b><u>Hourly Rates</u></b>	
<p><b>Michael Warburton:</b> Public Trust Alliance requested an hourly rate of \$535 for Warburton’s work in 2009-2011 as an advocate. Warburton has over 18 years experience as an advocate representing public trust and water issues in California and earned his JD degree from the University of California at Berkeley, although he is not licensed as an attorney. Warburton has no previous set rate for appearance before the Commission. Warburton’s requested rate of \$535 per hour is far outside the range of compensation adopted by this Commission for advocates of \$100-\$230 per hour (see e.g. D.09-12-043, D.09-10-054, D.11-01-024). In our proposed decision, we originally adopted an hourly rate of \$280 for Warburton; however, after our review of the comments and in recognition of Warburton’s extensive experience and contribution to this proceeding, which more closely resembled that of an expert, we adopt a rate of \$300, which is higher than the usual range adopted for advocates but is within the compensation range for experts with 13+ years experience (D.08-04-010).</p> <p><b>Patricia Nelson (Advocacy/Legal):</b> Public Trust Alliance requested an hourly rate of \$280 for Nelson’s work in 2009-2011 as an advocate/attorney. Nelson has 6 years experience as an environmental advocate/attorney and earned her JD from New College of California in 1988. Nelson has no previous set rate for appearance before the Commission. The rate requested by Public Trust Alliance is commensurate with rates adopted by this Commission for attorneys with similar experience and is hereby adopted (D.08-01-040).</p> <p><b>Patricia Nelson (Paralegal):</b> Public Trust Alliance requested an hourly rate of \$140 for Nelson’s work in 2009-2011 as a paralegal. Since 2008, see D.08-09-037, D.06-10-012, we have applied the hourly rate of \$110 for paralegal work. We adopt the same rate here for Nelson’s 2009-2011 paralegal work.</p>	
<b>Disallowances</b>	
<b>2009 Warburton Hours</b>	<p>3/4/09-11/3/09- In our proposed decision, we originally deducted 23.2 hours of Warburton’s time spent preparing for and participating in Water for Monterey County (WFMC) meetings. After our review of the comments, we decide that Warburton’s participation in WFMC meetings made a substantial contribution to the Settlement and therefore reimburse Public Trust Alliance for Warburton’s participation in WFMC meetings.</p> <p>5/12/09- We disallow 1.2 hrs of Warburton’s time spent on “analysis of ex-parte implications of CLE Forum” as we find that participation in</p>

	<p>continuing legal education was not related to PTA’s participation here.</p> <p>6/29/09- We disallow 1 hr of Warburton’s time<sup>6</sup> spent “discussing challenges to regional project and public participation hearing” as the Commission does not cover time or costs related to participation in a public participation hearing.<sup>7</sup></p> <p>7-13-09- We disallow 2.5 hrs of Warburton’s time “participating in public participation hearing” for the same reasons we have outlined above.</p>
<p><b>2010 Nelson hours</b></p>	<p>1/4/10 thru 4/29/10- We disallow 7.05 hours of Nelson’s time spent researching and writing its “Boron” comments. While PTA’s comments provided value, we find 57.05 hours be excessive given the scope of the work.</p>
<p><b>Other Fees &amp; Costs</b></p>	<p>3/4/09-11/3/09 In our proposed decision, we originally disallowed 28 hours of Warburton’s time spent traveling to and from WFMC meetings as well as \$880.50 in travel expenses associated with WFMC. After our review of PTA’s comments, we decide that Warburton’s participation in WFMC meetings made a substantial contribution to the Settlement and therefore reimburse Warburton’s time and travel expenses. However, we continue to deduct 2.5 hours as noted above and \$132.00 in travel expenses associated with the Monterey public participation hearing. Per D.10-04-024, travel to and participation in a public participation hearing is not compensable.</p>
<p><b>Warburton and Nelson’s work related to NOI and compensation preparation</b></p>	<p>We disallow 14.5 of the hours PTA requests (equal to 32.5%) for time that both participants spent preparing PTA’s original and re-submitted NOI’s and Request for Intervenor Compensation. While we recognize that numerous hours were spent on PTA’s response to the Commission’s initial disapproval for compensation, PTA’s request of 44.5 hours is excessive. The only other intervenor in this proceeding received compensation of 22.0 hours. We approve a more reasonable amount of 30 hours here. While PTA is new to Commission proceedings and is still getting up to speed on Commission protocol, ratepayers should not have to bear this cost. We deduct this time (14.5 hrs) equally from Warburton and Nelson’s 2009 totals. We caution PTA that future claims including excessive time spent on this task may face deeper reductions. We remind PTA and other intervenors that the Commission’s website contains information and instructions on a variety of issues related to the intervenor compensation program and can be viewed at:  <a href="http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/">http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/</a></p>

<sup>6</sup> On this date, PTA combines two tasks into one timesheet entry. We divide the total hours by ½ to approximate the amount of time spent on each task. We remind PTA that combining multiple tasks into one timesheet entry violates Rule 17.4 and that PTA must discontinue this practice in future claims.

<sup>7</sup> See D.10-04-024.

**PART IV: OPPOSITIONS AND COMMENTS**

**A. Opposition: Did any party oppose the claim?** No

**B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?** No

Public Trust Alliance filed comments on the proposed decision on June 13, 2011. We have reviewed the comments and make the following changes:

- 1) We raise Michael Warburton’s hourly rate to \$300/hour.
- 2) We reimburse Public Trust Alliance for Michael Warburton’s participation in Water for Monterey County (WFMC) meetings.

**FINDINGS OF FACT**

1. Claimant has made a substantial contribution to Decision 10-12-016.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable compensation is \$127,019.20

**CONCLUSION OF LAW**

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

**ORDER**

1. Claimant is awarded \$127,019.20
2. Within 30 days of the effective date of this decision, California-American Water Company shall pay the award to Resource Renewal Institute.<sup>8</sup> Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 17, 2011, the 75<sup>th</sup> day after the filing of Claimant’s request, and continuing until full payment is made.
3. This is an intervenor compensation matter. As provided in Rule 14.6(c)(6) of our Rules of Practice and Procedure, we normally waive the otherwise applicable 30-day comment period for

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<sup>8</sup> Because The Public Trust Alliance operates under the auspices of its parent organization, RRI, the ALJ Ruling of December 9, 2010 at page 9 states “to the extent that funding is awarded, the awarded will be made to RRI, who can then allocate the funds to The Public Trust Alliance.

this proposed decision. Because the Commission is sizably reducing the amount requested in this reward, we allow comments on this proposed decision.

This order is effective today.

Dated June 28, 2011, at San Francisco, California.

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

I abstain.

/s/ MICHEL PETER FLORIO  
Commissioner

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

<b>Compensation Decision:</b>	D1106034	<b>Modifies Decision?</b> No
<b>Contribution Decision:</b>	D1012016	
<b>Proceeding:</b>	A0409019	
<b>Author:</b>	ALJ Angela K. Minkin	
<b>Payer:</b>	California-American Water Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier</b>	<b>Reason Change/Disallowance</b>
The Public Trust Alliance	2/1/2011	\$184,006.50	\$127,019.20	No	adjusted hourly rates, excessive hours, adjusted professional hours for work performed at paralegal level, and travel to and participation in public hearings.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Michael	Warburton	Advocate	The Public Trust Alliance	\$535	2009-2011	\$300
Patricia	Nelson	Advocate/ Attorney	The Public Trust Alliance	\$280	2009-2011	\$280
Patricia	Nelson	Paralegal	The Public Trust Alliance	\$140	2009-2011	\$110

**(END OF APPENDIX)**