

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

Application of California-American Water Company  
(U210W) for Approval of the Monterey Peninsula  
Water Supply Project and Authorization to Recover  
All Present and Future Costs in Rates.

A.12-04-019  
(Filed April 23, 2012)

**SETTLEMENT AGREEMENT ON PLANT SIZE AND LEVEL OF OPERATION,  
ENTERED BY THE FOLLOWING PARTIES: CALIFORNIA-AMERICAN WATER  
COMPANY, CITIZENS FOR PUBLIC WATER, CITY OF PACIFIC GROVE,  
COALITION OF PENINSULA BUSINESSES, DIVISION OF RATEPAYER  
ADVOCATES, MONTEREY PENINSULA REGIONAL WATER AUTHORITY,  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, MONTEREY  
REGIONAL WATER POLLUTION CONTROL AGENCY, AND PLANNING AND  
CONSERVATION LEAGUE FOUNDATION**

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July 31, 2013

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REGIONAL WATER POLLUTION CONTROL AGENCY, AND PLANNING AND  
CONSERVATION LEAGUE FOUNDATION**

**1. GENERAL**

1.1 Pursuant to Article 12 of the California Public Utilities Commission’s (“Commission’s”) Rules of Practice and Procedure, to avoid the expense and uncertainty of litigating matters in dispute between them, the following parties agree on this Settlement Agreement, which will be submitted for review, consideration, and approval by the Commission: California-American Water Company (“California American Water”), Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, Division of Ratepayer Advocates (“DRA”), Monterey Peninsula Regional Water Authority (“MPRWA”), Monterey Peninsula Water Management District (“MPWMD”), Monterey Regional Water Pollution Control Agency (“MRWPCA”), and Planning and Conservation League Foundation (collectively, the “Settling Parties”).

**2. BACKGROUND**

2.1 On April 23, 2012, California American Water filed its Application for Approval of the Monterey Peninsula Water Supply Project (“MPWSP”) and Authorization to Recover All Present and Future Costs in Rates for the MPWSP (“Application”). State Water Resources Control Board (“SWRCB”) Order Nos. WR 95-10 (July 6, 1995) and WR 2009-0060 (Oct. 20, 2009) limit California American Water’s ability to use water from the Carmel River to supply its Monterey County District customers. Through the MPWSP, California American Water seeks to comply with the SWRCB’s Orders by both reducing its Monterey District’s reliance on water taken from the Carmel River and increasing its District’s use of water taken from alternative

sources. The MPWSP is comprised of two elements: (1) a desalination plant with associated facilities, and (2) what are commonly referred to as the “CAW-Only Facilities.”

2.2 As to the desalination plant component of the MPWSP, California American Water’s application sought authorization initially for a 9.0 million gallons per day (“mgd”) desalination plant. It also requested authorization to reduce the plant size to 5.4 mgd if a supplemental supply of water purchased from the separate Groundwater Replenishment Project (“GWR Project”) could be secured with adequate assurances. Those assurances require (1) the GWR Project reaches certain milestones by the time California American Water is ready to construct the desalination plant, and (2) the cost of water from the GWR Project is reasonable. (Application, pp. 1, 5-6.)

2.3 In response to comments from interested parties, California American Water first modified the sizing of the desalination plant to 9.6 mgd without water from the separate GWR Project and to 6.4 mgd with 3,500 acre feet per year (“af/yr”) from the GWR Project. (CA-12, *Supplemental Testimony of Richard C. Svindland*, dated January 11, 2013 (“Svindland Supplemental”), p. 5.) Through this Settlement Agreement, the parties agree to a third sizing option of a potential 6.9 mgd plant to be combined with 3,000 af/yr of GWR water.

2.4 The GWR Project is a joint undertaking between MRWPCA and MPWMD. The GWR Project will create a source of water by taking the treated water from MRWPCA’s plant, filtering it through a new advanced water treatment plant, and injecting the highly-treated product water into the Seaside Basin Aquifer, where it would be stored. California American Water entered a Memorandum of Understanding with the MRWPCA and MPWMD to collaborate on developing the GWR Project. The criteria and process for determining whether the GWR Project meets the milestones and cost reasonableness necessary to reduce the size of the desalination plant are addressed in a separate settlement agreement, submitted in A.12-04-019.

2.5 The MPWSP also incorporates facilities that the Commission previously approved in D.10-12-016, which are commonly referred to as the “CAW-Only Facilities” and include the Transfer Pipeline, Seaside Pipeline, Monterey Pipeline, Terminal Reservoir, Aquifer Storage and Recovery (“ASR”) Pipeline, ASR Recirculation and Backflush Pipelines, ASR Pump Station, and Valley Greens Pump Station. (Application, p. 5.)

2.6 In a separate process from this proceeding, the local agencies affected by the MPWSP are addressing certain issues related to the allocation of water obtained from the MPWSP.

(a) MPWMD has begun and commits to complete the process of updating its existing Environmental Impact Report to address the environmental impacts pertaining to the allocation of water from the MPWSP.

(b) MPWMD will initiate a process and collaborate with MPRWA, the County of Monterey (“County”), and California American Water to develop proposed amendments to MPWMD’s rules and regulations to address the allocation of water obtained from the MPWSP, and thereafter agendize the proposed amendments for consideration by the

MPWMD. An amendment shall be included that specifically addresses intensification of water use from water obtained from the MPWSP.

(c) MPWMD will initiate a process and collaborate with MPRWA, County, and California American Water to develop a process for accurately estimating the added capacity needed to meet General Plan build out projections for communities served by California American Water's Monterey District. The findings from this process shall be reported to the Commission either in a subsequent rate design phase of A.12-04-019 or as part of the general rate case process.

2.7 Workshops on MPWSP costs, contingencies, and financial modeling were held on December 11-13, 2012. California American Water served supplemental testimony on January 11, 2013. DRA and intervenors served testimony on February 22, 2013. California American Water served rebuttal testimony on March 8, 2013. Evidentiary hearings were held on April 2-11, 2013 and April 30-May 2, 2013.

2.8 Notice of an all-party settlement meeting was served by MPRWA on April 18, 2013. The all-party settlement meeting was held on April 30, 2013 at the Commission. Settlement discussions continued through May, June, and July 2013. Such discussions led to this Settlement Agreement and one additional settlement agreement between parties, submitted in A.12-04-019.

### **3. DESALINATION PLANT SIZING**

3.1 The Settling Parties agree, based on present assumptions of calculations for anticipated future demand, as set forth in Section 3.1 below, the desalination plant shall be sized at 9.6 mgd without the GWR Project, or either 6.4 mgd or 6.9 mgd to accommodate certain discrete capacities of 3,500 or 3,000 af/yr of GWR product water, respectively, subject to the conditions herein. The sizing of the desalination plant is agreed to solely for planning and engineering purposes. This Settlement Agreement does not implicate or affect the decision concerning whether California American Water shall enter into a water purchase agreement for GWR Project water, which is addressed in a separate settlement agreement. Calculations:

(a) California American Water's forecast for the total customer demand in its Monterey District is 15,296 acre-feet per year, as calculated below.

<b>COMPONENT</b>	<b>ANNUAL DEMAND (AF)</b>
5-Year Average System Demand	13,291
Pebble Beach	325
Tourism Bounce Back	500
Lots of Record	<u>1,180</u>
<b>TOTAL</b>	<b>15,296</b>

(CAW-12, Svindland Supplemental, Attachment 2, pp. 4-5.)

(b) Based on total forecasted demand of 15,296 acre-feet per year, without the addition of water from the GWR Project, 9,752 acre-feet per year will be required from the desalination plant, as calculated below:

<b>COMPONENT</b>	<b>ANNUAL SUPPLY (AF)</b>
Forecasted Demand	15,296
Supply from Carmel River Wells	- 3,376
Extraction from Seaside Groundwater Basin <sup>1</sup>	- 774
Long-Term Average ASR Capacity	- 1,300
Sand City Plant Firm Yield to CAW	- 94
Total Required from Desalination Plant	<u>9,752</u>

(CA-12, Svindland Supplemental, Attachment 1, p. 5.)

(c) The Settling Parties have agreed to the sizing of the desalination plant as either: (1) a 9.6 mgd plant without the GWR Project; (2) a 6.4 mgd plant to accommodate discrete capacities of 3,500 af/yr from the GWR Project; or (3) a 6.9 plant to accommodate discrete capacities of 3,000 af/yr from the GWR Project. These agreed upon sizes are intended for planning purposes only in order to allow the plant to be planned and engineered appropriately to meet the aforementioned anticipated demand.

(d) California American Water in its general rate case shall report on the annual demand in the Monterey County District and the annual operating level of the desalination plant.

#### **4. CITY OF PACIFIC GROVE PROJECT**

4.1 As part of this proceeding, the City of Pacific Grove proposed a local water project to be owned and operated by it, which will provide new non-potable water supplies for irrigation at its municipal golf links and cemetery, City parks, and school ball fields, as well as for commercial and residential uses. California American Water currently services these uses with potable water.

4.2 The Settling Parties agree the Pacific Grove Project, which consists of three interconnected components using recycled water, stormwater, and dry weather flow, is a valuable part of a comprehensive solution, when integrated with the MPWSP, the GWR Project, and ASR.

4.3 Pacific Grove Project intends to generate as much as 500 acre-feet of recycled, non-potable water per year. The City of Pacific Grove shall be the lead agency to perform the environmental review for the Pacific Grove Project.

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<sup>1</sup> California American Water and the Seaside Basin Water Master recently reached an agreement on the replenishment of the Seaside Groundwater Basin water level. The agreement requires California American Water to reduce extraction from the Basin by 700 acre-feet of water annually on a 5-year average basis. The reduced annual extraction volume from the Seaside Groundwater Basin would be 774 acre-feet. The reduction in extraction volume is not treated as demand but is instead treated as a reduction in supply.

4.4 California American Water included in its general rate case application, filed July 1, 2013, a proposal on behalf of the City of Pacific Grove that addresses the Pacific Grove Project.

## **5. TABLE 13 WATER RIGHTS**

5.1 California American Water has had pending at the SWRCB since 1993 Application No. 30215A. On January 29, 2013, the SWRCB released for public comment a draft permit that would authorize California American Water to divert from the Carmel River up to 1,488 acre-feet per year between December 1 and May 31 of the subsequent year at the rate of 4.1 cubic feet per second, subject to certain conditions. Those conditions include compliance with flow criteria established by the National Oceanic and Atmospheric Administration Fisheries and implementation of certain aspects of the MPWMD Mitigation Program.

5.2 The Settling Parties agree that there is no need to adjust the capacity of the desalination plant to address the possible availability of Table 13 water rights since it is possible that in a dry year there will not be any Table 13 water available to California American Water.

5.3 California American Water agrees that if Table 13 water is available, California American Water shall be able to lower the operating level of the desalination plant or use those rights first in the year to allow other existing rights to be used later in the year for emergencies.

(CA-21, *Rebuttal Testimony of Richard C. Svindland*, dated March 8, 2013, pp. 13-14; WD-5, *Direct Testimony of David J. Stoldt*, dated February 22, 2013, pp. 9-10.)

## **6. CONDITIONS**

6.1 This Settlement Agreement is without prejudice to any Party's right to take part to the full extent provided by law in any state, local, or federal permitting or other entitlement process related to the MPWSP. Notwithstanding such right, the Parties agree to support or not oppose all provisions included in this Settlement Agreement in any such process, and shall not advocate in any such process a position inconsistent with any provision in this Settlement Agreement. Any Party with the legal authority or obligation to issue any permit or entitlement for the MPWSP shall maintain its full legal authority and discretion to determine whether or not to issue such permit or entitlement.

(a) In the event any Party believes another Party has breached its obligations under this provision, the Party alleging breach shall provide the allegedly breaching party written notice and a 30-day opportunity to cure the alleged breach. The Parties agree that injunctive relief, and injunctive relief alone, is the appropriate means to enforce this provision. No Party shall be subject to any claim for money damages as a result of a breach of this provision.

6.2 Because this Settlement Agreement represents a compromise by them, the Settling Parties have entered into each stipulation contained in the Settlement Agreement on the basis that its approval by the Commission not be construed as an admission or concession by any Settling Party regarding any fact or matter of law in dispute in this proceeding.



6.3 The Settling Parties agree that no signatory to the Settlement Agreement assumes any personal liability as a result of this Settlement Agreement. The Settling Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedy pertaining to this Settlement Agreement.

6.4 The Settling Parties agree that the Settlement Agreement is an integrated agreement such that if the Commission rejects or modifies any portion of this Settlement Agreement, each Settling Party must consent to the Settlement Agreement as modified, or any Settling Party may withdraw from the Settlement Agreement. Such consent may not be unreasonably withheld. As between the Settling Parties, this Settlement Agreement may be amended or changed only by a written agreement signed by all of the Settling Parties.

6.5 The Settling Parties agree to use their best efforts to obtain Commission approval of the Settlement Agreement. The Settling Parties shall request that the Commission approve the Settlement Agreement without change and find the Settlement Agreement to be reasonable, consistent with the law, and in the public interest.

6.6 This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument. Each of the Settling Parties hereto and their respective counsel and advocates have contributed to the preparation of this Settlement Agreement. Accordingly, the Settling Parties agree that no provision of this Settlement Agreement shall be construed against any Settling Party because that Party or its counsel drafted the provision.

6.7 This Settlement Agreement supersedes any prior representations by the Settling Parties regarding each stipulation contained herein.

## **7. COMMISSION MODIFICATION OF SETTLEMENT AGREEMENT**

7.1 If the Commission approves the Settlement Agreement with modifications, the Settling Parties request the Commission provide a reasonable period for the Settling Parties to consider and respond to such modification.

7.2 If the Commission approves the Settlement Agreement with modifications, each Settling Party shall determine no later than two business days before the deadline imposed by the Commission for acceptance of the modification whether the Settling Party will accept the modification and shall notify the other Settling Parties of its determination.

7.3 If any Settling Party declines to accept the Commission's modification, the other Settling Parties may still accept the modification and request the Commission to approve the revised Settlement Agreement in the absence of the agreement of the Settling Party or Parties who decline to accept the Commission's modification; provided, however, that Settling Parties who accept the modification and request approval of a revised Settlement Agreement may not accept the modification and request the Commission to approve the revised Settlement Agreement if the applicant California American Water is among the Settling Parties who decline to accept the Commission's modification. If the Commission's proposed modification of this Settlement Agreement is not consented to by California American Water, the Settlement



Agreement shall be void and the Commission will establish a procedural schedule to address the disputed issues.

July\_\_\_, 2013

CALIFORNIA-AMERICAN WATER  
COMPANY

By: \_\_\_\_\_  
Robert MacLean, President

July\_\_\_, 2013

CITIZENS FOR PUBLIC WATER

By: \_\_\_\_\_  
George T. Riley

July\_\_\_, 2013

CITY OF PACIFIC GROVE

By: \_\_\_\_\_  
Thomas Frutchey, City Manager

July\_\_\_, 2013

COALITION OF PENINSULA BUSINESSES

By: \_\_\_\_\_  
Bob McKenzie

July\_\_\_, 2013

DIVISION OF RATEPAYER ADVOCATES

By: \_\_\_\_\_  
Joe Como, Acting Director

July \_\_, 2013

MONTEREY PENINSULA REGIONAL  
WATER AUTHORITY

By: \_\_\_\_\_  
Chuck Della Sala- President

July \_\_, 2013

MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT

By: \_\_\_\_\_  
David J. Stoldt -General Manager

July \_\_, 2013

MONTEREY REGIONAL WATER  
POLLUTION CONTROL AGENCY

By: \_\_\_\_\_  
Keith Israel, General Manager

July \_\_, 2013

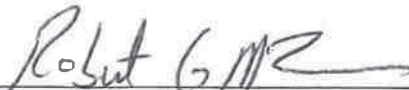
PLANNING AND CONSERVATIONS  
LEAGUE

By: \_\_\_\_\_  
Jonas Minton, Water Policy Advisor

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COMPANY

By:   
Robert MacLean, President

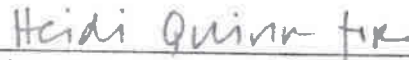
July \_\_, 2013

CITIZENS FOR PUBLIC WATER

By: \_\_\_\_\_  
George T. Riley


July 30, 2013

CITY OF PACIFIC GROVE

By:   
Thomas Frutchey, City Manager

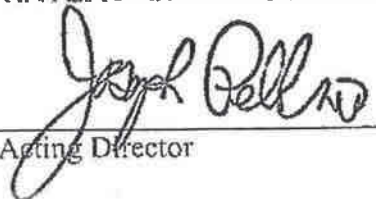
July 31, 2013

COALITION OF PENINSULA BUSINESSES

By:   
Bob McKenzie

July 31, 2013

DIVISION OF RATEPAYER ADVOCATES

By:   
Joe Como, Acting Director

July \_\_, 2013

CALIFORNIA AMERICAN WATER

By: \_\_\_\_\_  
Robert MacLean, President

July 31, 2013

CITIZENS FOR PUBLIC WATER

By:   
George T. Riley

July \_\_, 2013

CITY OF PACIFIC GROVE

By: \_\_\_\_\_  
Thomas Frutchey, City Manager

July \_\_, 2013

COALITION OF PENINSULA BUSINESSES

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Bib McKenzie, President

July \_\_, 2013

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Joe Condo, Acting Director

July 31, 2013

MONTEREY PENINSULA REGIONAL  
WATER AUTHORITY

By:   
Chuck Della Sala- President

July 30, 2013

MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT

By:   
David J. Stoldt - General Manager

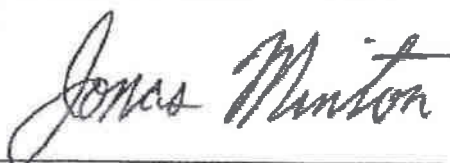
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MONTEREY REGIONAL WATER  
POLLUTION CONTROL AGENCY

By:   
Keith Israel, General Manager

July 31, 2013

PLANNING AND CONSERVATIONS  
LEAGUE

By:   
Jonas Minton, Water Policy Advisor