

**ATTACHMENT B-2
DRAFT RESOLUTION**

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

In the matter of the application of:

California-American Water Company (PLN120817)

RESOLUTION NO. _____

Grant the request to waive the appeal fee and authorize the RMA-Planning Director to refund the appeal fee.

(PLN120817, California-American Water Company)

The request by Constance Murray for a Waiver of Appeal Fee came on for public hearing before the Monterey County Board of Supervisors on March 19, 2013 and April 9, 2013. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Monterey County Board of Supervisors hereby finds and decides as follows:

FINDINGS

1. **FINDING:** **PROCESS** – On December 7, 2012, California American Water Company (“Cal-Am”) applied for an after-the-fact Design Approval to correct a code violation and to allow for the placement of a twenty foot high water tank communication antenna within a water tank easement to serve Cal-Am.
- a) On January 7, 2013 the RMA- Director of Planning approved the Design Approval. (PLN120817)
 - b) A Notice of Approved Design Approval was mailed to all property owners within 300’ of the subject property on January 9, 2013.
 - c) On January 22, 2013, Constance Murray (“Appellant”) filed a timely appeal from the RMA-Planning Director’s approval of a Design Approval. (PLN120817) The Appellant requested that the appeal fees be waived.
 - d) The hearing on the appeal and the fee waiver request was noticed for March 19, 2013. At the March 19, 2013 hearing, the appellant requested a continuance, and the applicant agreed to a continuance to April 9, 2013. The Board of Supervisors continued the hearing to April 9, 2013 and the Board of Supervisors conducted a public hearing on the appeal and fee waiver on April 9, 2013. Notices of the public hearing on the appeal were published in the Monterey County Herald and mailed to neighbors within 300 feet on March 8, 2013, pursuant to Monterey County Code Chapter 21.78. Public hearing notices for the appeal were posted in three different public places on or near the subject property by Planning staff.
- EVIDENCE:** The Notice of Appeal form, 300 foot list, Affidavit of Posting, and

related materials found in the RMA-Planning Department project file PLN120817.

2. FINDING:

FEE WAIVER – The Board grants appellant’s request to waive the appeal fee based on the following:

- a) Constance Murray filed an appeal on January 22, 2013 of the RMA-Director of Planning’s approval of the Design Approval. (PLN120817) Ms. Murray requested waiver of the appeal fee on the basis that noticing requirements were not followed, the appellant never received notice of the filed application from the County or Cal-Am, Cal-Am signed the application as “Property Owner/Agent”, and Ms. Murray had no knowledge of the application until after it was approved. Although all noticing required by the Monterey County Title 21 Zoning Ordinance was followed, the sequence results in the first public hearing on the application occurring on the appeal. On January 22, 2013 the appellant paid the appeal fee in the amount of \$5146.81.
- b) Under Section 21.44.040. D of Title 21, the Director of Planning may approve a Design Approval without a hearing. Notice of the approved Design Approval was given, and the appellant had the opportunity to appeal per section 21.44.070 of Title 21. Because the Design Approval was granted by the Director of Planning without a hearing, this appeal hearing is the first public hearing on the application. It is appropriate to grant the waiver of appeal fee in this case where the Board’s appeal hearing is the first public hearing on the Design Approval.

EVIDENCE:

Notice of Appeal form, Title 21 of the Monterey County Code.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors does hereby:

- a. Grant the request by Constance Murray to waive the appeal fee and authorize the RMA-Planning Director to refund the appeal fee.

PASSED AND ADOPTED this 9th day of April, 2013 upon motion of Supervisor _____, seconded by Supervisor _____, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book___ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy