

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

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

**SETTLEMENT AGREEMENT ON
MPWSP DESALINATION PLANT RETURN WATER**

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Dated: May 13, 2016

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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

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**SETTLEMENT AGREEMENT ON
MPWSP DESALINATION PLANT RETURN WATER**

Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC”), California-American Water Company (“Cal Am”), Landwatch Monterey County (“Landwatch”), the Monterey County Farm Bureau (“MCFB”), the Monterey County Water Resources Agency (“Agency”), the Monterey Peninsula Regional Water Authority (“Authority”), and the Salinas Valley Water Coalition (“SVWC”) (collectively, the “Parties”) agree on the terms of this Settlement Agreement, which they now submit for review, consideration, and approval by the CPUC.

RECITALS

- A. Cal Am is seeking permits and approvals for the Monterey Peninsula Water Supply Project (“Project”), including a certificate of public convenience and necessity from the CPUC.
- B. The Project includes a desalination plant that will provide a potable water supply for Cal Am’s Monterey Peninsula service area. Rather than using an open-ocean intake that would produce only seawater as source water for the desalination plant, the Project desalination plant will produce its source water from subterranean slant wells drilled adjacent to the ocean, which will draw water from strata underlying the ocean. The location of the wells overlies the western portion of the Salinas River Groundwater Basin (“SRGB”).
- C. Cal Am characterizes its Project as proposing to develop seawater and brackish groundwater originating from the SRGB to produce source water that would be desalinated to provide a potable water supply for Cal Am’s Monterey Peninsula service area.
- D. The SVWC, MCFB and Landwatch contend that—rather than proposing to use an open-ocean intake that would produce only seawater—Cal Am’s Project proposes to use wells developed in the SRGB to produce source water for desalination to provide Cal Am’s Monterey Peninsula service area with a new source of water supply.
- E. The ratio of seawater to brackish SRGB groundwater in the Project source water is anticipated to change over time, with more seawater and less SRGB groundwater

anticipated later in the Project's life.

- F. Cal Am contends that source water production by the Project is unlikely to cause significant adverse environmental effects with respect to SRGB groundwater resources and is unlikely to cause injury to prior groundwater rights in the SRGB but submits that the Monterey County Water Resources Agency Act ("Agency Act") authorizes the Monterey County Water Resources Agency ("Agency") to obtain an injunction prohibiting the export and use of SRGB groundwater outside of the SRGB and certain areas of Fort Ord.
- G. The Agency, SVWC, MCFB and Landwatch submit that the Agency Act directly prohibits the export and use of SRGB groundwater outside of the SRGB and certain areas of Fort Ord without the need for the Agency to obtain an injunction.
- H. The Project's slant intake wells are designed to produce source water for treatment by the selected desalination plant ("Project Source Water Production"). To meet applicable requirements of the Agency Act, Cal Am has proposed as part of the Project to make available for delivery to groundwater users overlying the SRGB a volume of water ("Return Water") equal to the percentage of SRGB groundwater in the total Project Source Water Production, as calculated on a water year basis and determined by the Agency.
- I. The SVWC, MCFB and Landwatch contend there is no surplus SRGB groundwater available for Cal Am's use in providing public water service within or outside of the SRGB and that the law of California groundwater rights requires that any production and use of SRGB groundwater by the Project must be returned for use within the SRGB in lieu of existing groundwater pumping.
- J. For Project planning and engineering purposes, Cal Am submits that the Project source water wells have been designed so that approximately 4% of the source water produced by the Project will originate as brackish groundwater from the SRGB.
- K. For planning purposes, Cal Am has assumed that the Return Water volume for the large desalination plant will be 1,080 acre feet annually ("afa") and, for the small desalination plant, 690 afa.
- L. The CPUC is conducting environmental review of the Project under the California Environmental Quality Act ("CEQA"), and the Monterey Bay National Marine Sanctuary is conducting environmental review of the Project under the National Environmental Policy Act ("NEPA").
- M. The modeling used in the CPUC's April 2015 CalAm Monterey Peninsula Water Supply Project Draft Environmental Impact Report ("DEIR") estimates that the volume of SRGB groundwater produced as source water for the large-scale (9.6 million gallons per day) Project would be approximately 7 percent, or 1,889 afa, under existing land-use conditions and would be approximately 4 percent, or 1,080 afa, under projected future 2060 land-use conditions, and would average approximately 5.5 percent, or 1,485 afa, over the life of the Project. (DEIR at 4.4-67.)
- N. Note C to the CPUC's DEIR Table 2-5 states that "groundwater modeling indicates that as

much as 1,080 afa may need to be returned to the Salinas Valley Groundwater Basin (based on 4 percent of total source water intake being drawn from the Salinas Valley Groundwater Basin)” and states that “Project supply would be sufficient to provide this larger quantity of return water.”

- O. The CPUC is preparing a revised DEIR/Environmental Impact Statement (RDEIR/DEIS) for the Project that will assess the significance of effects to SRGB groundwater resources, and the modeling in the revised RDEIR/DEIS will be updated and calibrated to include test well production data obtained to date (over 100 days of pumping). Cal Am also is working to gather additional (up to two years) test well production data to inform analysis of those effects. The full data set is not expected to be available before the CPUC’s completion of CEQA/NEPA review and its decision whether to approve a certificate of convenience and necessity for the Project.
- P. The Parties and the State Water Resources Control Board are in agreement, and the DEIR concludes, that delivering Return Water by injecting desalinated water from the Project into the SRGB is less desirable than delivering Return Water for beneficial use in in the SRGB.
- Q. The Castroville Seawater Intrusion Project (“CSIP”) is an Agency project that provides recycled water and diverted Salinas River water for use in lieu of groundwater pumping for irrigated agricultural use in the Castroville area of the SRGB.
- R. It has been proposed that Cal Am Return Water obligations be fulfilled, in part, by delivery of Return Water to CSIP. Prior environmental analyses reveal that there may be limitations in the capacity of CSIP to accommodate all of the Project Return Water under some conditions. (DEIR, p. 2-45, 6-4, 6-114; Pure Water Monterey, GWR DEIR, Appendix Q, Table B-3).
- S. The SVWC, MCFB and Landwatch contend that the Project’s well production may cause injury to the SRGB and senior groundwater rights holders in the SRGB under California groundwater law, even if the RDEIR/DEIS concludes that the well production would not cause a significant adverse effect under CEQA.
- T. MCFB, SVWC and Landwatch oppose any scenario where Return Water would be used outside the SRGB, rather than for use in lieu of existing groundwater pumping in the SRGB.
- U. In the July 31, 2013 Settlement Agreement among 16 parties to Proceeding A.12-04-019, MCFB, SVWC, Landwatch, the Agency, and Citizens for Public Water reserved all rights to challenge production of water from the SRGB by Cal Am in any appropriate forum based on their concerns for potential harm to the SRGB and users thereof.
- V. MCFB and SVWC have stated they may litigate these issues if they are not resolved through agreement.
- W. Cal Am and the Authority maintain that any obligation to return SRGB groundwater to the SRGB arises only as a requirement of the Agency Act, except to the extent that Return Water is necessary as part of a physical solution to avoid harm to the SRGB and senior

groundwater rights holders in the SRGB under California groundwater law or to mitigate significant adverse effects to the SRGB or particular groundwater users pursuant to CEQA.

- X. Cal Am, with the encouragement of the Authority, also desires to maximize revenue for Return Water to offset water costs and water rates for Cal Am customers on the Monterey Peninsula.
- Y. Cal Am must obtain CPUC approval to deliver or sell any Return Water for use outside of Cal Am's service area.
- Z. A controversy has now arisen as to Cal Am's obligation to deliver Return Water to the SRGB, and as to the responsibility for the costs of producing the Return Water, and the Parties to this Settlement Agreement seek to resolve these issues through this Settlement Agreement.
- AA. Pursuant to the terms of this Settlement Agreement, the Parties propose that Cal Am deliver Return Water to the Castroville Community Services District ("CCSD") and to the CSIP to satisfy Return Water requirements that may arise out of the Agency Act, CEQA, or California groundwater law, in accordance with terms and conditions and general principles contained in this Settlement Agreement and separate Return Water Purchase Agreements between Cal Am as seller and CCSD and the Agency, respectively, as purchasers of Return Water.
- BB. To facilitate planning and review, the Parties and CCSD executed a Return Water Planning Term Sheet ("Planning Term Sheet") on January 22, 2016 (Appendix A). At a regular meeting called and held on January 19, 2016, the Board of Directors of CCSD adopted Resolution No. 16-2 (Appendix B) approving execution of the Planning Term Sheet. The form of the Planning Term Sheet approved by Resolution 16-2 is consistent with the Planning Term Sheet executed by the Parties and CCSD on January 22, 2016. CCSD and the Parties have met and conferred since January 22, 2016 concerning the terms for a Return Water Purchase Agreement between CCSD and Cal Am ("CCSD RWPA") consistent with the Planning Term Sheet. The Board of Directors of CCSD reviewed the draft CCSD RWPA at a regular meeting on April 19, 2016 and adopted Resolution 16-4 (Appendix B) approving the draft CCSD RWPA in concept for submission to the CPUC for planning purposes and review. CCSD submits that CCSD would sign a CCSD RWPA after expiration of the statute of limitations for challenging a decision by the CPUC certifying the Project environmental impact report and approving this Settlement Agreement.
- CC. In the Planning Term Sheet, CCSD submits that it provides municipal and domestic water service to the Town of Castroville, which overlies the SRGB in an area north of the City of Marina and west of the City of Salinas.
- DD. In the Planning Term Sheet, CCSD submits that it currently relies on groundwater from the SRGB to meet Castroville's water demands, which use averages approximately 780 afa.
- EE. In the Planning Term Sheet, CCSD submits that it increasingly has experienced water supply challenges due to water quality degradation of its water supplies, primarily from

increased salinity.

- FF. In the Planning Term Sheet, CCSD submits that poor water quality, including elevated sodium levels in CCSD's groundwater supplies, can contribute to health risks of individuals susceptible to high sodium.
- GG. In the Planning Term Sheet, CCSD submits that it has been identified as a disadvantaged community (Greater Monterey County IRWM Regional Water Management Group Disadvantaged Community Outreach Plan, Prepared for the Environmental Justice Coalition for Water by Nilsen & Associates, Approved April 18, 2012), and was an active participant in the Regional Plenary Oversight Group process established by the Office of Ratepayer Advocates to determine whether the Regional Desalination Project, a predecessor project to the Project, would be a source of supply for Castroville.
- HH. In the Planning Term Sheet, CCSD submits that many of CCSD's customers contribute significantly to agricultural and hospitality industries in the Salinas Valley and on the Monterey Peninsula.
- II. In the Planning Term Sheet, CCSD submits that it is actively pursuing alternative water supplies and has applied to the State for funding to develop deeper groundwater wells and other projects to serve its customer demands.
- JJ. In the Planning Term Sheet, CCSD submits that it is interested in taking delivery of a Return Water supply from the Project to replace all or part of CCSD's current reliance on groundwater from the SRGB.
- KK. Cal Am contemplated two separate pipelines delivering Return Water from the Project desalination plant, one to CSIP ponds and one to CCSD's wellsite #3 ("CCSD Wellsite"). Through negotiations and discussions, the Parties determined the cost of new infrastructure could be decreased by connecting with existing CSIP infrastructure. That connection allows a single pipeline, rather than two pipelines, to be constructed from the desalination plant to the CCSD Wellsite that will connect with an existing CSIP pipeline ("CSIP Connection"). The elimination of a separate pipeline to the CSIP ponds avoids certain pipeline and pump station costs and results in an estimated cost savings to Cal Am of approximately \$1,300,000. A preliminary cost estimate for a pipeline and ancillary facilities necessary to convey water from the Project desalination plant to the CCSD Wellsite ("Delivery Pipeline") is approximately \$6,500,000. Cal Am believes that if the Delivery Pipeline is constructed by Cal Am there will be economies of scale achieved which may reduce the cost of the Delivery Pipeline to approximately \$4,400,000, assuming that Cal Am will secure contracts for construction of the pipeline and that environmental review and permitting will be performed in conjunction with the Project. CCSD estimates its cost to construct a new deep well with treatment facilities would cost approximately \$2,800,000. Thus, CCSD submits that it may not be able to prudently fund the Delivery Pipeline for more than \$2,800,000, and that capital obligations for the Delivery Pipeline would necessitate long-term commitments by CCSD and certainty of source water supply for CCSD.

- LL. The SVWC, MCFB, and Landwatch support Cal Am's delivering Return Water to CCSD and to CSIP for use in lieu of existing groundwater pumping in the SRGB.
- MM. The Parties submit that Cal Am's delivery of Return Water to CCSD and CSIP pursuant to the terms of this Settlement Agreement is a fair and equitable resolution of the disputed matters described above, and is consistent with the law and policy controlling the CPUC's approval of the Project, and therefore desire to settle the differences between and among them discussed in the preceding Recitals by entry into this Settlement Agreement.

AGREEMENT

NOW, THEREFORE, as a COMPROMISE and SETTLEMENT of the above-stated dispute, and to provide for an efficient and effective resolution of this dispute, the Parties do hereby AGREE to the following terms:

1. The recitals are hereby incorporated in this Settlement Agreement as if fully set forth herein.
2. Cal Am will deliver Return Water to the SRGB for use in lieu of existing groundwater production as follows:
 - a. Subject to Cal Am's Return Water obligations under this Settlement Agreement, Cal Am anticipates delivering Return Water pursuant to two Return Water Purchase Agreements, attached hereto in draft form as Appendix C, and Cal Am, CCSD and the Agency intend to enter into the Return Water Purchase Agreements.¹
 - b. In order to ensure Cal Am's compliance with the Agency Act, the Parties agree that upon start-up of the Project, the first 175 acre-feet of Return Water delivered by Cal Am pursuant to this Settlement Agreement ("Reserve Water") shall be delivered to CSIP.
 - c. Cal Am shall have annual Return Water requirements ("Annual Return Water Obligation") that shall be calculated based on the percentage of SRGB groundwater in the total Project Source Water Production. Cal Am's Annual Return Water Obligation under this Settlement Agreement shall not begin until the day after the full

¹ Cal Am is in discussions with the Monterey Regional Waste Management District ("MRWMD") regarding the potential for potable water supply delivery by Cal Am to MRWMD's landfill site that is contiguous to the desalination plant facilities in an amount not to exceed MRWMD's historical average pumping amount estimated at 6 afa. The landfill site cannot use its existing wells for human consumption due to nitrate contamination and, currently, potable water is trucked-in to provide service. In addition, Cal Am is also in discussions with Monterey Regional Water Pollution Control Agency ("MRWPCA") regarding the potential for potable water supply delivery by Cal Am to MRWPCA's site located near the desalination plant facilities in an amount not to exceed MRWPCA's historical averaging pumping amount estimated at 11.9 afa. MRWPCA is currently pumping SRGB groundwater for use at its site and any such potable water supply provided by Cal Am would directly reduce the corresponding amount of groundwater pumping by MRWPCA. The Parties agree that if Cal Am delivers potable water supply to MRWMD's landfill site and/or MRWPCA's site, such water (a) will be counted toward Cal Am satisfying its return water obligations under the Agency Act and this Settlement Agreement, (b) will be subject to Cal Am's applicable commercial customer tariff for its Monterey District, (c) will be included in Cal Am's reporting of Return Water delivered by Cal Am as contemplated by Section 2.h. of this Settlement Agreement, and (d) will be in lieu of existing groundwater pumping from the SRGB.

amount of Reserve Water has been delivered to CSIP (the “Obligation Start Date”).

- i. During the first three months after the Obligation Start Date, the Annual Return Water Obligation shall be 7% of total Project Source Water Production during that period. For the remainder of the water year after the first three months have passed, the Annual Return Water Obligation shall be the percentage of SRGB groundwater in the total Project Source Water Production calculated during the first three months after the Obligation Start Date.
- ii. Beginning in the first full water year after the time period set forth in subsection i. above expires, the Annual Return Water Obligation in any given year shall be the sum of (a) the Base Return Water Obligation for that year, as determined pursuant to subsection iii. below, plus (b) any Return Water Shortfall for the prior year, as determined pursuant to subsection iv. below, minus (c) any Return Water Surplus for the prior year, as determined pursuant to subsection v. below.

- iii. The volume of the Base Return Water Obligation shall be initially calculated each year by Cal Am based on the methodology set forth in Appendix D and Cal Am shall notify the other Parties, in writing, of the result of such calculation by December 1 of each year. Such notification shall include all calculations leading to such result. Within 14 days following receipt of such notification, the Agency shall notify the other Parties, in writing, of its determination regarding the accuracy of Cal Am's calculation of the volume of the Base Return Water Obligation. If the Agency determines the result is not accurate, its notification shall explain the reason for such determination. Within 21 days after any written notification by the Agency that it has determined that Cal Am's calculation is not accurate, the Parties shall meet to seek to reach agreement regarding the volume of the Base Return Water Obligation for that year. If the Parties do not reach agreement within 30 days after the initial meeting, any Party may on or after the 31st day, but no later than the 91st day, invoke the provisions of Section 9.
 - iv. The volume of any Return Water Shortfall for a given year shall be determined by subtracting the amount of Return Water made available by Cal Am in that year from the amount of the Annual Return Water Obligation for that year. If the amount of Return Water made available by Cal Am in that year equals or exceeds the Annual Return Water Obligation, the Return Water Shortfall for that year shall be equal to zero.
 - v. The volume of any Return Water Surplus for a given year shall be determined by subtracting the amount of the Annual Return Water Obligation for that year from the amount of Return Water provided by Cal Am to CCSD and the Agency in that year. If the amount of Annual Return Water Obligation in that year equals or exceeds the amount of Return Water provided by Cal Am to CCSD and the Agency, the Return Water Surplus for that year shall be equal to zero.
- d. Subject to Section 8, Cal Am's obligation to make Return Water available for use in lieu of existing groundwater pumping in the SRGB to meet its Annual Return Water Obligation shall survive for a period of 30 years following start-up of the Project even if the Return Water Purchase Agreements are not executed, do not become effective, or are otherwise amended or terminated.
 - e. Cal Am shall make available for delivery to CCSD 690 afa of Return Water ("CCSD Delivery Volume").
 - f. If the Annual Return Water Obligation is less than the CCSD Delivery Volume, Cal Am shall make available for delivery potable water in an amount equal to the difference between the Annual Return Water Obligation for that year and the CCSD Delivery Volume ("Excess Water").
 - g. Cal Am shall make available for delivery to CSIP any Annual Return Water Obligation in excess of the CCSD Delivery Volume, according to procedures agreed

Volume shall be reduced in the event and to the extent that a regulatory agency or court has required Cal Am to deliver Return Water in a manner or to a location different than as specified in the Settlement Agreement. CCSD shall not be obliged to purchase Return Water if it determines that the reduced amount of Return Water would not be sufficient to justify a Water Purchase Agreement as contemplated herein. In the event that CCSD determines that its water purchase is not justified due to an Other Return Water Obligation, the Parties to this Settlement Agreement will meet and confer in good faith to effect other arrangements to make the remaining Return Water, net of the Other Return Water Obligation, available for use in lieu of existing groundwater pumping in the SRGB in order to ensure that Cal Am will meet its Annual Return Water Obligation under this Settlement Agreement.

The Parties further acknowledge that the CCSD must be assured of a specific volume of Return Water to justify investment in the capital facilities necessary to convey the Return Water from the Project to the CCSD (the "CCSD Facilities"), and therefore Cal Am's obligation to the CCSD Delivery Volume specified herein cannot be terminated during the term of the anticipated Return Water Purchase Agreements after such time as CCSD has obligated itself to finance such capital facilities. To afford the best foresight in relation to potentially competing Return Water obligations, while also facilitating the certainty relating to Return Water deliveries required by CCSD, Cal Am's obligation to make available the CCSD Delivery Volume under the terms of the CCSD Return Water Purchase Agreement shall become unconditional on the date that is the latest of the following dates:

- a. the date on which the CPUC has issued a CPCN for the Project and the period to challenge the legality of the CPUC's issuance of the CPCN (based on CEQA compliance or otherwise) has expired and no challenge has been brought;
- b. the date on which any challenge against the CPUC's issuance of the CPCN is resolved with finality following all available appeals and petitions; or
- c. 60 days following the date on which the CCSD provides notification to Cal Am that it has secured financing, acceptable to CCSD, to acquire the CCSD Facilities.

In the event of any challenge against the CPUC's issuance of the CPCN, the Parties to this Settlement Agreement shall meet and confer in good faith to effect other arrangements to make the total amount of the Return Water, as adjusted by any Other Return Water Obligation, available for use in lieu of existing groundwater pumping in the SRGB in order to ensure that Cal Am will meet its Annual Return Water Obligation under this Settlement Agreement during the pendency of that litigation.

After the above dates, Cal Am may not terminate its obligation to deliver the CCSD Delivery Volume in the event Cal Am is subsequently required to meet Other Return Water Obligations. Cal Am and CCSD shall meet and confer as necessary within a reasonable amount of time before or after any of the above dates if it appears that Cal Am's obligation to make available the CCSD Delivery Volume may not become unconditional. Due to the urgent nature of the Project and other regulatory pressures to implement the Project, Cal

Am and CCSD may mutually agree at any time to amend and move forward with the CCSD Water Purchase Agreement, notwithstanding Other Return Water Obligations, provided all other required approvals have been attained and provided that Cal Am will meet its Annual Return Water Obligation under this Settlement Agreement through some combination of some or all of the CCSD Water Purchase Agreement, the CSIP Water Purchase Agreement, Other Return Water Obligations, or arrangements made pursuant to Section 7 of the Settlement Agreement.

5. Return Water and Excess Water pricing shall be as follows:
 - a. **CCSD:** For each acre-foot of Return Water or Excess Water made available for delivery to CCSD:
 - i. CCSD shall pay a rate intended to represent its avoided cost to produce groundwater to meet customer demand, currently estimated to be \$110 per acre-foot, which will be the rate as of the Obligation Start Date, for Return Water made available for delivery to meet the Annual Return Water Obligation. CCSD plans to continue operation of its existing wells so they may be available in emergency circumstances. This continuing operation will enable CCSD to provide future updates to the avoided cost of pumping. If CCSD is unable to provide such updated avoided costs of pumping, then the percentage increase of PG&E's A-6 tariff for off-peak summer distribution rate (with a base of \$0.07311 / kWh as of the tariff existing on March 24, 2016) will be used as the escalation factor for the increase in avoided cost of pumping in the future. After the Obligation Start Date, the rate will be reviewed annually and updated, if necessary, via Tier 2 advice letter filing with the CPUC.
 - ii. CCSD shall pay a rate intended to represent the marginal operation and maintenance costs for the Project to produce one acre-foot of potable water, currently estimated to be \$580 per acre-foot, which will be the rate as of the Obligation Start Date, for any Excess Water calculated as set forth in Appendix F. After the Obligation Start Date, the rate will be reviewed annually and updated, if necessary, via Tier 2 advice letter filing with the CPUC.
 - b. **CSIP:** Subject to rights to terminate established in Section 10 of the Return Water Purchase Agreement between the Agency and Cal Am, for each acre-foot of Return Water delivered by Cal Am, the Agency shall pay a rate intended to represent the CSIP customers' marginal avoided cost for groundwater produced for use by the CSIP customers, currently estimated to be \$102 per acre-foot which will be the rate as of the Obligation Start Date. After the Obligation Start Date, the rate will be reviewed annually and updated, if necessary, via Tier 2 advice letter filing with the CPUC.
6. The Parties support Cal Am negotiating and entering into Return Water Purchase Agreements substantially in the form attached in Appendix C to this Settlement Agreement.

To the extent any conflict is noted or alleged to exist between the terms of this Settlement Agreement and the terms of either Return Water Purchase Agreement, the Parties agree to meet and confer to seek to arrive at a mutually-agreeable reconciliation of the terms of the three agreements.

- a. The Return Water Purchase Agreements shall have an initial term of at least 30 years.
 - b. Prior to the expiration of the Return Water Purchase Agreements contemplated herein, CCSD and CSIP shall have a right of first refusal to enter into new water purchase agreements on terms to be negotiated at the time.
7. If the Return Water Purchase Agreements are not executed, do not become effective, or are otherwise amended or terminated, the Parties to this Settlement Agreement shall meet and confer in good faith to effect other arrangements to make the total amount of the Return Water reduced by any Other Return Water Obligation available for use in lieu of existing groundwater pumping in the SRGB in order to ensure that Cal-Am will meet its Annual Return Water Obligation under this Settlement Agreement. Regardless of whether the Return Water Purchase Agreements are not executed, do not become effective, or are otherwise amended or terminated, Cal Am shall not be excused from meeting its Annual Return Water Obligation under this Settlement Agreement.
8. Upon termination, expiration or non-renewal of the Return Water Purchase Agreements, Cal Am shall continue to make Return Water available for delivery to the SRGB for use in lieu of existing groundwater production, unless Cal Am demonstrates that Return Water is not needed to prevent legal injury to prior groundwater rights holders in the SRGB or to avoid significant adverse effects to SRGB groundwater resources. If Cal Am desires to make such a showing, it shall initially do so by providing a demonstration in writing to all Parties to this Settlement Agreement using the notice provisions of Section 22. Within 21 days thereafter, the Parties shall meet to seek to reach agreement regarding whether Cal Am has made the requisite demonstration. If the Parties do not reach agreement within 30 days after the initial meeting, any Party may on or after the 31st day, but no later than the 91st day, invoke the provisions of Section 9. For the avoidance of doubt, nothing in this section 8 in any way affects the provisions, scope and application of Section 3.
9. If a dispute arises concerning any controversy or claim arising out of or relating to this Settlement Agreement or the breach thereof, or relating to its application or interpretation, such dispute shall be resolved as follows:
 - a. Disputes. The aggrieved Party will notify the other Parties of the dispute in writing within twenty (20) days after such dispute arises. If the Parties fail to resolve the dispute within sixty (60) days after delivery of such notice, each Party will promptly nominate a senior officer of its organization to meet at any mutually-agreed time and location to resolve the dispute. The Parties shall use their best efforts to reach a just and equitable solution satisfactory to all Parties. If the Parties are unable to resolve the dispute to their satisfaction within sixty (60) days thereafter, the dispute will be subject to mediation, as described below in Section 9.b. The time periods set forth in this section are subject to extension if agreed to by the Parties.

- b. Mandatory Non-binding Mediation. If a dispute is not resolved pursuant to Section 9.a., the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation initiated and conducted under the applicable rules of the American Arbitration Association in effect as of the Effective Date or other rules agreed to in writing by the Parties, before having recourse in a court of law or equity. Each Party shall bear its own legal expenses, and the expenses of witnesses for either side shall be paid by the Party producing such witnesses. All expenses of the mediator, including required travel, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation, including without limitation any materials prepared or submitted or any positions taken by or on behalf of any Party, shall be confidential and inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 through 1128), unless such admission is otherwise agreed upon in writing by the Parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. The mediation shall be completed within sixty (60) days after selection of the mediator, unless the Parties agree to extend the mediation period.
 - c. Judicial Relief. If mediation pursuant to Section 9.b. does not resolve a dispute, any Party may seek relief in a court of competent jurisdiction.
 - d. Limitations on Damages. No Party shall be entitled to consequential damages, incidental damages, or punitive or exemplary damages from any other Party in any action or proceeding in connection with this Settlement Agreement.
 - e. Attorneys' Fees and Costs. In any action or proceeding to enforce a term or condition of this Settlement Agreement, in any disputes relating to this Settlement Agreement, and in any actions for breaches, defaults, or misrepresentations in connection with the Settlement Agreement, a prevailing Party (as determined by a court of competent jurisdiction) shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs.
10. The Parties agree that Cal Am's certificated service area for the Monterey County District shall be extended to include: (1) a delivery point near the intersection of Nashua Road and Monte Road (located between Cal Am's desalination plant facilities and the CCSD service area) that is necessary for Cal Am to serve CCSD and the Agency at the delivery point set forth in the anticipated Return Water Purchase Agreements; (2) the territory contiguous to the desalination plant facilities that is necessary for Cal Am to deliver water to Monterey Regional Waste Management District ("MRWMD"), and (3) to the Monterey Regional Water Pollution Control Agency's wastewater treatment plant site which is located next to the MRWMD site, and that Cal Am shall update its service area map accordingly through a Tier 2 advice letter filing to describe the territory served on the utility's tariffs. The Parties further agree to support Cal Am's ability to implement and update its tariffs accordingly through a Tier 2 advice letter.

11. The Parties agree that the proposed tariff set forth in Appendix E, which may be modified from time to time with CPUC approval to reflect adjustments to the terms of service as set forth herein, shall govern the rates and provision of service to CCSD and the Agency, subject, however, to rights to terminate established in Section 10 of the Return Water Purchase Agreements between Cal Am and each of CCSD and the Agency.
12. Pursuant to the Return Water Purchase Agreements, Cal Am would collect revenue from CCSD and the Agency. All revenue collected under the Return Water Purchase Agreements would be through an approved tariff with the CPUC and would be used to offset the operations and maintenance costs of the Project to customers in the Monterey District in accordance with Section 8.3 of the document known as the "Large Settlement Agreement." Revenues collected from MRWMD would be under an existing General Metered Non-Residential tariff that is subject to regulation by the CPUC.
13. Cal Am shall provide notice of advice letters filed pursuant to this Settlement Agreement to the Parties and to CCSD upon their filing and in accordance with applicable CPUC requirements.
14. This Settlement Agreement reflects a settlement and compromise of putative claims and remedies of the Parties hereto.
15. If the Return Water settlement described in this Settlement Agreement is not approved by the CPUC and implemented by Cal Am, the Agency, SVWC, MCFB and Landwatch reserve their rights to challenge Cal Am's production of water from the SRGB in any appropriate forum.
16. The Parties agree to expeditiously, substantively and in good faith support this Settlement Agreement and cooperate with Cal Am in any administrative or judicial proceeding challenging this Settlement Agreement and/or Cal Am's obligations and responsibilities with respect to Return Water.
17. Among other things, this Settlement Agreement helps to define a stable and finite project description that will facilitate the CPUC's completion of CEQA review for the Project. The legal effectiveness of this Settlement Agreement is contingent on the completion of CEQA review and this Settlement Agreement does not irretrievably commit the Parties to carrying out any physical activities that would be required for Cal Am to meet the Annual Return Water Obligation or would otherwise be required for the Parties to comply with the terms of this Settlement Agreement, including through the anticipated Return Water Purchase Agreements whose future approval will be conditioned upon the completion of CEQA review by the CPUC as lead agency for the Project and by those Parties playing the role of a responsible agency with respect to the anticipated Water Supply Agreements. The Parties acknowledge and intend that the lead agency and responsible agencies will retain full discretion with respect to deciding whether to approve the Return Water Supply Agreements or any other commitments necessary or convenient for Cal Am to meet the Annual Return Water Obligation, including discretion to modify commitments to avoid or reduce any significant adverse physical environmental effects (i) from Return Water activities that are within their jurisdiction, and (ii) from the Parties' compliance with other

terms of this Settlement Agreement.

18. If the CPUC approves the Settlement Agreement with modifications, the Parties request the CPUC to provide a reasonable period for the Parties to consider and respond to such modification.
19. If the CPUC approves the Settlement Agreement with modifications, each Party shall determine no later than two business days before the deadline imposed by the CPUC for acceptance of the modification whether it will accept the modification and shall notify the other Parties of its determination.
20. If any Party declines to accept the CPUC's modification, the other Parties may still accept the modification and request the CPUC to approve the revised Settlement Agreement in the absence of the agreement of the Party or Parties who decline to accept the CPUC's modification; provided, however, that Parties who accept the modification and request approval of a revised Settlement Agreement may not accept the modification and request the CPUC to approve the revised Settlement Agreement if the applicant Cal Am is among the Parties who decline to accept the CPUC's modification. If the CPUC's proposed modification of this Settlement Agreement is not consented to by Cal Am, the Settlement Agreement shall be void and the CPUC will establish a procedural schedule to address the disputed issues.
21. This Settlement Agreement does not currently impact the terms of sections 3.1(b) of the document known as the Large Settlement Agreement. To the extent later binding agreements may specifically do so, they will not impact the Agency's authority and responsibilities under or Cal Am's obligation to comply with the Agency Act.
22. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties hereto and their respective successors and assigns permitted hereunder.
23. Nothing in this Settlement Agreement is intended, either expressly or by implication, to confer any rights or remedies under or by reason of this Settlement Agreement on any persons other than the Parties hereto; nothing in this Agreement is intended, either expressly or by implication, to relieve or discharge the obligation or liability of any third person to any Party; and nothing in this Settlement Agreement creates, either expressly or by implication, any duty, liability or standard of care to any person who is not a Party.
24. All notifications, notices, demands, requests and other communications herein provided for or made pursuant hereto shall be in writing and shall be sent by: (i) registered or certified mail, return receipt requested, and the giving of such communication shall be deemed complete on the third (3rd) business day after the same is deposited in a United States Post Office with postage charges prepaid; or (ii) reputable overnight delivery service, and the giving of such communication shall be deemed complete on the immediately succeeding business day after the same is deposited with such delivery service; and (iii) so long as a Party has notified the other Party by means of a method described in clauses (i) or (ii) above of such Party's email address for notification purposes, email transmission of notices to such Party are also permitted provided an original is also sent via one of the other

permitted means and the giving of such communication shall be complete when such email is received if such email is received on a business day before 3:00 pm Pacific Time; otherwise, such communication shall be deemed complete the next business day. The date on which notifications, notices, demands, requests and other communications are deemed complete shall be the earliest date arising under subsections (i), (ii) or (iii) of this Section 24. All notifications, notices, demands, requests and other communications shall be sent to the Parties as follows:

To Agency:

David E. Chardavoyne
General Manager
Monterey County Water Resources Agency
893 Blanco Circle
Salinas, CA 93901

To Authority:

Jason Burnett
President
Monterey Peninsula Regional Water Authority
580 Pacific Street, Room 6
Monterey, CA 93940

To Cal Am:

Eric J. Sabolsice
Director, Operations
Coastal Division
California-American Water Company
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950

To Landwatch:

Chris Fitz
LandWatch Monterey County
P.O. Box 1876
Salinas, CA 93902-1876

To MCFB:

Norman C. Groot
Monterey County Farm Bureau
P.O. Box 1449
1140 Abbott Street, Suite C

Salinas, CA 93902-1449

To SVWC:

Nancy Isakson
President
Salinas Valley Water Coalition
3203 Playa Court
Marina, CA 93933

A Party may change the person and/or address for provision of notice by delivering written notice to the other Parties.

25. Each Party to this Settlement Agreement represents and warrants that it has the capability and authority to carry out the rights and obligations of this Settlement Agreement. Each person whose signature appears hereon represents and warrants that he/she has been duly authorized and has full authority to execute this Settlement Agreement on behalf of the Party on whose behalf this Settlement Agreement is executed.
26. This Settlement Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

Respectfully submitted,

Dated: CALIFORNIA-AMERICAN WATER COMPANY

By _____
Robert MacLean,
President

Dated: LANDWATCH MONTEREY COUNTY

By _____
Chris Fitz,

Dated: MONTEREY COUNTY FARM BUREAU

By _____
Norman C. Groot,
Executive Director

Dated: MONTEREY COUNTY WATER RESOURCES AGENCY

By _____
David Chardavoyne,
General Manager

Dated: MONTEREY PENINSULA REGIONAL WATER AUTHORITY

By _____
Jason Burnett,
President

Dated: SALINAS VALLEY WATER COALITION

By _____
Nancy Isakson,
President

APPENDIX A
PLANNING TERM SHEET

APPENDIX B

CCSD RESOLUTION No. 16-2 AND No. 16-4

APPENDIX C
RETURN WATER PURCHASE AGREEMENTS

APPENDIX D

BASE RETURN WATER OBLIGATION METHODOLOGY

Example of Calculation of Percentage of Salinas Basin Water in Brackish Water using current Monterey Bay salinity levels (33,500 mg/L) and current and projected test well results (~31,076 mg/L → 31,950 mg/L)

$$(seawater\ salinity) \times (Percentage\ of\ seawater) + (inland\ water\ salinity) \times (Percentage\ of\ Salinas\ Basin\ water) = (brackish\ water\ salinity)$$

EXAMPLE #1

Assumed Data for Example #1 Purposes Only:

33,500 mg/L = Measured seawater TDS (“seawater salinity”)¹

500 mg/L = Measured Salinas Basin water TDS (“inland water salinity”)¹

31,076 mg/L = Measured Brackish Source Water TDS (“brackish water salinity”)¹ (Test Well)

Unknowns:

Percentage of seawater = x

Percentage of Salinas Basin Water (inland water) = y

The sum of the percentage must equal 100% or 1. Therefore: $x+y=1$ or $y=1-x$

$$\begin{aligned} 33,500x + 500y &= 31,076 \\ 33,500x + 500(1 - x) &= 31,076 \\ 33,500x + 500 - 500x &= 31,076 \\ 33,000x + 500 &= 31,076 \\ 33,000x &= 30,576 \\ x &= \frac{30,576}{33,000} \\ x &= 0.926 \text{ or } 92.6\% \end{aligned}$$

Thus,

$$\begin{aligned} y &= 1 - x \\ y &= 1 - 0.926 \\ y &= 0.074 \text{ or } 7.4\% \end{aligned}$$

Therefore,

Percentage of seawater = 92.6% and Percentage of Salinas Basin water (inland water) = 7.4%

¹ TDS values for the seawater, Basin water, and Brackish Source water will be determined by analysis by an accredited laboratory, using appropriate methodology – **SM 2540C**

EXAMPLE #2

Assumed Data for Example #2 Purposes Only:

33,500 mg/L = Measured seawater TDS (“seawater salinity”)¹

500 mg/L = Measured Salinas Basin water TDS (“inland water salinity”)¹

31,950 mg/L = Measured Brackish Source Water TDS (“brackish water salinity”)¹

Unknowns:

Percentage of seawater = x

Percentage of Salinas Basin Water (inland water) = y

The sum of the percentage must equal 100% or 1. Therefore: $x+y=1$ or $y=1-x$

$$\begin{aligned}33,500x + 500y &= 31,950 \\33,500x + 500(1 - x) &= 31,950 \\33,500x + 500 - 500x &= 31,950 \\33,000x + 500 &= 31,950 \\33,000x &= 31,450 \\x &= \frac{31,450}{33,000} \\x &= 0.953 \text{ or } 95.3\%\end{aligned}$$

Thus,

$$\begin{aligned}y &= 1 - x \\y &= 1 - 0.953 \\y &= 0.047 \text{ or } 4.7\%\end{aligned}$$

Therefore,

Percentage of seawater = 95.3% and Percentage of Salinas Basin water (inland water) = 4.7%

¹ TDS values for the seawater, Basin water, and Brackish Source water will be determined by analysis by an accredited laboratory, using appropriate methodology – **SM 2540C**

Example of Calculation of Return to Basin Allocation:

Return to Basin Allocation

$$= (\text{Percentage of Salinas Basin water}) \\ \times (\text{Total Actual Source Water Quantity})$$

EXAMPLE #1

Assumed Data for Example #1 Purposes Only:

26,992 AFY = Total Actual Source Water Quantity (i.e. 24.1 MGD)

92.6% = Percentage of Seawater = x

7.4% = Percentage of Salinas Basin water = y

Unknowns:

Return to Basin Allocation = z

So, substituting the equation with the assumed data for example#1:

$$z = (y) \times (26,992) \\ z = (0.074) \times (26,992) = 1,997 \text{ AFY}$$

EXAMPLE #2

Assumed Data for Example #2 Purposes Only:

26,992 AFY = Total Actual Source Water Quantity

95.3% = Percentage of Seawater = x

4.7% = Percentage of Salinas Basin water = y

Unknowns:

Return to Basin Allocation = z

So, substituting the equation with the assumed data for example#2:

$$z = (y) \times (26,992) \\ z = (0.047) \times (26,992) = 1,268 \text{ AFY}$$

APPENDIX E
PROPOSED TARIFF

APPENDIX F

Project MARGINAL OPERATION AND MAINTENANCE COSTS CALCULATION

Calculation of the marginal cost of water at either the 6.4 MGD or 9.6 MGD desalination plant proposed as part of the Project. Items that are part of the cost computation include:

1. **Power Costs (PC)**: related to the slant intake wells and the desalination plant. The costs shall be computed annually based on the sum of the power bills for the intake wells and the desalination plant including the high service pump station.
2. **Chemical Costs (CC)**: related to the production the potable water. The costs shall be computed annually based on the sum of the chemical bills for the desalination plant.
3. **Membrane and Media Replacement Costs (MMRC)**: related to production the potable water. The costs shall be computed annually based on the sum of the invoices for replacement membranes and media.
4. **Production Volume (AF)**: related to the total amount of water produced from the desalination plant.
5. **Marginal Cost of Water**: Cost per acre-foot of water.

The formula for the marginal cost of water shall be:

$$\frac{PC + CC + MMRC}{AF} = \frac{\$}{AF} = \text{Marginal Cost of Water}$$

EXAMPLE #1 – First Years Cost - \$580 / AF

Summary of Updated 6.4 MGD O&M Costs (Dec. 15, 2015)

Item	6.4 MGD MPWSP	AFY	Desal Plant Only	Cost per AF
Power	\$4,580,000	7,168	\$3,323,160	\$463.6
Chemicals	\$920,000	7,168	\$750,871	\$104.8
Membrane/Media Replacement	\$90,000	7,168	\$88,240	\$12.3
R&R	\$1,570,000		Total	\$580.7
Purchased Recharge Water	\$8,750,000			
Labor & Misc	\$3,360,000			
Total	\$19,270,000			