



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

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Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service in its Monterey District by \$24,718,200 or 80.30% in the year 2009; \$6,503,900 or 11.72% in the year 2010; and \$7,598,300 or 12.25% in the year 2011 Under the Current Rate Design and To Increase its Revenues for Water Service in the Toro Service Area of its Monterey District by \$354,324 or 114.97% in the year 2009; \$25,000 or 3.77% in the year 2010; and \$46,500 or 6.76% in the year 2011 Under the Current Rate Design.

Application 08-01-027  
(Filed January 30, 2008)

And Related Matters

Application 08-01-023  
Application 08-01-024  
(Filed January 30, 2008)

**OPENING BRIEF OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

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MANAGEMENT DISTRICT**

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**OPENING BRIEF OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

**I. INTRODUCTION AND BACKGROUND**

Pursuant to Rule 13.11 of the California Public Utilities Commission's ("Commission" or "CPUC") Rules of Practice and Procedure, the Monterey Peninsula Water Management District ("MPWMD") hereby files this Opening Brief in the above captioned proceeding.

California-American Water Company ("Cal-Am") filed Application ("A." or "Application") 08-01-027 on January 30, 2008.<sup>1</sup> The Application contained eleven

<sup>1</sup> *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service in its Monterey District by \$24,718,200 or 80.30% in the year 2009; \$6,503,900 or 11.72% in the year 2010; and \$7,598,300 or 12.25% in the year 2011 Under the*

special requests. The Commission subsequently removed Special Request #9 to recover San Clemente Dam Seismic retrofit expenditures at Cal-Am's request.<sup>2</sup> The Application was consolidated with Cal-Am's General Office (A.08-01-024) and Wastewater (A.08-01-023) applications on June 27, 2008.<sup>3</sup>

MPWMD filed its protest March 3, 2008. Subsequent discovery, evidentiary hearings, and partial settlement agreements have resolved some issues of concern. This brief addresses some of those issues which remain unresolved or are contained in the Partial Settlement Agreements of November 24, 2008 as to Water and Wastewater Issues between Cal-Am and DRA. MPWMD will file separate comments on or before December 24, 2008 on the Settlement Agreement as to Monterey District Water Rate Design Issues.

California Public Utilities Code §451 requires that all charges by a public utility for any product or service rendered must be just and reasonable. The burden is on Cal-Am to justify the requests contained in this Application by clear and convincing evidence.

## **II. PURCHASED WATER COSTS**

Purchased water costs include annual rent and operating costs for the Sand City desalination facility, non-replenishment costs for the Seaside Basin, and replenishment costs for the Seaside Basin.<sup>4</sup>

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*Current Rate Design and to Increase its Revenues for Water Service in the Toro Service Area of its Monterey District by \$354,324 or 114.97% in the year 2009; \$25,000 or 3.77% in the year 2010; and \$46,500 or 6.76% in the year 2011 Under the Current Rate Design.*

<sup>2</sup> Assigned Commissioner's and Administrative Law Judge's Ruling Conditionally Granting Request to Withdraw San Clemente Dam Issue from This Proceeding, October 6, 2008.

<sup>3</sup> Assigned Commissioner's and Administrative Law Judge's Ruling and Scoping Memo, June 27, 2008.

<sup>4</sup> Exhibit 2, Tab 12, Direct Testimony of Patrick Pilz at 5.

Cal-Am seeks recovery in rates of over \$4.5 million in 2009 for Seaside Basin fees and assessments.<sup>5</sup> Cal-Am also wants ratepayers to pay over \$1 million annually for its lease agreement with Sand City for water from a desalination facility expected to be operational in 2009. Discovery and testimony show that neither expense is warranted.

A. Seaside Basin Replenishment Cost Recovery

The Seaside Basin Watermaster imposes Replenishment Assessments (1) against standard water producers when the natural safe yield of the basin is exceeded and (2) against standard and alternative water producers when their individual allocations of the operating safe yield are exceeded. Replenishment assessments are established by the Watermaster annually. The assessment for Water Year 2008 (October 1, 2007 through September 30, 2008) is set at \$2,485 per acre-foot of over-production. Cal-Am estimates fees and assessments for 2009 at \$4,514,558 and seeks recovery in an embedded average cost per unit of sales at about \$0.86 per Ccf.<sup>6</sup>

MPWMD's protest raised the issue that Cal-Am could seek credit from the Watermaster against any assessment.<sup>7</sup> If successful, this would avoid any additional recovery from the ratepayers. The Watermaster's Annual Report issued November 15, 2008, at Section H indicates the Watermaster's intent to grant a credit to Cal-Am under the terms and conditions of a Memorandum of Understanding (MOU).<sup>8</sup> On December 3, 2008, the Watermaster approved the MOU and Cal-Am's request for a replenishment credit of \$12,305,924 for Water Years 2006, 2007, and 2008, subject to the condition that

<sup>5</sup> Exhibit 2, Tab 14, Direct Testimony of David P. Stephenson (hereafter "Stephenson Direct") at 23.

<sup>6</sup> Id. MPWMD expresses no opinion on non-replenishment costs.

<sup>7</sup> Protest of the Monterey Peninsula Water Management District to the Application of California-American Water Company to Increase Revenues in Its Monterey District at 6.

<sup>8</sup> [www.seasidebasinwatermaster.org/sbwmARC.html](http://www.seasidebasinwatermaster.org/sbwmARC.html). The report can be accessed under Archives

Cal-Am will ensure replenishment of the basin with water from the Coastal Water Project, or a comparable project, at no cost to the Watermaster. The amount of water that Cal-Am must replenish at no cost is the amount of water that Cal-Am has overproduced and incurred a replenishment assessment obligation for Water Years 2006, 2007 and 2008, i.e., 6,390 acre-feet. The MOU also allows Cal-Am to make future requests for replenishment credits subject to the same conditions.

Based on the Watermaster's action, Cal-Am's request to recover replenishment costs is moot and should be denied.

B. Sand City Desalination Lease Expense Recovery

The primary issues for consideration are whether Cal-Am exercised due diligence in entering into a lease agreement with Sand City and, even if due diligence was exercised, is the cost of desalinated water reasonable. The record indicates that due diligence was lacking and that the water cost is unreasonable. MPWMD relies on the discovery conducted by DRA<sup>9</sup> and Chapter 12 of DRA's Report on the Results of Operations. It should be noted that MPWMD did not do any fiscal analysis of the desalination facility during its review of Sand City's application for a water entitlement or of the amendment to Cal-Am's water distribution permit. In fact, MPWMD never had a fully executed copy of the lease until it was produced in this proceeding.<sup>10</sup>

While water resources available to Cal-Am from the Carmel River System and the Seaside Groundwater Basin are constrained, there are options available which do not cost in excess of \$3,500 per acre foot of water. Yet Cal-Am has executed a 15-year lease and

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<sup>9</sup> See Exhibits 35, 36, and 37.

<sup>10</sup> Exhibit 51, City of Sand City and California-American Water Company, Inc. Lease Agreement dated as of November 5, 2007 (hereafter "Lease Agreement").

agreed to pay over \$1 million annually to run the Sand City desalination plant.<sup>11</sup> MPWMD agrees with DRA's assessment that savings from enhanced conservation programs and reduction of unaccounted for water are viable options to produce permanent savings in excess of the temporary access to 300 acre-feet of desalinated water.<sup>12</sup> In addition, planned improvements to the joint Aquifer Storage and Recovery ("ASR") project can increase injected water for storage in the Seaside Groundwater Basin.

The Commission should also carefully examine what the ratepayers are getting for this investment. The reality is that they are paying for virtually the entire capital cost with no ownership interest and only temporary use of the water. The true beneficiary is Sand City which has secured project financing for its redevelopment plans. Meanwhile, Cal-Am customers have only permanently offset 94 acre feet of water for the \$15 million cost.<sup>13</sup>

Based on the evidence in the record, the Commission should deny Cal-Am's request or, in the alternative, allow recovery based on costs to reduce unaccounted for water and include connection charge recovery for new or expanded connections.

### **III. UTILITY PLANT IN SERVICE**

Cal-Am requested over \$97 million in plant additions for some 91 proposed projects in this Application. This compares with an historical annual average of \$10 million during the period 2003 to 2007.<sup>14</sup>

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<sup>11</sup> Exhibit 21, DRA Report on the Results of Operations (hereafter "DRA Report") at 12-1.

<sup>12</sup> Exhibit 21, DRA Report at 12-8 to 12-10.

<sup>13</sup> The Sand City desalination facility is designed to produce 300 acre feet of desalinated brackish water annually. Only 94 acre feet will offset existing demand; the remaining 206 acre feet is for new connections or expansion of existing connections.

<sup>14</sup> Exhibit 21, DRA Report at 7-1.



MPWMD focuses its comments on two areas critical to conservation efforts while new water supply projects are being developed.

A. Unaccounted For Water

Since 1999, MPWMD has established a 7% standard for unaccounted for water (“UFW”).<sup>15</sup> Cal-Am has not been able to achieve this standard and currently has a UFW of about 11% for the Main System.<sup>16</sup> Given the constrained water supply, efforts to reduce UFW must be a priority. Several categories indicate substantial water savings at reasonable costs. These include an enhanced annual meter replacement program and acoustic leak detection program.<sup>17</sup> In addition, MPWMD strongly supports implementation of the Goff Report Phase 2 recommendations.<sup>18</sup>

B. Meters

General Order (“GO”) 103 establishes standards for meters. According to DRA’s analysis, Cal-Am’s annual replacement rate is slightly below the GO requirements.<sup>19</sup> It is important to replace meters which don’t read accurately. This results in a loss of revenue and facilitates excess water use. There is also the need for recurring meter replacement.

MPWMD supports recovery for the backlog of meters not in compliance with GO 103 as well as recovery for replacements scheduled for this rate cycle. MPWMD defers to DRA’s analysis on the appropriate meter cost.

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<sup>15</sup> MPWMD Ordinance No. 92, Expanded Water Conservation and Standby Rationing Plan.

<sup>16</sup> Exhibit 33, Direct Testimony of Thomas J. Bunosky Revised, Exhibit A.

<sup>17</sup> Exhibit 21, DRA Report, Chapter 4.

<sup>18</sup> Application 08-01-027, Exhibit A, Chapter 3, Section 1.

<sup>19</sup> Exhibit 21, DRA Report at 7-48.

#### IV. INTERCONNECTIONS

Cal-Am proposes two interconnection projects. One provides an interconnection between Ryan Ranch and the Bishop Service Area for \$272,000; the other provides an interconnection for the Hidden Hills Service Area with the Monterey Main System for \$546,000.<sup>20</sup>

As General Manager Darby Fuerst testified, the current MPWMD permit conditions of approval prohibit these interties. Cal-Am must submit applications to modify these water distribution systems which are subject to MPWMD rules and must comply with the California Environmental Quality Act ("CEQA").<sup>21</sup> In addition, safeguards must be included to protect Cal-Am's Main System customers so they are not disadvantaged by any water transfers.<sup>22</sup>

It is, therefore, premature to authorize these expenditures until the appropriate permits have been secured and construction has been completed. The Commission should require Cal-Am to develop a work plan and tentative schedule for obtaining the permits and permit amendments needed to construct and operate the proposed interconnections including a description of the amount and source of water to be transferred through the interconnections.

#### V. SPECIAL REQUEST #1: DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

Cal-Am seeks to recover fixed costs associated with capital expenditures for the replacement or rehabilitation of certain infrastructure facilities through a surcharge on

<sup>20</sup> Exhibit 2, Tab 8 at 13 and 15. See also Sub-tabs G and H.

<sup>21</sup> Exhibit 29, Direct Testimony of Darby W. Fuerst (hereafter "Fuerst Direct Testimony") at 6.

<sup>22</sup> Id.

each monthly bill.<sup>23</sup> This Distribution System Improvement Charge (“DSIC”) was identified as a contentious issue.<sup>24</sup> While MPWMD recognizes the need for system main and valve replacements, Cal-Am’s system needs-analysis approach is inappropriate and premature not to mention extremely costly in light of the many other pending capital expenditures.

A pilot DSIC program has been authorized by the Commission in Cal-Am’s Los Angeles District.<sup>25</sup> This is also a condition precedent to the adoption of a DSIC in any other districts.<sup>26</sup> There is no justification for treating Cal-Am’s Monterey District differently. Therefore, MPWMD recommends the Commission deny the DSIC Special Request #1.

#### **VI. SPECIAL REQUEST #6: MEMORANDUM ACCOUNT FOR ESA FINES**

In its Application, Special Request # 6 called for “Implementation of a memorandum account to track special levies and assessments incurred as a result of ESA compliance issues.”<sup>27</sup> Cal-Am correctly identified it as a contentious issue because the euphemism “levies and assessments” actually meant fines.<sup>28</sup> Cal-Am had previously pursued this issue in its 2005 General Rate Case Application 05-12-012 as Special Request #5. MPWMD and DRA opposed the request and the Commission concurred. There would be no deviation from the policy of not allowing recovery of fines.<sup>29</sup>

Cal-Am and DRA have settled this issue. The Partial Settlement Agreement states at Section 4.2, “California American Water agreed to withdraw this request to track

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<sup>23</sup> Application 08-01-027 at 8.

<sup>24</sup> Application 08-01-027 at 3.

<sup>25</sup> D.07-08-030.

<sup>26</sup> D.08-03-022 and D.08-05-018. These decisions involve Cal-Am’s Coronado, Village, Sacramento and Larkfield districts.

<sup>27</sup> Application 08-01-027 at 8.

<sup>28</sup> Application 08-01-027 at 3.

<sup>29</sup> D.06-11-050 at 59 – 60.

levies imposed by NOAA for violating the ESA.”<sup>30</sup> MPWMD does not believe the language is adequate or accurate. The U.S. Fish and Wildlife Service protects red-legged frog while NOAA is responsible for steelhead protection. Endangered Species Act violations could occur for either species. MPWMD requests that the settlement language be modified to track the original request.

## **VII. SUBSYSTEM SUBSIDIES**

Cal-Am’s Main System customers pay for 96 cents of every dollar of capital expense for improvements to the subsystems. In the previous General Rate Case, MPWMD argued against these continued subsidies. Decision 06-11-050 required Cal-Am to document capital improvement projects undertaken since SWRCB Order 95-10 as well as to project forward by ten years.<sup>31</sup>

Cal-Am has now provided the documentation. In the first twelve years after SWRCB 95-10, Cal-Am estimated its actual capital investments in Ryan Ranch, Bishop, Hidden Hills and Ambler exceeded \$11.2 million. Cal-Am also estimates it will spend an additional \$12.1 million in the eleven years beginning January 1, 2008. While subsystem customers pay for some Main System capital improvements, their contribution is minimal in comparison to the revenue benefits they receive from Main system customers for their system improvements.

As ALJ Walwyn stated,

The Monterey district main system customers are facing extraordinary water issues, both in the need to conserve and in the need to develop new water sources. The record shows the Bishop subsystem is a small but rapidly expanding system, with new demand driven by new homes

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<sup>30</sup> Partial Settlement Agreement between the Division of Ratepayer Advocates and California-American Water Company on Monterey Water and Wastewater Issues at 7.

<sup>31</sup> D.06-11-050, Ordering paragraph 16-b at 111.

in the Pasadera subdivision that sell for over \$2 million on average. With main system customers facing proposed surcharges for the Coastal Water Project, it may be appropriate to consider a capital improvement surcharge for the subsystem customers.<sup>32</sup>

The Commission must afford relief to Cal-Am Main System customers. Faced with surcharges for the Carmel River Dam (\$3.6 million), Coastal Water Project (\$200 million), San Clemente Dam retrofit (\$65 million), increased rates for capital replacements and rate design for enhanced conservation programs, it is unfair to burden them with the bulk of capital expenses for the subsystems Cal-Am has acquired along the Highway 68 corridor.

In particular, Hidden Hills, Bishop, and commercial customers in Ryan Ranch can afford a capital improvement surcharge. Indeed, the representative from Hidden Hills thought they were paying for their own system improvements.<sup>33</sup> Even Cal-Am's Director of Rates stated, "If money is necessary to fund infrastructure, then the water utility should establish a specific surcharge for such purpose. In this manner, customers would know exactly what they are paying for and how much of their bill is designated for such a purpose."<sup>34</sup>

A. Toro Service Area

If past indicators predict future actions, Cal-Am will eventually seek to consolidate its Toro subsystem into the Monterey District for ratemaking purposes. MPWMD notes that the Partial Settlement Agreements as to Water and Wastewater Issues recommends approval of \$685,000 for the Toro arsenic treatment project plus

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<sup>32</sup> D.06-11-050 at 24.

<sup>33</sup> 6RT 591: 26-28 to 592 (Stransky/Hidden Hills).

<sup>34</sup> Exhibit 74, Supplemental Further Rebuttal Testimony of David P. Stephenson on Rate Design Issues at 4.

\$855,860 for capital expenditures during this rate cycle for “repairs, replacements and upgrades to the Toro system to bring it into compliance with applicable standards and regulations.”<sup>35</sup>

These capital improvements should be the responsibility of Toro ratepayers, both now and in the future.

#### **VIII. MPWMD USER FEE**

In a ruling on May 9, 2008, the Commission sought information to better understand MPWMD’s user fee and its collection by Cal-Am from its customers.<sup>36</sup> This was amplified further in the scoping memo issued June 27, 2008.<sup>37</sup>

MPWMD was created by special legislation in 1977 and approved by the voters in 1978.<sup>38</sup> It holds powers expressly granted by its enabling legislation as well as powers reasonably implied which are necessary and proper to carry out its object and purposes. One purpose is the conservation and augmentation of the water supplies by integrated management to avoid environmental degradation.

MPWMD has collected a user fee since 1983. This fee, which is based on actual water use, is included on the water bills for Cal-Am and the Seaside Municipal Water System. The user fee, which is expressed as a percentage of the meter and water charges, is presently set at 8.325 percent and generated approximately \$1,860,000 in Fiscal Year 2006. Revenues from the user fee are used to support MPWMD’s comprehensive Mitigation Program. This program, which was adopted when MPWMD certified its

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<sup>35</sup> Partial Settlement Agreements as to Water and Wastewater Issues at 8-9.

<sup>36</sup> Joint Assigned Commissioner and Administrative Law Judges’ Ruling Setting Special Procedures to Develop Record on Conservation and Rationing Programs, May 9, 2008.

<sup>37</sup> Assigned Commissioner’s and Administrative Law Judge’s Ruling and Scoping Memo, June 27, 2008.

<sup>38</sup> Statutes of 1977, Chapter 527, as amended (found at West’s California Water Code Appendix, Chapters 118-1 to 118-901 (hereafter referred to as “MPWMD Law”).

Water Allocation Program Environmental Impact Report in November 1990, is designed to lessen the environmental impacts that community water use and Cal-Am's operations have on the Carmel River and Seaside Groundwater Basins.

In general, the Carmel River environment is in better condition today than it was 17 years ago. This improvement is evidenced by biological/hydrologic indicators such as consistent steelhead adult spawner counts of several hundred fish in recent years as compared to zero to five fish per year when the Mitigation Program began in 1991; improved densities of juvenile steelhead in quantities that reflect a healthy seeded stream; consistently increased bird diversity in MPWMD restoration project areas compared to control areas; fewer miles of dry river in summer and fall than in the past; and higher water tables in the Carmel Valley alluvial aquifer at the end of the water year.

The comprehensive MPWMD Mitigation Program is an important factor responsible for this improvement. Direct actions such as fish rescues and rearing, and riparian habitat restoration enable species to survive and reproduce. Indirect action such as conservation programs, water augmentation, ordinances/regulations and cooperative development of Cal-Am operation strategies result in less environmental impact from human water needs than would occur otherwise. MPWMD's comprehensive monitoring program provides a solid scientific data baseline, and enables better understanding of the relationships between weather, hydrology, human activities and the environment.

Despite these improvements, challenges still remain due to human influence on the river. The steelhead and red-legged frog remain listed as threatened species under the federal Endangered Species Act. Several miles of the river still dry up each year, harming habitat for fish and frogs. The presence of the two existing dams, flood plain

development and water diversions to meet community needs continue to alter the natural dynamics of the river. Stream bank restoration projects may be significantly damaged in large winter storm events, and some people continue to illegally dump refuse into the river or alter their property without the proper permits. Thus, the Mitigation Program (or a comprehensive effort similar to it) will be needed as long as significant quantities of water are diverted from the Carmel River and people live in close proximity to it.

A. Water Resources

Streamflow and precipitation data continue to provide a scientific basis for management of the water resources within the MPWMD boundary. These data continue to be useful in Carmel River Basin planning studies, reservoir management operations, water supply forecast and budgeting, and defining the baseline hydrologic conditions of the Carmel River Basin. MPWMD's streamflow monitoring program continues to produce high quality data in a cost-effective manner.

B. Steelhead Resource

Monitoring conducted by MPWMD shows that the Carmel River steelhead population has recovered from remnant levels that prevailed as a result of the last drought and past water supply practices. Since 1992, the spawning population has recovered from a handful of fish to levels approaching 900 adults per year as counted at San Clemente Dam. Monitoring of the juvenile population at several sites along the main stem Carmel River below Los Padres Dam shows that the population is recovering from low densities during the 1989-91 drought period (ranging below 0.50 fish per foot [fpf] of stream) to levels frequently ranging above 1.00 fpf, values that are typical of well-stocked steelhead streams.



A recent challenge that may remain for some years is the potential effects of substantive physical and operational changes to San Clemente Dam required by the California Department of Water Resources, Division of Safety of Dams (DWR/DSOD), including possible removal of the dam. The most significant issue is the effect of released sediment from the reservoir on downstream river habitat, proper functioning of MPWMD's Sleepy Hollow Steelhead Rearing Facility, and downstream property owners (flood elevations).

C. Riparian Corridor

The Carmel River is showing many signs of recovery after the drought and flood events during the 1990s that impacted property owners, threatened species, and riparian habitat. Fine material (silt and sand) that entered the main stem during floods in 1995 and 1998 has, for the most part, been washed downstream of River Mile 2 (measured from the ocean) leaving behind a more complex channel with diverse habitat and a richer riparian community. Areas with perennial flow (upstream of Schulte Bridge) or a high groundwater table, such as downstream of Highway 1, have experienced vigorous natural recruitment in the channel bottom, which has helped to stabilize streambanks and diversify aquatic habitat.

In these areas, natural recruitment has led to vigorous vegetation encroachment that, in some areas, may constrict high flows and threaten bank stability. MPWMD continues to monitor these areas closely and to develop a management strategy to balance protection of native habitat with the need to reduce erosion potential.

Restoration project areas sponsored by MPWMD since 1984 continue to mature and exhibit more features of relatively undisturbed reaches, such as plant diversity and

vigor, complex floodplain topography, and a variety of in-channel features such as large wood, extensive vegetative cover, pools, riffles, and cut banks. Areas that were repaired after the 1995 and 1998 floods are still developing these natural features. In part, the location and geometry of the projects constrain the rate of progress toward a fully restored stream channel (i.e., several are located in highly developed, narrow sections of the river impacted by groundwater extraction).

D. Carmel River Lagoon

MPWMD continues to support and encourage the ongoing habitat restoration efforts in the wetlands and riparian areas surrounding the Carmel River Lagoon. These efforts are consistent with goals that were identified in the Carmel River Lagoon Enhancement Plan, which was partially funded by MPWMD.

MPWMD expanded its long-term monitoring around the lagoon in 1995 in an attempt to determine if the reduction in freshwater flows due to ground water pumping upstream might be changing the size or ecological character of the wetlands. Demonstrable changes have not been identified. Because of the complexity of the estuarine system, a variety of parameters are monitored, including vegetative cover in transects and quadrats, water conductivity, and hydrology.

MPWMD's user fee was first enacted in 1983. The bulk of the monies collected are used for mitigation efforts such as those enumerated above on the Carmel River to offset adverse environmental effects from pumping activities. Currently, 7.125% is used

expressly for mitigation activities and 1.2% for MPWMD's Aquifer Storage and Recovery ("ASR") costs.<sup>39</sup>

E. Prior Commission Recognition of MPWMD's User Fee

In Decision 94-03-015, the Commission reviewed a complaint filed by a Cal-Am customer who objected to certain surcharges and administrative fees. The non-CPUC administrative fee in question was MPWMD's user fee, then at 7.125%. The Commission reviewed MPWMD Ordinance No. 61, passed in July, 1992, amending the user fee to 7.125%, and noted that Cal-Am "assesses on each bill a MPWMD fee of 7.125%, which it remit to MPWMD." The Commission deferred interpretation of the ordinance to MPWMD.

Since the entry of SWRCB Order 95-10, Cal-Am is responsible for implementing all measures in the MPWMD Mitigation Program for its Water Allocation Program "not implemented by MPWMD."<sup>40</sup> As a public agency, MPWMD has provided these measures and is prepared to continue providing them at a cost below that of Cal-Am.<sup>41</sup>

Whether Commission procedures require authorization for Cal-Am to collect the user fee from its customers and remit it to MPWMD is not known to MPWMD. However, it is apparent that the Commission is aware of the fee and recognizes MPWMD's authority to enact it and for Cal-Am to collect it.

If official recognition is required, MPWMD respectfully requests the Commission make the appropriate findings in this proceeding. Should the Commission decline such

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<sup>39</sup> ASR enables excess winter flows from the Carmel River to be extracted and stored in the Seaside Groundwater Basin for use during the summer months. This reduces pumping on the river as directed by federal and state fisheries agencies.

<sup>40</sup> SWRCB Order 95-10, Ordering Paragraph 11.

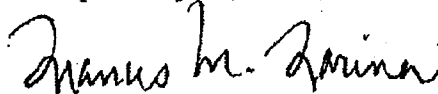
<sup>41</sup> MPWMD is not organized for profit, requires no return on equity, and pays no taxes. These savings accrue to the benefit of Cal-Am and its customers.

authorization after finding that it is required, MPWMD would proceed to assess the fee directly against Cal-Am.

**IX. CONCLUSION**

For the reasons stated above, MPWMD asks that its recommendations be adopted.

Respectfully submitted,



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**MONTEREY PENINSULA WATER  
MANAGEMENT DISTRICT**


Date: December 8, 2008

U: MPWMD-Main/PUC - 2008 GRC (Monterey District) A.08-01-027/MPWMD Opening Brief

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the **OPENING BRIEF OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT** on all known parties in A.08-01-027, et al. via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address.

Executed at Pacific Grove, California on December 8, 2008

  
\_\_\_\_\_  
Wanda Gooch

## SERVICE LIST

A.08-01-023, A.08-01-024, A.08-01-027

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