

**EXHIBIT 21-A**

**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 12-04-019  
(Filed April 23, 2012)

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT  
ON DESALINATION PLANT RETURN WATER**

**[SETTLEMENT AGREEMENT ATTACHED]**

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In accordance with Article 12 of the Rules of Practice and Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), California-American Water Company (“California American Water”), Coalition of Peninsula Businesses (“CPB”), LandWatch Monterey County (“LandWatch”), the Monterey County Farm Bureau (“MCFB”), the Monterey County Water Resources Agency (“Agency”), the Monterey Peninsula Regional Water Authority (“Authority”), Planning and Conservation League Foundaton (“PCL”), and the Salinas Valley Water Coalition (“SVWC”) (collectively, the “Settling Parties”)<sup>1</sup> hereby respectfully move the Commission to approve the Settlement Agreement on Monterey Peninsula Water Supply Project (“MPWSP”) Desalination Plant Return Water (“Return Water Settlement”).<sup>2</sup> The Settling Parties executed and entered into the Return Water Settlement on June [ ], 2016, for the purpose

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<sup>1</sup> Monterey Peninsula Water Management District (“MPWMD”) intends to join the Settlement Agreement upon formal delegation of authority to do so, which is anticipated to be granted by the MPWMD board of directors at its June 20, 2016 regular board meeting. Monterey Regional Water Pollution Control Agency (“MRWPCA”) also intends to join the Settlement Agreement upon formal delegation of authority to do so, which is anticipated to be granted by the MRWPCA board of directors at its June 27, 2016 regular board meeting.

<sup>2</sup> California American Water files this response on behalf of the above-named parties and provides electronic signatures in accordance with Rule 1.8 of the Commission’s Rules of Practice and Procedure.

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of resolving certain issues presented in the above-captioned proceeding. The Return Water Settlement is appended hereto as Exhibit A. Pursuant to Rule 12.1(a) and an extension granted by the assigned Administrative Law Judge on May 12, 2016, this Motion is timely.<sup>3</sup> The Settling Parties also convened a telephonic settlement conference on May 6, 2016, after notice of that conference was provided to all parties on April 29, 2016, thus complying with Rule 12.1(b).

### **I. PROCEDURAL BACKGROUND**

California American Water filed Application (“A.”) 12-04-019 (the “Application”) on April 23, 2012, for Commission approval to implement the MPWSP and for authorization to recover the costs associated with the MPWSP in rates. On September 13, 2013, the then-Assigned Commissioner, Michael R. Peevey,<sup>4</sup> granted California American Water’s motion to bifurcate the proceeding into two phases, which have been conducted on parallel tracks. Evidentiary hearings on Phase 1 and Phase 2 issues were held on April 11 through 15, 2016. On April 18, 2016, eighteen parties filed a joint motion requesting the Commission issue a separate Phase 2 decision, which joint motion was conditionally granted by Assigned Commissioner and Administrative Law Judge’s Ruling on April 25, 2016. The April 25, 2016 Ruling also adopted a schedule for future testimony, hearings and briefing on issues relevant to the development of two alternative water sources that would precede operation of the full-scale MPWSP (assuming the Commission eventually approves the MPWSP).

During the pendency of the proceeding described above, a controversy arose regarding the planned production of source water for the MPWSP’s desalination plant, on one hand, and the relationship of such production to the anti-export provisions of the Monterey

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<sup>3</sup> The Return Water Settlement is submitted after the prehearing conference, held on April 11, 2016. By e-mail ruling, the assigned Administrative Law Judge granted the May 11, 2016 Joint Motion Requesting Extension of Time to Submit Settlement Agreements and extended the deadline for submittal of Phase 1 settlement agreements to the Commission from May 15, 2016 (30 days following the last day of Phase 1 evidentiary hearings) until June 14, 2016.

<sup>4</sup> Commissioner Catherine J.K. Sandoval is the current Assigned Commissioner.

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County Water Resources Agency Act (“Agency Act”) and to Salinas River Groundwater Basin (“SRGB”) conditions and groundwater rights of the SVWC’s and MCFB’s members, on the other hand.

### **II. OVERVIEW OF THE RETURN WATER SETTLEMENT**

The MPWSP includes a desalination plant that will provide a potable water supply for California American Water’s Monterey Peninsula service area. Source water for the desalination plant will be generated 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 SRGB).

As part of the MPWSP, California American Water has proposed to make available for delivery “Return Water” equal to the percent of SRGB groundwater in the total source water production, as distinguished from seawater in the source water. The Settling Parties propose that California American Water deliver Return Water to the Castroville Community Services District (“CCSD”) and to the Castroville Seawater Intrusion Project (“CSIP”) to satisfy its Return Water obligations. Return Water deliveries will be made in accordance with the terms, conditions, and general principles contained in the Return Water Settlement and separate Return Water Purchase Agreements executed between California American Water as seller and CCSD and the Agency, respectively, as purchasers of Return Water.

The major aspects of the Return Water Settlement are as follows:

#### **A. Return Water Deliveries**

In the Return Water Settlement, the Settling Parties agree that California American Water will deliver Return Water to the SRGB for use in lieu of existing groundwater production. While the specific terms of the Return Water Settlement and separate Return Water Purchase Agreements will govern, California American Water’s Return Water obligations are summarized as follows:

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(1) Reserve Water. In order to ensure California American Water's compliance with the Agency Act, California American Water will deliver a quantity of "Reserve Water" in the amount of 175 acre-feet of Return Water to CSIP upon start-up of the MPWSP.

(2) Annual Return Water Obligation. California American Water's "Annual Return Water Obligation" will be calculated based on the percentage of SRGB groundwater in the MPWSP's total source water production. Section 2.c and Appendix D of the Return Water Settlement sets forth the formula by which the volume of the Annual Return Water Obligation will be determined.

(3) 30 Year Obligation. California American Water's obligation to make Return Water available for use in the SRGB to meet its Annual Return Water Obligation shall survive for a period of 30 years following MPWSP start-up. Upon termination, expiration or non-renewal of the Return Water Purchase Agreements, California American Water shall continue to make Return Water available for delivery to the SRGB for use in lieu of existing groundwater production, unless California American Water demonstrates that Return Water is not needed either to prevent legal injury to prior groundwater rights holders in the SRGB or to avoid significant adverse effects to SRGB groundwater resources.

(4) CCSD Delivery Volume. The Return Water Settlement provides that California American Water will make available for delivery to CCSD a "CCSD Delivery Volume" of 690 acre-feet of Return Water and triggers certain delivery obligations in the event that California American Water's Annual Return Obligation is determined to be greater than or less than the CCSD Delivery Volume. If California American Water's Annual Return Obligation *is less than* the CCSD Delivery Volume, California American Water will make potable water available for delivery in the amount of the difference between the Annual Return Water Obligation for that year and the CCSD Delivery Volume (the "Excess Water"). If California American Water's Annual Return Obligation *exceeds* the CCSD Delivery Volume, California American Water will make such surplus available for delivery to CSIP.

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(5) **Reporting.** California American Water will provide quarterly reports on the quantity of Return Water delivered to each recipient under the Return Water Settlement for the first two years of Return Water deliveries. For the subsequent three years, reports will be made on a semi-annual basis. Thereafter, California American Water will report to the Settling Parties on an annual basis.

### **B. Compliance with the Agency Act and protection of SRGB groundwater**

The Return Water Settlement expressly affirms California American Water's obligation to comply with the Agency Act. The Return Water Settlement also protects SRGB groundwater by returning water produced from the SRGB to SRGB groundwater users for use in lieu of existing SRGB groundwater production.

### **C. Reconciliation with Judicial or Regulatory Requirements**

In the Return Water Settlement, the Settling Parties acknowledge that a court or regulatory agency, including the Commission, could require California American Water to undertake other Return Water obligations. To avoid duplicative liability to California American Water and its ratepayers, the Return Water Settlement provides for the reduction of California American Water's obligation to make available the CCSD Delivery Volume where such duplication would otherwise occur.

### **D. Pricing**

The Return Water Settlement sets forth the formulas by which the pricing for Return Water and Excess Water are to be determined. In general terms, the rates CCSD will pay for Return Water and Excess Water are intended to represent, respectively: (1) the avoided costs to produce groundwater to meet customer demand; and (2) the marginal operation and maintenance costs for MPWSP to produce one acre-foot of potable water. CSIP will pay a rate for Return Water intended to represent the CSIP customers' marginal avoided cost for groundwater produced for use by the CSIP customers. The Return Water Settlement contains provisions for the annual review and update of these rates through Tier 2 Advice Letter filings.

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### **E. Service Area Extensions**

Through the Return Water Settlement, the Settling Parties agree that California American Water's certified service area for the Monterey County District shall be extended to include certain specified delivery points and territories necessary for California American Water to provide the deliveries and services contemplated by the Return Water Settlement. CCSD and CSIP will not be added to California American Water's Monterey County District.

### **F. Tariffs**

Appendix E of the Return Water Settlement contains a set of proposed tariffs intended to govern the rates and service for the provision of service to CCSD and the Agency, which may be adjusted from time to time.

### **G. CEQA**

The Return Water Settlement is expressly contingent on the completion of CEQA review. In the Return Water Settlement, the Settling Parties acknowledge that the lead agency and responsible agencies under CEQA will retain full discretion to decide whether to approve the commitments necessary or convenient for California American Water to meet the Annual Return Water Obligations.

### **H. Cooperation**

Through the Return Water Settlement, the Settling Parties agree to support California American Water negotiating and entering into Return Water Purchase Agreements substantially in the form attached to the Return Water Settlement as Appendix C. The Settling Parties further agree to support California American Water's ability to implement and update its tariffs to reflect the service area extensions described in Section II.D above through a Tier 2 Advice Letter. Additionally, the Return Water Settlement contains good faith meet and confer, as well as dispute resolution, provisions that are intended to reconcile conflicts, if any, in the negotiation of Return Water Purchase Agreements, specifically, and arising out of the Return Water Settlement, generally.



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### **III. BURDEN OF PROOF**

Rule 12.1(d) of the Commission's Rules requires that a settlement be "reasonable in light of the whole record, consistent with law, and in the public interest" in order to gain Commission approval. The Return Water Settlement meets that standard.

The Settling Parties met and discussed the contested issues in good faith, negotiated in defense of their respective positions, and considered various proposals to resolve the issues. Their discussion initially led to a Return Water Planning Term Sheet, submitted to the Commission on January 22, 2016. Negotiations to reach the Return Water Settlement followed that filing, occurring in March through May 2016. These two sets of negotiations led to the building of a consensus on the terms of the Return Water Settlement among a number of parties with disparate goals and perspectives. The Settling Parties believe that this comprehensive and inclusive process has generated a settlement document that reflects a fair and equitable resolution of the disputed issues and represents an appropriate compromise of their well-developed and vigorously-supported positions.

Moreover, the Return Water Settlement establishes a return water delivery arrangement that is in the public interest, in that it assures compliance with the Agency Act, delivers Return Water for beneficial use in the SRGB in a manner that is in lieu of groundwater pumping from the SRGB, and helps to address the public health and water supply challenges CCSD has experienced due to water quality degradation of its water supplies, primarily from increased salinity.

Accordingly, the Settling Parties respectfully submit that the Return Water Settlement, as Rule 12.1(d) requires, is reasonable in light of the whole record, consistent with law, and in the public interest.

### **IV. COMPLIANCE WITH RULE 12.1(b)**

Rule 12.1(b) requires parties to convene at least one settlement conference for the purpose of discussing settlements in the proceeding. Notice and an opportunity to participate must be afforded all parties. Such notice is required to be provided at least seven (7) days before

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a settlement is signed.

On April 29, 2016, counsel for California American Water notified all parties on the service list in this proceeding of the time and place for a settlement conference, which was convened by telephone on May 6, 2016 at 10:00 a.m. Representatives of both the Settling Parties and of many other parties to the proceeding participated in the settlement conference. Following lengthy settlement negotiations, the Settling Parties completed the execution of the proposed Return Water Settlement, in compliance with the rules for notice and opportunity for participation set forth above.

### **V. FURTHER PROCEDURES**

Rule 12.2 accords all parties the opportunity to file comments contesting all or part of a settlement within 30 days of the date that a motion for adoption of the settlement is served. Rule 12.3 provides for the setting of a hearing on a contested settlement.

As noted above, other parties to this proceeding did not execute the Return Water Settlement. However, as these non-settling parties expressed concerns over different issues than those resolved by the Return Water Settlement, the Settling Parties are hopeful that the non-settling parties will not contest the Return Water Settlement.

In the event that the non-settling parties file comments expressing concerns about the Return Water Settlement, the Settling Parties expect that there will be no disputed issues of material fact warranting an evidentiary hearing. In either case, if the Assigned Commissioner or the presiding ALJ wishes the Settling Parties to present one or more witnesses to testify in explanation or support of the Return Water Settlement, the Settling Parties are fully prepared and willing to do so.

### **VI. CONCLUSION**

As demonstrated above, the Return Water Settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Accordingly, the Settling Parties respectfully move for the Commission to approve and adopt the Return Water Settlement as

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attached hereto as Exhibit A, without modification, in the course of its decision in this proceeding.

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Dated: June 14, 2016

By: \_\_\_\_\_

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Dated: June 14, 2016

By: \_\_\_\_\_

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