

EXHIBIT 5-A

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November 1, 2007

TO: David Berger, General Manager
FROM: David C. Laredo, General Counsel
RE: Voluntary Payment to Watermaster Board

This memo addresses the matter that has been characterized by the Watermaster Board as “A Volunteer Financial Assessment Policy to Share the Cost of Providing Annual Administrative Support.”

As you are aware, the Watermaster Board has invited all Parties to the Seaside Groundwater Basin Adjudication to share the annual financial cost of administering the judgment entered in *California American Water Company v. City of Seaside*, Case No. M66343. The requested monetary contribution differs from both the requirements of Judge Randall’s court order, and from the terms of the Watermaster Board’s own Rules and Regulations.

The court decreed formula (Decision, page 34, line 13) provides that “The Budget Assessment for the administrative budget shall be assessed against each Producer (except those inn (sic) the Landowner Group) by multiplying the amount of the budget for the ensuing Administrative Year by the following percentages:

- (1) California American 83%
- (2) City of Seaside 14.4%
- (3) City of Sand City 2.6%.”

These same percentage shares for the Administrative Budget (California American – 83%, City of Seaside – 14.4%, and City of Sand City – 2.6%) are incorporated into Rule 6.3 of the adopted Watermaster Board Rules and Regulations.

The voluntary assessment is proposed “in the interest of fiduciary fairness” in accord with the Watermaster Budget and Finance Committee recommendation. No facts are stated in support of this request to show the public purposes to be accomplished by this contribution.

As a part of deciding whether or not the Monterey Peninsula Water Management District should make this voluntary contribution, the District must be careful to avoid making a gift of funds. Article XVI, Section 6 of the California Constitution prohibits making a gift of public funds, providing that public entities,

“shall have no power to give or to lend, or to authorize the giving or lending, of

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the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever;”

If the voluntary payment is not made, as requested, the Watermaster Board has stated “If any party chooses not to voluntarily pay the assessment, the current court decreed formula would continue for the amount of that party’s calculated assessment.” Accordingly, California American Water would be required to bear 83% of the District’s unpaid share. Voluntary payment could be construed to constitute a pledge of credit or payment by the District of the liabilities of a for-profit utility.

Without a clearly identified factual basis, supported by findings of the Board, this contribution could be deemed to be a gift of funds in contravention of California Constitution Article XVI, Section 6. Should the board agree to make the voluntary contribution as requested, the board should identify facts supporting the public purposes achieved by that payment.