

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN APPLICATION 10-01-012

This is the proposed decision of Administrative Law Judge (ALJ) Maribeth Bushey. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Bushey at [mab@puc.ca.gov](mailto:mab@puc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

    /s/ KAREN V. CLOPTON    

Karen V. Clopton, Chief  
Administrative Law Judge

KVC:jyc

Attachment

Decision **PROPOSED DECISION OF ALJ BUSHEY** (Mailed 12/21/2010)

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

In the Matter of the Application of California-American Water Company (U210W) for an Order Authorizing the Collection and Remittance of the Monterey Peninsula Water Management District User Fee.

Application 10-01-012  
(Filed January 5, 2010)

**DECISION DENYING APPROVAL OF SETTLEMENT AGREEMENT AND DISMISSING APPLICATION**

**Summary**

This decision denies the application of California-American Water Company for Commission authorization to collect and remit a “user fee” for the Monterey Peninsula Water Management District and finds that the settlement agreement supporting the application fails to meet the Commission’s standards for approving settlement agreements. It also dissolves the memorandum account for interim user fee payments.

**Background**

In Decision (D.) 09-07-021, the Commission authorized California-American Water Company (Cal-Am) to increase water rates in its Monterey district by over 40% for the three-year rate case cycle. In that Decision, the Commission also acted on a request from the Monterey Peninsula Water Management District (Management District) to authorize Cal-Am to collect and

remit to the Management District a “user fee” set at 8.325% of all meter and water charges billed by Cal-Am in the Monterey district.<sup>1</sup>

The Commission began its analysis of the Management District’s request by noting that the substantial rate increase in Cal-Am’s Monterey District imposed “significant financial burdens . . . on residential and business customers” and required that all “proposed expenditures be demonstrably necessary for reliable service and provide value to customers.” With this context of closely scrutinizing increased customer charges, the Commission expressed concern that “Cal-Am’s customers may be paying user fees to the Management District for projects that may not be necessary or cost effectively performed by the Management District.” The Commission noted that the “Management District has a variety of funding mechanisms at its disposal over which this Commission has no jurisdiction,” specifically:

The Management District is authorized to issue bonds, assess charges for groundwater enhancement facilities, levy assessments on real property and improvements, and fix, revise, and collect rates and charges for the services, facilities, or water furnished by it. For general administrative costs and expenses, as well programs of general benefit, the Management District is authorized to levy a second property tax of up to \$0.10 per \$100 in assessed value.<sup>2</sup>

Turning its attention to the Management District’s user fee proposal, the Commission observed that the “Management District’s choice of a percentage assessment, rather than a fixed amount, has the effect of substantially increasing

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<sup>1</sup> The Commission’s discussion of the Management District’s fee proposal is found at 116 through 123 of mimeo version of D.09-07-021. All quotations in this section are to those pages.

<sup>2</sup> D.09-07-021, *mimeo* at 117, quotations and citations omitted.

the total amount collected by the Management District for the identified projects as Cal-Am's rates increase." The Commission noted that the user fee generated \$1,860,000 in revenue during fiscal year 2006. With approximately \$42 million in operating revenues adopted in D.09-07-021 for test year 2009, at the requested level of 8.325%, the proposed fee would generate about \$3,500,000 for the Management District, an 88% increase from 2006.

The Commission next expressed concern with the incomplete explanation offered by the Management District for all components of the proposed user fee. The Commission stated that of the current 8.325% fee, 7.125% is attributed to Carmel River mitigation measures, which was explained, but the Management District offer no explanation for the remaining 1.2% which is for the Aquifer Storage and Recovery project costs.

In light of these concerns with Management District's user fee proposal, the Commission pointed to an alternative approach that Cal-Am and the Management District have previously used to ensure cost-effective coordination on a joint project for water conservation programs. This joint project approach, which included recovery of the Management District's costs from Cal-Am's customers by a surcharge placed on the customers' bills, was approved by the Commission in D.06-11-050.

The Commission concluded its discussion of the Management District's user fee by emphasizing that to the extent Cal-Am and its ratepayers are legally responsible for Carmel River Mitigation or Aquifer Storage Projects, the Commission expected Cal-Am to meet that "responsibility in an efficient and effective manner either by its own actions or as a joint project with the Management District." To achieve this objective, the Commission directed Cal-Am to (1) meet and confer with the Management District regarding "cost

effective and efficient methods for Cal-Am to fully meet any responsibility it may have for the Mitigation Program and the Aquifer Storage and Recovery project” and to particularly discuss the possibility of implementing them as joint projects, and to then (2) file an application setting forth any new method of collecting funds to support Management District program costs properly assignable to Cal-Am, whether performed by Cal-Am or the Management District.

The Commission also authorized Cal-Am to file an Advice Letter for a Memorandum Account to record costs that are Cal-Am’s responsibility on an interim basis.

Cal-Am filed Advice Letter No. 785-A that established the Monterey Peninsula Water Management District User Fee Memorandum Account. The Memorandum Account tracks costs for projects which Cal-Am has proper responsibility for and has funded, and that are performed by the Management District. The Memorandum Account was made effective July 20, 2009.

### **Description of the Application**

On January 5, 2010, Cal-Am filed this application seeking Commission authorization to “collect from the Company’s Monterey District customers and remit to the Monterey Peninsula Water Management District the Monterey Peninsula Water Management District User Fee at the rate set by the Monterey Peninsula Water Management District’s Board of Directors.”<sup>3</sup> The application also sought Commission authorization to collect from its Monterey District customers all amounts recorded in its Monterey Peninsula Water Management District Memorandum Account, which it estimates will total over \$5 million if

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<sup>3</sup> Application at 19.

the application is pending for 18 months. In support of its application, Cal-Am provided testimony from its Director of Rates and Regulation and its Vice President of Engineering.

In the application, Cal-Am contended that the proposed “percent of revenue” basis for calculating the user fee will not impose “a significant financial burden” on its customers because the Management District adopts its budget in a “transparent public process” and that the California Constitution prohibits the Management District from collecting more than it spends on a project.<sup>4</sup> Cal-Am also argued that the Commission should abstain from reviewing the Management District’s user fee as it does with other local government fees and taxes, or should only review it to ensure “that utility customers are not paying for duplicative work” or activities that “run counter to the Commission’s comprehensive scheme for regulating utilities.”<sup>5</sup>

In its application, Cal-Am stated that the State Water Resources Control Board has imposed a “contingent obligation” on Cal-Am to implement the Management District’s Carmel River Mitigation Program, should the Management District ever cease doing so.<sup>6</sup> Cal-Am stated that in its 1995 decision, the Board expressed “accolades” for the Management District’s Fisheries Mitigation Program, and the Riparian Vegetation and Associated Wildlife Mitigation Program.

The Management District also supplied supporting testimony for Cal-Am’s application. The testimony of the Management District’s General

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<sup>4</sup> Application at 6.

<sup>5</sup> Application at 12.

<sup>6</sup> Application at 10.

Manager explained the legislative creation of the Management District and its various powers.

The General Manager's testimony also described the 1990 process that produced the Carmel River Mitigation Program. The testimony included the 2007-2008 Annual Report for the Mitigation Program, dated September 2009. This report included the only cost data presented for the Mitigation Program. In the Executive Summary section, the report states that:

“a trend analysis shows that the overall costs remained fairly constant (about \$1.3 - \$1.7 million) for many years, except for FY 2000, when an additional \$981,786 was added to the capital expense program to fund one half of the acquisition cost of the District's new office building, bringing the expenditure total over \$2.6 million for that year. More recently, expenditures continue to trend upward: FY 2005-06 expenditures were \$3.17 million; and FY 2006-07 were \$3.29 million. . . . The Mitigation Program Fund Balance as of June 30, 2008, was \$999,898.”<sup>7</sup>

Section XIII of the annual report is entitled “Summary of Costs for the Mitigation Program – July 2007 through June 2008” and consists of one page of text followed by one table showing the “cost breakdown.” The table states that: “This report does not include the Rebate Program, salaries for the Conservation Office Staff or the project expenditures for ‘Ordinance Enforcement’ even though they were booked as part of the Mitigation Program.”

The table shows seven cost components, broken down into “personnel costs,” “operating expenses,” “project expenses” and “fixed asset acquisitions.” The total expenditure amount shown is \$3,671,996, with personnel comprising

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<sup>7</sup> Darby testimony at Exhibit 3, at I - 14.

the largest amount, \$1,660,034. The second largest amount shown is just under \$1 million for unspecified “project expenses” for “water supply.” Setting aside that \$1 million expenditure, the most expensive cost component is “administrative” at \$689,235. Chapter VI discusses the specific program elements for “water supply” and adopts two specific goals: (1) determine and participate in long-term water supply solutions, which focuses on participation in the various forums for the Coastal Water Project and Community Outreach; and (2) the Aquifer Storage and Reclamation Project, specifically to complete Phase I and continue work on the next Phase.

The testimony of the Management District’s Chief Financial Officer explains the history and derivation of the user fee. The Chief Financial Officer stated that the Management District and Cal-Am agreed that the “device of a water user fee was the most equitable” means to fund the District’s Mitigation Program, and Cal-Am required that any such revenue collection means “would not put the utility at risk.”<sup>8</sup> The testimony states that the Management District Board set the current user fee amount of 7.125% for the Mitigation Program in a 1992 Ordinance, and that the Board set the Aquifer Storage Project user fee at an additional 1.2% in 2005 based on the Board’s determination that the Aquifer Storage Project would be “funded on a pay-as-you go basis rather than via debt financing.”

Although not included in the testimony, the Management District’s Ordinance No. 67, adopted December 8, 1992, with a purpose to “increase user fee revenue available for the Five Year Mitigation Program” retains the total

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<sup>8</sup> Dickhaut Testimony at 3.



7.125% fee but includes the reallocated 1.11% from conservation programs. The ordinance states that the total 7.125% user fee “shall not be exclusively dedicated to a single activity or program, but instead may be allocated at the discretion of the Board provided that all such expenses shall confer benefit and/or service to existing water users.”<sup>9</sup>

Similarly, the Management District’s Ordinance No. 123, adopted September 13, 2005, sets an additional user fee component of 1.2% to fund Aquifer Storage and Recovery Project and related water supply expenses. That ordinance, like the Mitigation Program ordinance, retains the Board’s discretion to “allocate” the proceeds from this user fee to any endeavor that “confers benefit and/or service” to Cal-Am customers.<sup>10</sup>

Cal-Am provided testimony from its engineer and the Management District’s engineer showing that the Aquifer Storage and Recovery Project is a joint project between the two entities to store excess winter Carmel River water in the Santa Margarita aquifer for use during the summer. Generally, Cal-Am is providing improvements to its water main distribution system to enable the conveyance of water through its system to wells owned by the Management District for injection into the aquifer and then for the extraction and conveyance of the water back in Cal-Am’s system.<sup>11</sup>

The Management District submitted testimony showing that it owns certain water rights that are essential to the Aquifer Storage and Recovery Project and that it has constructed two wells and related facilities that comprise Phase I

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<sup>9</sup> Management District Ordinance 67, Section 3.C. (December 8, 1992.)

<sup>10</sup> Management District Ordinance 123, Section 2.

<sup>11</sup> Testimony of Schubert at 4 - 8.

of the Aquifer Storage and Recovery Project.<sup>12</sup> The testimony also explained that the entire project is operated and managed pursuant to an agreement between Cal-Am and the Management District dated March 28, 2006. The testimony included cost data showing that Phase I testing and construction costs were \$4,176,931, exclusive of staff time and permitting costs, with \$1,620,300 in costs remaining, and that the projected costs for Phase II are \$5,042,400.<sup>13</sup> The projected firm yield of Phase I is 920 acre-feet/year, with Phase II estimated to yield an additional 1,000 acre-feet/year.<sup>14</sup>

With approximately \$42 million in operating revenues adopted in D.09-07-021 for test year 2009, at the requested level of 1.2%, the Aquifer Storage and Recovery Project component of the user fee would generate about \$504,000 per year for the Management District.

### **Description of the Settlement Agreement**

On May 18, 2010, Cal-Am, the Management District and the Division of Ratepayer Advocates filed their joint motion to approve settlement agreement. The settlement agreement stated that the parties agreed that:

1. The Management District's Carmel River Mitigation Program is non-duplicative, and reasonable and prudent.
2. The Management District's Aquifer Storage and Recovery Program is non-duplicative, and reasonable and prudent.
3. The Commission should authorize Cal-Am to collect and remit the user fee to the Management District at the rate set by the Management District.

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<sup>12</sup> Testimony of Oliver at 4 - 11.

<sup>13</sup> *Id.* at Oliver Exhibits 6, 7, and 11.

<sup>14</sup> *Id.* at 7 and 13.

The settlement agreement also stated that the interest rate to be assessed on the Memorandum Account balance should be 5%. The parties also agreed that the Commission should receive into evidence all testimony that has been served in this matter.

## **Discussion**

### **Standard of Review – Settlement Agreement**

In this application, Cal-Am bears the burden of proof to show its requests are just and reasonable and the related ratemaking mechanisms are fair. In order for the Commission to approve any proposed settlement, the Commission must be convinced that the parties have a sound and thorough understanding of the application, the underlying assumptions, and the data included in the record. This level of understanding of the application and development of an adequate record is necessary to meet our requirements for considering any settlement.<sup>15</sup> These requirements are set forth in Rule 12.1 of the Commission's Rules of Practice and Procedure, which states, in pertinent part:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

For the reasons stated below, we are unable to find that the provisions of the settlement agreement are consistent with Rule 12.1.

### **Reasonable in Light of the Record as a Whole**

The record consists of Cal-Am's application with supporting testimony.

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<sup>15</sup> In the Matter of the Application of Park Water Company for Authority to Increase Rates Charged for Water Service by \$1,479,580 or 5.99% in 2010, \$503,371 or 1.91% in 2011, and \$643,923 or 2.40% in 2012, D.09-12-001, mimeo at 19 -20.

In its application, Cal-Am seeks Commission authorization for “the device of a user fee” that will be “collected at rates set by the District’s Board of Directors” for the Management District to fund any endeavor that the Management District determines will confer “benefit and/or service” to Cal-Am’s customers. Cal-Am justifies this request as “an appropriate means to fund projects, (i.e., the Aquifer Storage and Recovery Program and Mitigation Program) currently performed by the District but properly or ultimately the responsibility of the Company.”<sup>16</sup>

As described above, however, Cal-Am’s user fee proposal is not based on the costs of these two programs and includes no ratemaking or programmatic limitations. Consequently, the record in this proceeding is not sufficient for settling parties to meet their burden of justifying the Commission’s approval of the settlement agreement.

Specifically, the record shows that the Management District’s presentation on the Aquifer Storage and Recovery Project includes this Project in both the Mitigation Program for which it seeks an assessment of 7.125%, and as a separate component for another 1.2%. The Management District’s Chief Financial Officer stated that the Management District Board has decided to fund this project on a “pay-as-you-go” basis rather than incurring debt. While the Management District’s decision has the advantage of avoiding debt costs, such a decision results in current customers paying the full costs of a project that is expected to provide service for many years. This is not consistent with the Commission’s ratemaking standards.

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<sup>16</sup> Application at 5.

Turning to the Carmel River Mitigation Program, Cal-Am's presentation does little to respond to the issues identified by the Commission in D.09-07-021. Cal-Am continues to seek a percentage assessment but offers no cost-justification for the proposed 88% increase in annual collections since 2006. The Management District's own report shows that annual costs were stable at \$1.3 to \$1.7 million for "many years" but in recent years have more than doubled that, without explanation. The exception to the stable cost levels was in 2000 when the Management District used nearly a million dollars of Mitigation Program revenues to fund half its new office building.

Cal-Am's application raises several issues, most notably several instances where duplication in effort and accounting may occur. In addition to the apparent double-counting of the Aquifer Storage and Recovery Project as both a part of the user fee Mitigation Program costs and also to substantiate a stand-alone additional component of the user fee, "water supply augmentation" is a major cost component of the Management District's Mitigation Program which largely focuses on the Coastal Water Project. Cal-Am, however, is actively involved in the Coastal Water Project, such that the Management District need not act on Cal-Am's behalf. The Management District's Mitigation Program report also indicates that it does not include the "rebate program, salaries for the Conservation Office Staff or project expenditures for 'ordinance enforcement'" even though such costs are "booked as part of the Mitigation Program." The Commission, however, has approved and separately funded a joint conservation program with the Management District which would appear to include at least some of the conservation costs. Finally, Cal-Am asserts that National Oceanic

and Atmospheric Administration (NOAA) steelhead mitigation activities<sup>17</sup> focus on impacts to steelhead, and that these activities have no “overlap” with the Management District’s activities which also focus on the steelhead fishery but the record shows no analytical explanation for how endangered species costs for steelhead are divided between the two agencies or any evidence that Cal-Am is in any way managing these costs for ratepayers. With the total costs for the two programs approaching \$5 million a year, Cal-Am must demonstrate necessity and cost-effectiveness of both components because Cal-Am has no incentive to ensure cost control by these two agencies if the Commission blindly allows these charges to be passed along to ratepayers.

To find a settlement agreement reasonable in light of the record, the Commission must conclude that the parties used their collective experience to produce appropriate, well-founded recommendations. As set forth above, the record contains insufficient cost justification, several instances of apparent double-counting, and ratemaking treatment at odds with our standards. Accordingly, we are unable to conclude that the settlement agreement is reasonable in light of the record.

### **Consistent With Law and Prior Commission Decisions**

The parties assert that the Mitigation Program component of the User Fee is consistent with applicable law because “the Mitigation Program . . . is required

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<sup>17</sup> In Advice Letter No. 825-A, Cal-Am recently sought Commission authorization to recover from customers \$3.5 million paid to the NOAA for “Endangered Species Act mitigation activities on the Carmel River.”

by the California Environmental Quality Act.”<sup>18</sup> The parties offered no justification for the other components of the proposed user fee.

The Commission is charged with the responsibility of ensuring settlement agreements are consistent with other applicable law and prior Commission decisions. The Public Utilities Code requires that all rates received by a public utility be just and reasonable: “no public utility shall change any rate . . . except upon a showing before the Commission, and a finding by the Commission that the new rate is justified.”<sup>19</sup>

In D.09-07-021, the Commission indicated its willingness to include in the Monterey District revenue requirement all costs of the Carmel River Mitigation Program and Aquifer Storage and Recovery Project that are properly Cal-Am’s responsibility. The Commission required, however, that such costs must be shown to be necessary and cost-effectively performed by the Management District. As presented in the application and carried forward in the settlement agreement, Cal-Am’s justification for assessing these costs to its ratepayers does not demonstrate that the Management District’s user fee meets the Commission’s standards.

As set forth above, the Commission explained its concerns regarding the Management District’s proposed “percent of revenue” basis for its user fee. Nevertheless, Cal-Am has presented an application which persists with such a proposal and offers no compelling justification. Cal-Am’s contention that the

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<sup>18</sup> Joint Motion to Approve Settlement Agreement at 6.

<sup>19</sup> Pub. Util. Code §§ 451 and 454.

Management District's "transparent" budgetary process somehow obviates the Commission's concerns with a non-cost-based user fee is not persuasive.

Therefore, we conclude that the settling parties have failed to demonstrate that the settlement agreement is consistent with D.09-07-021.

### **The Public Interest**

For the reasons set forth above, we find that the user fee proposal as described in the application and settlement agreement is not in the public interest. The settling parties' motion for approval of the settlement agreement should, therefore, be denied.

### **Disposition of Cal-Am's Application**

The findings and conclusions in today's decision dispose of the substantive issues to be addressed in Cal-Am's application. As described above, the application does not address the issues with the Management District's proposed user fee set forth by the Commission in D.09-07-021.

No party has identified a disputed issue of material fact so no evidentiary hearings are necessary. Thus, we find that the record on this application can be closed and the matter determined at this time.

We conclude that the application does not address the issues raised in D.09-07-021. Therefore, we do not authorize Cal-Am to collect and remit the Management District's proposed user fee and this application should be dismissed.<sup>20</sup> Accordingly, the associated Monterey Peninsula Water

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<sup>20</sup> Cal-Am, in conjunction with the Management District, has presented coherent and credible testimony demonstrating that the Aquifer Storage and Recovery Project is a well-run joint project, complete with a joint management and operating agreement in effect since 2006. In D.09-07-021, the Commission strongly signaled its support for joint project arrangements as a means for the Commission to authorize ratemaking recovery

*Footnote continued on next page*



Management District User Fee Memorandum Account should also be dissolved and no rate recovery authorized.

This proceeding should be closed.

### **Cal-Am's Responsibilities Under Order No. WR 95**

The State Water Resources Control Board imposed the responsibility on Cal-Am to implement all measures in the "Mitigation Program for the District's Water Allocation Program Environmental Impact Report" not implemented by the Management District.<sup>21</sup> The 1990 Environmental Impact Report (EIR) document referenced in the Board's decision is attached to the Management District's General Manager's testimony in this proceeding, and was adopted by the Management District's Board in November 1990. The adopted mitigation measures are summarized at Exhibit 1 to that EIR and the following page, Exhibit 2 Table, contains cost estimates for each measure. The Mitigation Program summary in Exhibit 1 is substantially similar to the list set forth in Decision 95-10 in Section 6.2 "Water Allocation Mitigation Program," so we conclude that this is the Mitigation Program which the State Water Resources Control Board has made a contingent obligation of Cal-Am.

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for the costs of projects conducted by Cal-Am with the Management District, and pointed to the water conservation program authorized in D.06-11-050 as an example. Given the extant joint management and operating agreement and the existing Cal-Am memorandum account for its share of project costs, combining the Management District's costs for this project with Cal-Am's in a joint project agreement similar to that used by these same parties for joint water conservation programs would seem a convenient and certain means to fund the Aquifer Storage and Recovery Project. Cal-Am has not articulated a rationale for rejecting the joint project approach.

<sup>21</sup> State Water Resources Control Board Decision 95-10 at Ordering Paragraph 11.

The three headings for the mitigation measures are: fisheries, riparian vegetation and wildlife, and lagoon vegetation and wildlife. Exhibit 2 Table contains cost estimates for each measure, broken down into capital, \$442,700, and annual expenses, \$323,100.<sup>22</sup>

The EIR Exhibit 2 Table provides an ideal beginning point to prepare a budget for the Mitigation Program that is Cal-Am's responsibility, and is attached to today's decision for ease of reference. One way for Cal-Am to justify the amount of funding required to perform these three mitigation program elements is for Cal-Am to obtain up-to-date cost and budget data from the Management District specific to these three mitigation measures which are Cal-Am's contingent responsibility. Those data can then be used to update the Exhibit 2 Table as the basis for justifying a forward-looking rate mechanism to fund the three mitigation measures, should the Management District cease to implement these mitigation measures.

In D.09-07-021, the Commission emphasized that to the extent Cal-Am and its ratepayers are legally responsible for Carmel River Mitigation, the Commission expected Cal-Am to meet that "responsibility in an efficient and effective manner either by its own actions or as a joint project with the Management District." If the Management District ceases to perform these mitigation measures, then Cal-Am must prepare and implement a plan to meet this responsibility.

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<sup>22</sup> The table also includes \$6,000 for "aesthetics" which is not referenced in Order 95-10 as a Cal-Am obligation.

**Comments on Proposed Decision**

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

**Findings of Fact**

1. No party has identified a disputed issue of material fact.
2. Cal-Am must implement all measures in the "Mitigation Program for the District's Water Allocation Program Environmental Impact Report" not implemented by the Management District.
3. The Mitigation Program for the District's Water Allocation Program Environmental Impact Report is comprised of mitigation measures for fisheries, riparian vegetation and wildlife, and lagoon vegetation and wildlife.
4. The Management District's 2007-2008 Annual Report for the Mitigation Program shows that the Management District allocated nearly \$1 million of costs of its new office building to the Mitigation Program.
5. The Management District's 2007-2008 Annual Report for the Mitigation Program shows the Aquifer Storage and Recovery Project as a component of the user fee Mitigation Program costs and also as a stand-alone additional user fee.
6. Cal-Am is actively pursuing water supply augmentation through its Coastal Water Project and the Management District need not act on Cal-Am's behalf.

7. The rebate program, salaries for the Conservation Office Staff and project expenditures for ordinance enforcement are booked as part of the Mitigation Program, even though such costs are not included in the Management District's 2007-2008 Annual Report for the Mitigation Program. The Management District did not explain whether these booked costs are included in the user fee even though the Commission has approved and separately funded a joint conservation program with the Management District which may include some of the same costs.

8. The testimony supporting the application shows accounting treatment inconsistent with Commission ratemaking standards.

### **Conclusions of Law**

1. No evidentiary hearings are necessary. The testimony supporting the application should be received into evidence and the record on this application closed so that the matter can be determined at this time.

2. The settlement agreement is not reasonable in light of the record, consistent with the law, or in the public interest.

3. The settlement agreement should not be approved.

4. Cal-Am has not met its burden of justifying the proposed user fee for the Management District.

5. Application 10-01-012 does not meet the Commission's standards set out in D.09-07-021 and Cal-Am's application should be dismissed.

6. The Monterey Peninsula Water Management District User Fee Memorandum Account should be dissolved and the balance recorded in the account should not be included in revenue requirement or recovered from ratepayers in any way.

7. Cal-Am should file a Tier 1 advice letter to remove the memorandum account from the preliminary statement in Cal-Am's tariff.

**O R D E R**

**IT IS ORDERED** that:

1. The motion to approve the settlement agreement among California-American Water Company, the Monterey Peninsula Water Management District and the Division of Ratepayer Advocates is denied.

2. Application 10-01-012 is denied.

3. The testimony submitted in support of the application is received into evidence.

4. California-American Water Company must dissolve the Monterey Peninsula Water Management District User Fee Memorandum Account and not recover any amount recorded therein from ratepayers.

5. California-American Water Company must file a Tier 1 advice letter to remove the Monterey Peninsula Water Management District user fee memorandum account from the preliminary statement in California-American Water's tariff.

6. Application 10-01-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

