AGENDA

The next Watermaster Budget and Finance Committee meeting will be held on Wednesday, January 25 at 3:00 PM at the City of Sand City—City Council Chambers

*The public may comment on any item within the committee’s jurisdiction. Please limit comments to three minutes in length.*

**Action Item:**

1. **Discuss/Consider Recommendation to the Watermaster Board regarding California American Water’s Request to Allow a Credit for actual expenditures incurred in calendar year 2009 for pursuing the Coastal Water Project amounting to $5,425,799 to be used to offset the Watermaster Year 2010/2011 Overproduction Replenishment Assessment.**

2. **Discuss/Consider Recommendation to the Watermaster Board regarding the Memorandum of Understanding (MOU) Between the Monterey Peninsula Water Management District, The Marina Coast Water District, the City of Seaside and the Seaside Groundwater Basin Watermaster Regarding Water Used for Irrigation of Golf Courses.**

*If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.*
Below is the transmittal that is planned to be presented to the Board at the 2/1/12 meeting:

ITEM X.C. Calendar Year 2012  
2/1/2012

SEASIDE GROUNDWATER BASIN WATERMASTER

TO: Board of Directors

FROM: Laura Dadiw, Staff  
Approved by: Dewey D Evans, CEO

DATE: February 1, 2012

SUBJECT: California American Water Request for Credit against Replenishment Assessment

RECOMMENDATIONS:
The Watermaster Budget & Finance Committee recommends approving California American Water’s request to allow a credit for actual expenditures incurred in calendar year 2009 for pursuing the Coastal Water Project amounting to $5,425,799 to be used to offset the Watermaster Year 2010/2011 Over-production Replenishment Assessment.

DISCUSSION:
In January of 2009, California American Water and the Seaside Basin Watermaster (Watermaster) entered into a Memorandum of Understanding (MOU) in order to establish a process for implementing Section III.M.1.d of the Amended Decision. This Section authorizes California American Water to receive Replenishment Credits for water supply augmentation expenditures it contends has or will result in replenishment of the Basin.

In summary, the MOU provides that a claim for Replenishment Credits provided by California American Water shall be based upon expenditures for a water supply augmentation project that California American Water contends has or will result in Basin replenishment. The MOU further provides that the Watermaster shall grant California American Water’s requests for Replenishment Credits for years in which the Watermaster declares that water for Artificial Replenishment is not available. The granting of the request is subject to California American Water’s obligation to provide future Artificial Replenishment in an amount equal to the number of acre feet of Over-production for which California American Water receives Replenishment Credits. A copy of the MOU is attached.

California American Water has timely submitted its request for Replenishment Credits for Water Year 2011 which includes a detailed list of expenditures for a water supply augmentation project California American Water contends will result in replenishment of the Basin. The expenditures requested were approved by the California Public Utilities Commission (PUC) as reasonably incurred. A copy of California American Water’s request, including the decision of the PUC approving the expenditures, is attached.

Additionally, the Watermaster declared in December 2010 that water for Artificial Replenishment was not available for Water Year 2011.

California American Water representatives will be available at the January 25, 2012 Budget & Finance meeting to address any questions the committee may have regarding the request for Replenishment Credits.

ATTACHMENT: CAW Request for Credit Correspondence with expense listing and PUC approval.
January 13, 2012

Dewey Evans, Chief Executive Officer
Seaside Groundwater Basin Watermaster
2600 Garden Road, Suite 228
Monterey, CA 93940

SUBJECT: Request for Replenishment Assessment Credit

Dear Mr. Evans:

California American Water hereby submits its formal request for a Replenishment Credit in the amount of $5,425,799. We are requesting this credit be applied to the Seaside Basin Watermaster Year 2011 Overproduction Replenishment Assessment against California American Water that was transmitted by your January 10, 2012 invoice to California American Water.

The basis for this Replenishment Credit request is California American Water’s actual expenditures incurred in calendar year 2009 for pursuing the Coastal Water Project. The $5,425,799 expenditure amount was approved by the California Public Utilities Commission (“CPUC”) in its Decision 11-03-008, dated March 10, 2011 (copy attached). Also attached is a spreadsheet that breaks down this CPUC-approved expenditure amount by category. Detailed documentation of vendor invoices, labor costs, and other expenses corresponding to and supporting this $5,425,799 approved expenditure amount is available, if desired.

As you will likely recall, in January of 2009 the Seaside Basin Watermaster and California American Water executed a Memorandum of Understanding regarding Replenishment Credits (“MOU”). In accordance with the MOU, California American Water is submitting this request within 40 days of our receipt of the Watermaster’s notice of the amount of the Replenishment Assessment. Additionally, the MOU provides that the Watermaster “shall grant” California American Water’s request for a Replenishment Credit for years in which Artificial Replenishment Water is not available for purchase. Thus, we are requesting that you place California American Water’s request on the agenda for approval at the next Watermaster meeting.

Sincerely,

John Kilpatrick
Project Delivery Manager

Enclosures (2)

cc: Eric Sabolsice
    Lori Girard
## Summary of CPUC Approved Costs Charged to CWP in 2009

**CALIFORNIA AMERICAN WATER COMPANY**

**COASTAL WATER PROJECT**

**EXHIBIT ON 2009 EXPENSES**

<table>
<thead>
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<th>Line No.</th>
<th>Item</th>
<th>Vendor</th>
<th>2009</th>
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<td>Engineering &amp; Environmental</td>
<td>RBF Consulting</td>
<td>1,048,399.44</td>
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<td>Consulting, Engineering and PER/EIR Technical Support</td>
<td>Parsons Water &amp; Infrastructure, Inc.</td>
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<td>Design Engineering, Conveyance Facilities</td>
<td>ASR Systems, LLC</td>
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<td>Design Engineering, ASR Facilities</td>
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<td>Environmental Impact Report</td>
<td>RMC Water &amp; Environmental</td>
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<td>Desalination Study</td>
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<td><strong>Pilot Plant, O &amp; M</strong></td>
<td>Williams Scofemen Inc.</td>
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<td><strong>Pilot Plant, Laboratory</strong></td>
<td>Pacific Gas &amp; Electric Co</td>
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<td>Granite Construction, Darrell Varni Electric, L &amp; G</td>
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<td><strong>Pilot Plant Consultant Support</strong></td>
<td>Electric, Monterey Peninsula Engineering</td>
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<td><strong>Consulting, Water Quality Testing</strong></td>
<td>MWH America, Inc</td>
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<td><strong>Pilot Plant, Materials and Supplies</strong></td>
<td>Test America</td>
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<td><strong>Subtotal Construction &amp; PP Startup</strong></td>
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<td>Legal</td>
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<td><strong>Legal, Environmental</strong></td>
<td>Manatt, Phelps &amp; Phillips LLP</td>
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<td>Public Outreach &amp; Consulting</td>
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<td>CAW Labor, Overhead and Miscellaneous Expense</td>
<td>Company Labor &amp; Overhead</td>
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<td>Employee Expenses</td>
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<td>P-Card Expenditures</td>
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<td>Utility Plant Overhead</td>
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<td>Reclassified Charges</td>
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<td>AFUDC</td>
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<td>AWWSCE Charges</td>
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<td><strong>Subtotal Labor, Expense, Miscellaneous</strong></td>
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<td>Miscellaneous Charges</td>
<td>California Coastal Commission (Permit)</td>
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<td>Monterey County Health Department (Permit)</td>
<td>Marin County Water District</td>
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<td>Backtrail Employment Screening</td>
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<td>First Advantage OHS</td>
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<td>CIO Partners of Atlanta</td>
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<td>NEI Global Relocation</td>
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<td><strong>DRA Recommended Reduction to Line 44</strong></td>
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<td><strong>Subtotal Miscellaneous Charges</strong></td>
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<td><strong>Final Subtotal</strong></td>
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<td>GRAND TOTAL EXCLUDED</td>
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<td>GRAND TOTAL INTEREST</td>
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<td>GRAND TOTAL APPROVED</td>
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<td><strong>5,428,799.87</strong></td>
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</table>

Please note that the Final Subtotals reflected above do not include the specific costs from vendors that California American Water removed from its recovery request. A summary of these vendors and associated costs are reflected below:

**N/A**

Note: Dollars shown above for each year reflect amounts paid to vendor during the year. Work associated with the dollar amounts may have been performed at an earlier date (e.g., a January 2009 invoice, paid in 2009, may be for work done in 2008).

<table>
<thead>
<tr>
<th>Box A</th>
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<td>52</td>
<td><strong>Company Labor Exclusions</strong></td>
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<tr>
<td>53</td>
<td><strong>Subtotal Exclusions</strong></td>
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DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

   By today’s decision, we approve a Settlement Agreement entered into by the California-American Water Company (Cal-Am) and the Division of Ratepayer Advocates. We find that the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest, consistent with the requirements of Rule 12.1(d) of the Commission’s Rules of Practice and Procedure.

   Our approval of the Settlement Agreement authorizes Cal-Am to recover $5,425,799.87 for all Coastal Water Project costs incurred through December 31, 2009. This amount reflects disallowances totaling $6,421. Cal-Am will recover these costs from ratepayers through the Special Request 1 Surcharge Balancing Account authorized in Decision (D.) 06-12-040. The Settlement Agreement adopted today does not affect Cal-Am’s ability to recover preconstruction costs incurred after December 31, 2009 and tracked in the memorandum account approved in D.03-09-022.
2. Background

Decision (D.) 03-09-022 authorized California-American Water Company (Cal-Am) to establish a memorandum account to record costs associated with preliminary engineering studies, environmental studies, analysis of necessary permitting requirements, and development of cost estimates for the Coastal Water Project. D.06-12-040 authorized the Special Request 1 Surcharge Balancing Account to allow recovery of prudently incurred preconstruction costs.

On April 1, 2010, Cal-Am filed Application (A.) 10-04-004 requesting authorization to transfer a total of $5,432,220.87 in preconstruction costs for the Coastal Water Project that have been tracked in the authorized memorandum accounts to its Special Request 1 Surcharge Balancing Account for recovery from its ratepayers. On October 29, 2010, the Division of Ratepayer Advocates (DRA) served its Audit Report on California American Water Company’s Coastal Water Project 2009 Preconstruction Costs, recommending that Cal-Am’s request be reduced by $6,421 in total employee relocation expense and by $316,228 in legal fees that DRA contends were not justified with sufficient evidence. Cal-Am served its rebuttal testimony on November 19, 2010. Settlement negotiations ensued in December and the parties filed a motion for approval of the instant Settlement Agreement on January 12, 2011. The Administrative Law Judge (ALJ) received the exhibits into the record by ruling issued on February 1, 2011.

The instant application is related to A.04-09-019, the Coastal Water Project. In A.04-09-019, Cal-Am applied for a certificate of public convenience and necessity (CPCN) to construct and operate a desalination plant and associated facilities proposed to address long-term water supply problems on the Monterey Peninsula. As the Commission recently discussed in D.10-12-016, the water supply deficit on the Monterey Peninsula is long-standing. Cal-Am has
been subject to an order by the State Water Resources Control Board (SWRCB) since 1995 to cease diverting water from the Carmel River and to find an alternative supply of 10,730 acre-feet per year (afy) of water.¹ In 2006, the Monterey County Superior Court established physical limitations to various users’ water allocations to reduce the drawdown of the Seaside Basin aquifer and to prevent additional seawater intrusion. Cal-Am’s allocation from the Seaside Basin will be reduced over time. Also, in 2006, the Monterey Peninsula Water Management District updated the total demand in Cal-Am’s service territory. The replacement water supply required to meet the updated demand is 12,500 afy, as further discussed in D.10-12-016. On October 20, 2009, the SWRCB issued Order WR 2009-0060, a Cease and Desist Order that requires Cal-Am to take additional measures to reduce its diversions from the Carmel River and to terminate all such diversions no later than December 31, 2016. The proposed project and the alternatives studied in the Final Environmental Impact Report (FEIR) are known as the Coastal Water Project. The Commission certified the FEIR in D.09-12-017. By D.10-12-016, the Commission approved a Settlement Agreement and Water Purchase Agreement related to the Regional Desalination Project which resolves Phase 2 of A.04-09-019. D.10-12-016 also issued a CPCN for the Cal-Am facilities related to the Regional Project.²

¹ Order WR 95-10.
² On January 3, 2011, DRA timely filed an application for rehearing of D.10-12-016, and Cal-Am, the Marina Coast Water District, and the Monterey County Water Resources Agency timely filed a response on January 18, 2011. This decision in no way prejudges the Commission’s determinations in that application for rehearing.
3. Settlement Agreement

The Settling Parties agree on all of the disputed issues in the Application including:

1. Settling Parties agree that the Commission should authorize Cal-Am to transfer $5,425,799.87 in preconstruction costs incurred for the Coastal Water Project for services rendered through 2009 to the Special Request 1 Surcharge Balancing Account.

2. Settling Parties agree that Cal-Am’s total request for recovery should be reduced by $6,421. This is a reasonable adjustment because one of the employees for whom certain relocation expenses were incurred spent 85.6% of his time on the Coastal Water Project in 2009.

3. Settling Parties agree that for future applications for transfer of preconstruction costs to the Special Request 1 Surcharge Balancing Account, Cal-Am will provide DRA with copies of legal invoices for which Cal-Am is seeking recovery. These invoices will be provided as confidential work papers and do not constitute a waiver of any privilege. DRA will appropriately protect the confidential material and will evaluate the invoices solely for the purpose of considering the reasonableness of legal costs for which the invoices are provided. DRA will return or destroy all invoices and copies, including electronic copies, at the conclusion of each proceeding. Any redaction will be limited to entries reflecting legal strategy and attorney-client communications.

4. The Settlement Agreement is in the Public Interest, Consistent with the Law and Reasonable in Light of the Whole Record

The Settlement Agreement was reached after DRA conducted a thorough review and audit of the 2009 preconstruction costs. The agreement represents a reasonable resolution of the relatively narrow dispute between Cal-Am and DRA regarding the Coastal Water Project preconstruction costs. DRA reviewed the
documents reflecting Cal-Am’s 2009 costs and found most of them to be reasonable, and the parties have now agreed upon a reasonable process regarding substantiation of legal expenditures.

We concur that the agreed-upon 2009 preconstruction costs were reasonably and properly incurred in the pursuit of a long-term water supply solution on the Monterey Peninsula. We find that the Settlement Agreement also complies with our prior decisions addressing the Coastal Water Project preconstruction costs. As stated in D.10-08-008, Cal-Am ratepayers are responsible for preconstruction costs of $18.15 million incurred in 2006 through 2008. With the approval granted in today’s decision, Cal-Am ratepayers will be paying for a total of $23.58 million in preconstruction costs incurred from 2006 through 2009. While there was a great deal of activity in Phase 2 of A.04-09-019 in 2010, we would expect that certain preconstruction costs would be reduced in 2011 and future years. In these future applications, Cal-Am should carefully demonstrate and substantiate the need for additional ongoing preconstruction costs.

The proposed Settlement Agreement is in the public interest both because the agreed-upon costs are reasonable and because it will avoid potentially costly litigation. It is certainly preferable that parties develop their own mutually-agreeable solution regarding the relatively minor disputed amounts. There is no need for the Commission or the parties to invest further time and resources in litigation. For all of the foregoing reasons, we grant the Settling Parties’ Motion and adopt the Settlement Agreement as proposed.

5. Categorization and Need for Hearings

In Resolution ALJ 176-3251 dated April 8, 2010, the Commission preliminary categorized this application as Ratesetting and preliminarily
determined that hearings were necessary. Given the uncontested Settlement Agreement, a public hearing is not necessary.

6. Comments on Proposed Decision

   As a result of the Settlement Agreement, this matter is uncontested.

Pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2), comments on the proposed decision of the ALJ are waived.

7. Assignment of Proceeding

   Michael R. Peevey is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

Findings of Fact

1. As detailed in the Settlement Agreement, we find that Cal-Am should be allowed to recover $5,425,799.87 in 2009 preconstruction costs, and this amount constitutes the entirety of Cal-Am’s preconstruction costs incurred for services rendered through December 31, 2009, for which recovery has not been previously authorized.

2. $5,425,799.87 should be transferred from the Coastal Water Project Memorandum Account to the Special Request 1 Surcharge Balancing Account for recovery from Cal-Am’s ratepayers.

3. Cal-Am’s ratepayers have been responsible for $18.15 million in preconstruction costs incurred from 2006 through 2008. As a result of today’s decision, ratepayers are now responsible for an additional $5.43 million in preconstruction costs incurred in 2009, for a total of $23.58 million.

Conclusions of Law

1. The Settlement Agreement between Cal-Am and DRA is reasonable in light of the whole record, consistent with the law, and in the public interest and should be approved.
2. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.
3. A.10-04-004 should be closed.

ORDER

Therefore, IT IS ORDERED that:

1. The Settlement Agreement between California-American Water Company and the Division of Ratepayer Advocates is approved without modification.
2. California-American Water Company is authorized to transfer $5,425,799.87 of costs incurred for the Coastal Water Project for services rendered through December 31, 2009 from the Coastal Water Project Memorandum Account to the Special Request 1 Surcharge Balancing Account.
3. Hearings are no longer necessary.
4. Application 10-04-004 is closed.

This order is effective today.

Dated March 10, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
Commissioners
MEMORANDUM OF UNDERSTANDING BETWEEN SEASIDE BASIN
WATERMASTER AND CALIFORNIA AMERICAN WATER

This Memorandum of Understanding between the Seaside Basin Watermaster (Watermaster) and California American Water (CAW) is entered into pursuant to a motion passed by Watermaster on December 3, 2008 with respect to the following:

RECITALS

A. The Amended Decision in Case No. M66343 filed February 9, 2007 (Decision) provides that Standard Producers that exceed their allocation of Natural Safe Yield are subject to a Replenishment Assessment for each acre foot of Over-Production for each Water Year. Under Section III.M.1.d of the Decision, CAW has the right to claim a credit against its Replenishment Assessment (Replenishment Credit) for costs incurred for water supply augmentation that has or will result in replenishment of the Basin.

B. Wastermaster has calculated the Replenishment Assessments for CAW for Fiscal Year 2006 (Water Year 05/06), Fiscal Year 2007 (Water Year 06/07) and Fiscal Year 2008 (Water Year 07/08) in the total amount of $10,166,640. Pursuant to Section III.M.1.d of the Decision, CAW applied for a Replenishment Credit for expenditures totaling $12,305,924.00 that CAW has made through calendar year 2006 for water supply augmentation associated with pre-construction expenses for the Coastal Water Project. The request was made on March 5, 2008 and supplemented with further information on May 2, 2008.

C. Watermaster approved CAW's request for a Replenishment Credit in the amount of $12,305,924.00, subject to conditions set forth in the motion which provide that CAW will ensure replenishment of the Basin with water from the Coastal Water Project, or a comparable alternative project, at no cost to Watermaster, in an amount equivalent to the quantity of water that CAW has overproduced, and thus incurred a Replenishment Assessment obligation for Fiscal Years 2006, 2007 and 2008.

D. Watermaster and CAW desire to enter into this Memorandum of Understanding regarding future CAW requests pursuant to Section III.M.1.d of the Decision for Replenishment Credits against future Replenishment Assessment obligations.
AGREEMENT

Watermaster and CAW agree as follows:

1. At the end of each Water Year, Watermaster shall determine the Replenishment Assessments in accord with Section III.L.3.j.iii of the Decision. Within 40 days of CAW's receipt of Watermaster's notice of Replenishment Assessment against CAW for the preceding Water Year, CAW shall provide Watermaster any claim for a Replenishment Credit pursuant to Section III.M.1.d of the Decision. Such claim shall be based upon expenditures for a water supply augmentation project (such as the Coastal Water Project and/or other projects that produce water that can be used to replenish the Seaside Basin (hereinafter "Project(s)") that CAW contends has or will result in replenishment of the Basin.

2. Watermaster agrees that the Project will result in replenishment of the Basin, and therefore:

   (a) Watermaster hereby grants CAW's current request for a Replenishment Credit in the amount of $12,305,924.00. Such Credit shall be immediately applied to CAW's Replenishment Assessments for Fiscal 2006 (Water Year 05/06), Fiscal Year 2007 (Water Year 06/07) and Fiscal Year 2008 (Water Year 07/08), which total $10,166,640, subject to the condition that, upon completion and implementation of a water supply augmentation Project, CAW shall provide Watermaster, at no cost to Watermaster, and on a schedule that is Feasible either (1) water for Artificial Replenishment through direct replenishment and/or (2) cause in-lieu replenishment of the Basin by forbearing to produce water to which CAW is entitled as CAW's share of the Native Safe Yield, in an amount equal to CAW's total acre feet of Over-Production for the Water Years 05-06, 06-07, and 07-08, which total is 6,390.1 acre feet. Future CAW requests for Replenishment Credit shall be granted subject to the same conditions set forth in this Section 2 (a).

   (b) In future Water years Watermaster shall address future requests by CAW for a Replenishment Credit as follows:

   i. For years in which Watermaster declares that water for Artificial Replenishment is not available, Watermaster shall grant CAW's request for a Replenishment Credit for that Water year, subject to CAW’s obligation to provide future Artificial Replenishment as set forth in Section 2(a) herein.

   ii. For years in which Watermaster declares that water for Artificial Replenishment is available from sources other than a CAW water supply augmentation Project, Watermaster shall have the option of either: (i) requiring CAW to pay all or part of CAW's Replenishment Assessment for that Water Year for the purpose of providing Watermaster with funds to obtain Artificial Replenishment in sufficient quantities to replenish that quantity of Over-Production for which CAW pays a Replenishment Assessment; or (ii) granting CAW’s request for a Replenishment Credit subject to CAW’s obligation to provide future Artificial Replenishment as provided for in section 2(a) herein. If Watermaster is unable to purchase Replenishment Water equal to CAW’s total Over-Production for that Water Year,
the Watermaster shall grant CAW a Replenishment Credit for the balance of CAW's Over-Production for that Water year, subject to CAW's obligation to provide future Artificial Replenishment as set forth in Section 2(a) herein.

3. The sum of the acre feet of water to be provided to Watermaster for replenishment either by direct replenishment and/or in-lieu replenishment for each Water Year shall equal the number of acre feet for which CAW is assessed a Replenishment Assessment for the Water Year at issue. In no event shall the total amount of direct replenishment and/or forbearance by CAW be greater than the cumulative total of acre feet of CAW's Over-Production for all Water Years for which CAW is granted Replenishment Credits.

4. Upon completion and implementation of the Project(s), at any stage in CAW's direct replenishment and/or in-lieu replenishment pursuant to conditions set by Watermaster upon granting of Replenishment Credits, CAW shall have the right to request that the Court determine that, based upon principles of the physical solution set forth in the Decision, the Basin has been replenished in an amount sufficient to prevent seawater intrusion or the Basin has been protected by alternative seawater intrusion preventive measures. Upon such determination by the Court, CAW's obligations under conditions set by Watermaster upon granting of Replenishment Credits and any obligation under this Memorandum of Understanding to provide direct replenishment water and/or in-lieu replenishment at no cost to Watermaster shall be deemed fully satisfied.

5. All terms used in this Memorandum of Understanding that are defined terms in the Decision shall be defined herein as set forth in Section III.A of the Decision.

IN WITNESS WHEREOF the Parties hereby agree to the full performance of the terms set forth herein.

SEASIDE BASIN WATERMASTER

Chair, Seaside Basin Watermaster
Date: January 21, 2009

CALIFORNIA AMERICAN WATER

President, California American Water
Date: 1-29-2009
TO: Board of Directors

FROM: Laura Dadiw, Staff
Approved by: Dewey D Evans, CEO

DATE: February 1, 2012

SUBJECT: Four-party Memorandum of Understanding (“MOU”) Regarding 68.8 Acre-feet of Non-native Water Injected Into the Seaside Groundwater Basin

RECOMMENDATIONS:
The Watermaster Budget / Finance Committee recommends approving the MOU between the Monterey Peninsula Water Management District, the Marina Coast Water District, the City of Seaside, and the Seaside Basin Watermaster regarding water used for irrigation of golf courses.

DISCUSSION:
From January 8 through January 21, 2009, Marina Coast Water District (MCWD) provided 68.8 acre-feet (AF) of groundwater from its wells in the Salinas Groundwater Basin to Monterey Peninsula Water Management District (MPWMD) for well injection testing of its Phase 1 ASR Project. The “loan” of the water was agreed to by MPWMD, MCWD and Monterey County Water Resources Agency in a Coordination Agreement dated March 19, 2008. MPWMD is now required to return the “loaned” water to MCWD.

Per the terms of the proposed four-party MOU, the right to return of the 68.8 AF of water loaned to MPWMD by MCWD for ASR injection and storage testing in January of 2009 would be assigned to the City of Seaside. Watermaster would treat the assignment as a delivery by MCWD to the City of 68.8 AF of imported water form MCWD’s Salinas Groundwater Basin for the City’s Golf course irrigation in Water Year 2010 as part of the In Lieu Replenishment Program. The assignment would allow the City of Seaside to receive a credit against Replenishment Assessment from Watermaster in the amount of 68.8 AF x $2,780 = $191,264 for Water Year 2010.

ATTACHMENT:
Four-party Memorandum of Understanding
Letter of explanation of loan repayment via MOU to James Heitzman (MCWD) from Darby Fuerst (MPWMD) dated May 9, 2011
January 9, 2012

Dewey D. Evans
Seaside Groundwater Basin Watermaster
2600 Garden Road Suite 228
Monterey, CA 93940

In January 2009, the Monterey Peninsula Water Management District (MPWMD) conducted a dual-well injection test at its Phase 1 Aquifer Storage and Recovery (ASR) site on General Jim Moore Boulevard in Seaside. The quantity of water used for this testing, 68.8 acre-feet (AF), was provided from the Marina Coast Water District (MCWD) system, as adequate instantaneous rate of water delivery for the testing was not available from the California American Water system at that time. A Memorandum of Understanding (MOU) between the MPWMD, MCWD, the City of Seaside (Seaside), and the Seaside Basin Watermaster (Watermaster) has been developed (attached) as a means for this loaned water to be returned and accounted for as an offset to native Seaside Basin water pumped by the City of Seaside for golf course irrigation. The MOU has been approved by MPWMD, MCWD and Seaside, and is before the Seaside Basin Watermaster for final approval.

This MOU builds on several other related existing agreements. The first agreement (Coordination Agreement) was between MPWMD, MCWD and Monterey County Water Resources Agency, and allowed for the use of MCWD water for injection testing. That agreement called for the return of the ASR testing water to MCWD within 12 months upon demand. The second agreement (Transfer Agreement) was between Seaside and MCWD, and allowed provision of 2,500 AF of water from MCWD for use on the Seaside golf courses in exchange for approximately 21 acres of former Fort Ord land to MCWD. This water could be from MCWD’s Salinas Basin wells or from treated recycled water; in either case the water supplied would have the effect of reducing the production of native Seaside Basin water. The third agreement (In-Lieu Agreement) was between Seaside and the Watermaster, and formalized the mechanism by which the water provided to Seaside from MCWD would offset Seaside’s Replenishment Assessment liability to the Watermaster.

The plan under the MOU is for the return of the 68.8 AF of loaned water through credits assigned by the Watermaster with respect to Seaside’s In-Lieu replenishment program. This would occur by the Watermaster allowing 68.8 AF of groundwater pumped for the Seaside golf courses in Water Year 2010 to be treated as imported water delivered by MCWD. In this regard, the MOU allows for the indirect return of the loaned water via the Seaside golf course irrigation, versus the direct return of this water from MPWMD to the MCWD system, which would entail additional logistical and cost considerations.

Please add this document to your February board meeting agenda for approval. Once signed, please return one original of the signed document to each of the parties. Thank you.

Sincerely yours,

David J. Stoldt
General Manager
MEMORANDUM OF UNDERSTANDING BETWEEN THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, THE MARINA COAST WATER DISTRICT, THE CITY OF SEASIDE, AND THE SEASIDE BASIN WATERMASTER REGARDING WATER USED FOR IRRIGATION OF GOLF COURSES

This Memorandum of Understanding is entered into between the Monterey Peninsula Water Management District ("MPWMD"), the Marina Coast Water District ("MCWD"), the City of Seaside ("City") and the Seaside Basin Watermaster ("Watermaster") (individually "Party," collectively "Parties") with respect to the following:

RECAPITALS

1. The amended decision ("Decision") entered in the lawsuit, California American Water v. City of Seaside et al., Monterey County Superior Court (Case No. M66343) governs the groundwater production within the Seaside Groundwater Basin ("Basin").

2. Under the Decision the City received an allocation of 540 acre feet ("AF") of Alternative Production Allocation in relation to the City-owned Blackhorse and Bayonet Golf Courses ("Golf Courses").

3. The Decision obligated the Watermaster to procure new sources of water for replenishment of the Basin to offset any cumulative over production.

4. The Decision provided that any party that exceeded its allocation of Natural Safe Yield and/or its allocation of Operating Yield was subject to a Replenishment Assessment for each acre foot of over production during each Water Year.

5. In April 2010, the City owed certain sums to the Watermaster for previously accrued Replenishment Assessments.

6. In an agreement between MCWD and the City executed effective April 1, 2010 (the "City-MCWD April 2010 Agreement") in consideration of the City’s transfer to MCWD of certain land, MCWD agreed to supply water to the City to irrigate the City’s two golf courses located on the former Fort Ord in lieu of the City producing Seaside Basin groundwater to irrigate the golf courses. MCWD agreed to supply 2,500 acre-feet of the water to the City in consideration of land to the City.

7. In April 2010, the City and the Watermaster entered into a Memorandum of Understanding to memorialize the terms of an in lieu replenishment program ("In Lieu Replenishment Program") in accordance with the City-MCWD April 2010 Agreement.
8. Separately, in March of 2008, the MPWMD, MCWD and the Monterey County Water Resources Agency ("MCWRA") entered into a Coordination Agreement for Aquifer Storage and Recover (ASR) Injection Testing (the "Coordination Agreement"). Pursuant to the agreement, MCWD loaned MPWMD water from MCWD’s existing Salinas Groundwater Basin wells (i.e., imported water from a separate groundwater basin) to the MPWMD for aquifer storage and recovery testing done by the MPWMD at its Santa Margarita test well site. The total amount loaned for the testing was 68.8 AF, and the testing was done in January of 2009. The water used for testing was not produced from the Seaside Basin, but was produced from another groundwater basin.

9. MPWMD desires to facilitate the return of 68.8 AF of water loaned by MCWD to MPWMD.

10. Physical return of the 68.8 AF of loaned water is difficult because of infrastructure limitations.

11. However, a full and fair "return" of the 68.8 AF of loaned water can be made through credits assigned by Watermaster to the City with respect to the City’s In Lieu Replenishment Program. This can occur by Watermaster treating 68.8 AF of groundwater produced by the City’s Golf Course wells between October 2009 and April 2010 (before commencement of the In Lieu Replenishment Program) as imported water delivered by MCWD to the City (the 68.8 AF of loaned water is imported water stored in the Basin through the ASR injection), thereby increasing the City’s in lieu replenishment credit under the In Lieu Replenishment Program by 68.8 AF and giving credit to MCWD against the 2,500 acre-feet of water to be provided to the City without cost to the City.

12. MCWD is willing to become a party to this Memorandum of Understanding as an accommodation to the City, MPWMD, and the Watermaster.

13. The Parties desire to effectuate this return of loaned water and crediting of in lieu replenishment credits, as set forth herein.

AGREEMENT

The Parties agree as follows:

1. Repayment and Assignment of Loaned Water. MCWD hereby assigns to the City MCWD’s right under the Coordination Agreement to have MPWMD return the 68.8 AF of water loaned to MPWMD by MCWD for ASR injection and storage testing in January of 2009. The Watermaster will treat this assignment as delivery by MCWD to the City of 68.8 AF of water loaned to MPWMD by MCWD for ASR injection and storage testing in January 2009. The
Watermaster will treat this assignment as a delivery by MCWD to the City of 68.8 AF of imported water in accordance with the City-MCWD April 2010 Agreement for the City's Golf Course irrigation in Water Year 2010 as part of the In Lieu Replenishment Program.

2. **Credit to City.** This assignment shall increase the monetary credit to the City in an amount attributable to an additional 68.8 AF of in lieu replenishment in Water Year 2010 pursuant the accounting methods set forth in Section 3.2 of the MOU that the City and Watermaster entered into in April 2010.

3. **Commensurate Reduction in Basin Pumping by City.** The amount of native groundwater pumped by City under its Alternative Production Allocation in the first nine months of Water Year 2010 shall be deemed reduced by 68.8 AF -- from 100.6 AF to 31.8 AF.

4. **Satisfaction of Water Loan.** Pursuant to the provisions above, the Parties agree that MPWMD's obligation to return the water loaned to it by MCWD is hereby satisfied.

5. **Credit to MCWD from City.** The City shall credit MCWD 68.8 AF against MCWD's obligation under Section 3.2 of the City-MCWD April 2010 Agreement.

6. **Approval of Watermaster Board.** The approval of the Seaside Basin Watermaster Board shall be a condition precedent to this Memorandum of Understanding taking effect.

7. **No Effect on Existing Water Rights.** The Parties agree that no provision of this Memorandum of Understanding shall have any force or effect, directly or indirectly, on water rights of any nature held by a Party. No water right of any kind, including but not limited to prescriptive water rights, nor any claim thereto, shall arise or be created in favor of or against any Party or other person, directly or indirectly, nor shall any water right be lost as a result of this Memorandum of Understanding.

8. **Defense and Indemnity of MCWD.** MPWMD will defend and indemnify MCWD against any and all liability, claims, damages, demands, costs and action arising from the approval, execution and performance of this Memorandum of Understanding. MPWMD shall reimburse MCWD's costs, including attorney fees, incurred in connection with the negotiation, review, approval and execution of this Memorandum of Understanding.

9. **Remedies.** This Agreement shall be specifically enforceable; damages are not an adequate remedy for a failure to perform pursuant to its terms and conditions.

10. **Arbitration.** In the case of any disagreement, difference, or controversy arising between any of the Parties with respect to any matter in relation to or arising out of or under this Memorandum of Understanding, whether as to the construction or operation thereof, or the respective rights and liabilities of the Parties, and all Parties cannot mutually agree as to the resolution thereof, then such disagreement, difference or controversy shall be determined by arbitration by and under the arbitration rules of JAMS or by such other arbitrator and under such
other rules as the Parties may agree, provided that the arbitrator shall be a former judge of the Superior Court or the Court of Appeal. Any arbitration hearing shall be noticed and open to the public. The submission to arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrators shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California, and shall be subject to appellate review upon the same terms and conditions as law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the Prevailing Party shall be entitled to reasonable attorneys' fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorneys' fees shall be considered costs recoverable in that proceeding and be included in any award.

11. **Litigation.** In the event any of the Parties to this Memorandum of Understanding brings a judicial or arbitration proceeding to enforce or interpret any provision of its terms, then, and in that event, the Prevailing Party shall be entitled to recover reasonable attorneys' fees and related expenses and costs, including but not limited to court costs, expert witness fees and expenses, and accountant fees and expenses. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence, whether or not any such witness or accountant shall be called to testify. Recovery of these fees and costs shall be as additional costs awarded to the Prevailing Party, and shall not require initiation of a separate legal proceeding.

12. **Notices.** Notices regarding this Memorandum of Understanding shall be given to the Parties at the following addresses:

**Monterey Peninsula Water Management District**  
Attn: General Manager  
P. O. Box 85  
Monterey, CA 93942

**Marina Coast Water District**  
Attn: General Manager  
11 Reservation Road  
Marina, CA 93933

**City of Seaside**  
Attn: City Manager  
440 Harcourt Avenue  
Seaside, CA 93955

**Seaside Basin Watermaster**  
Attn: Chief Executive Officer  
2600 Garden Road - Suite 228  
Monterey, CA 93940

13. **Entire Agreement.** This document represents the entire Memorandum of Understanding between the Parties, and supersedes any prior written or oral negotiations and representations between the Parties with regard to the matters described herein.

14. **Severability.** If any provision, or any portion thereof, contained in this Memorandum of Understanding is held unconstitutional, invalid, unenforceable, or contrary to
public policy, the remainder of this Memorandum of Understanding, or portion thereof, shall be
d deemed severable, shall not be affected and shall remain in full force and effect.

15. **Mutuality.** This Memorandum of Understanding is the product of negotiation and
preparation by and among the Parties. All sides have reviewed and have had the opportunity to
revise this Memorandum of Understanding. The Parties waive the provisions of Section 1654 of
the Civil Code of California and any other rule of construction to the effect that ambiguities are
to be resolved against the drafting Party, and the Parties warrant and agree that the language of
this Memorandum of Understanding shall neither be construed against or in favor of any Party.

16. **Waiver.** A Party’s failure to insist on the strict performance of any provision of
this Memorandum of Understanding or to exercise any right, power, or remedy upon a breach of
this Memorandum of Understanding shall not constitute a waiver of any provision of this
Memorandum of Understanding. Neither shall such action or inaction limit the Party’s right to
later enforce any provision or exercise any right to the fullest extent allowed under this
Memorandum of Understanding. A waiver of any covenant, term or condition contained in this
Memorandum of Understanding shall not be construed as a waiver of any subsequent breach of the
same covenant, term or condition. The consent, authorization or approval by a Party of any act shall
not be deemed to waive or render unnecessary the consent, authorization or approval of any
subsequent similar act.

17. **Amendment.** This Memorandum of Understanding shall be amended or modified
only by an instrument in writing duly approved and signed by each party hereto. Any waiver of any
terms or conditions must be in writing and signed by the Parties.

18. **Effective Date.** This Memorandum of Understanding shall take effect on day
of , 2012, subject to the qualification described in paragraph 6 of this Memorandum of
Understanding.

IN WITNESS WHEREOF the Parties hereto execute this Memorandum of Understanding
pursuant to the terms set forth herein.
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

[Signature]
David J. Stoldt, General Manager
Date: 1-11-12

MARINA COAST WATER DISTRICT

[Signature]
James Heitzman, General Manager
Date: 1-10-12

CITY OF SEASIDE

[Signature]
Ray Corpuz, City Manager
Date: 1-22-11

SEASIDE BASIN WATERMASTER

[Signature]
Dewey Evans, Chief Executive Officer
Date: ______________
May 9, 2011

James Heitzman, General Manager
Marina Coast Water District
11 Reservation Road
Marina, CA 93933

Subject: Coordination Agreement between Monterey Peninsula Water Management District (MPWMD), Marina Coast Water District (MCWD), and Monterey County Water Resources Agency (MCWRA) for Aquifer Storage and Recovery (ASR) Injection Testing

Dear Jim:

As we have discussed, this letter is to propose a plan by which the Monterey Peninsula Water Management District (MPWMD) will repay Marina Coast Water District (MCWD) the quantity of water that MCWD supplied MPWMD for Aquifer Storage and Recovery (ASR) injection testing in January 2009. Specifically, MCWD provided 68.8 acre-feet (AF) of groundwater from its wells in the Salinas Groundwater Basin to MPWMD for dual-well injection testing at MPWMD’s Phase 1 ASR Project site during the January 8 through January 21, 2009 period. This water “loan” was agreed to by MPWMD, MCWD and Monterey County Water Resources Agency (MCWRA) and is described in a Coordination Agreement for ASR Injection Testing (Coordination Agreement) that was executed on March 19, 2008 (Enclosure 1). Under the Coordination Agreement, as amended, MPWMD is required to return all water supplied by MCWD for ASR testing to MCWD within 12 months upon demand.

Proposed Plan: The proposed plan is based on a suggestion that you made in 2009, i.e., we let the City of Seaside (City or Seaside), which pumps native groundwater from the Seaside Groundwater Basin for irrigation on the Blackhorse and Bayonet golf courses, pump the injected water for use on the golf courses and you bill Seaside for the water. Thus, rather than directly supplying water to Seaside for the golf courses, MCWD would indirectly supply water to Seaside, via the water provided to MPWMD and injected into the Seaside Groundwater Basin in January 2009. In this instance, the water pumped by Seaside for the golf courses would be injected water and would not count against the Seaside’s adjudicated production allocation for the golf courses.

Related Agreements: The proposed plan also builds on two other recently-approved agreements:

(1) Land Transfer and Water Service Agreement between Seaside and MCWD (Transfer Agreement), and
(2) Memorandum of Understanding between the Seaside Basin Watermaster (Watermaster) and Seaside for an in-lieu replenishment program (In-Lieu Agreement).

The Transfer Agreement, which was executed on April 1, 2010, provides Seaside with a total of 2,500 AF of water from MCWD for use on the golf courses at no cost in exchange for approximately 21.15 acres of land within the former Ford Ord to MCWD. As specified in the agreement, water for Seaside’s golf courses could come from MCWD’s wells in the Salinas Groundwater Basin or from recycled water suitable for golf course irrigation, when it becomes available. A copy of the Transfer Agreement is enclosed (**Enclosure 2**). The In-Lieu Agreement, which was executed on April 7, 2010, formalized Seaside’s desire to engage in the In-Lieu Program utilizing the water provided by MCWD under the Transfer Agreement and established the mechanism by which Seaside would receive a monetary credit from the Watermaster against its Replenishment Assessment liability. The monetary credit would be calculated on an annual basis as the amount of all MCWD deliveries to Seaside’s golf courses for irrigation in acre-feet multiplied by the amount of the current Replenishment Assessment per acre-foot. A copy of the In-Lieu Agreement is enclosed (**Enclosure 3**).

**Draft MOU:** A draft Memorandum of Understanding (MOU) between MPWMD, MCWD, Seaside, and the Watermaster is enclosed for your review (**Enclosure 4**). The basic plan is summarized in the draft MOU (Recital No. 11):

> However, a full and fair “return” of the 68.8 AF of loaned water can be made through credits assigned by the Watermaster to the City with respect to the City’s In Lieu Replenishment Program. This can occur by Watermaster treating 68.8 AF of groundwater produced by the City’s Golf Course wells between October 2009 and April 2010 (before commencement of the In Lieu Replenishment Program) as imported water delivered by MCWD to the City (the 68.8 AF of loaned water is imported water stored in the Basin through the ASR injection), thereby increasing the City’s in lieu replenishment credit under the In Lieu Replenishment Program by 68.8 AF and giving credit to MCWD against the 2,500 acre-feet of water to be provided to the City without cost to the City.

Specific conditions regarding:

1. repayment and assignment of the loaned water,
2. credit to the City,
3. commensurate reduction in basin pumping by the City,
4. satisfaction of the water loan, and
5. credit to MCWD from the City

are described in the draft MOU. Notably, Agreement Item No. 4, *Satisfaction of Water Loan*, addresses MPWMD’s obligation to return the water loaned to it by MCWD and indicates that the parties agree that the obligation is satisfied, pursuant to the provisions in the MOU.
Next Steps: Please note that approval by the Watermaster is a condition precedent to the MOU taking effect. Please review the proposed plan and draft MOU with Curtis and let me know if the MOU is acceptable. Once I hear from you, I will contact the Watermaster to schedule a date at which the Watermaster Board can consider approval of the MOU.

If you have any questions regarding the proposed plan or MOU, please let me know. Thank you for your cooperation in this matter.

Sincerely,

[Signature]
Darby Fuerst,
General Manager

Enclosures

cc: Curtis Weeks, MCWRA General Manager
Ray Corpuz, Seaside City Manager
Dewey Evans, Seaside Basin Watermaster Chief Executive Officer

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