



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099

Home Page: www.mcwd.org

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DIRECTORS
KENNETH K. NISHI
President

WILLIAM LEE
Vice President

THOMAS P. MOORE
HOWARD GUSTAFSON
DAN BURNS

Agenda

Special Board Meeting, Board of Directors Marina Coast Water District

11 Reservation Road, Marina, California
Wednesday, February 24, 2010, 6:00 p.m.

This meeting has been noticed according to the Brown Act rules.

Mission: Providing high quality water, wastewater and recycled water services to the District's expanding communities through management, conservation and development of future resources at reasonable costs.

Vision: The Marina Coast Water District will be the leading public supplier of integrated water and wastewater services in the Monterey Bay Region.

1. Call to Order

2. Roll Call

3. Pledge of Allegiance

4. Oral Communications *Anyone wishing to address the Board on matters not appearing on the Agenda may do so at this time. Please limit your comment to three minutes. The public may comment on any other items listed on the agenda at the time they are considered by the Board.*

5. Closed Session

- A. Pursuant to Government Code 54957.6
Conference with Labor Negotiators (President Nishi, Vice President Lee)
Unrepresented Employee: General Manager

Reconvene Open Session

6. Possible Action on Closed Session Item *The Board will report out on any action taken during Closed Session, and may take additional action in Open Session, as appropriate. Any closed session items not completed will be discussed at the end of the meeting.*

7. Action Item

- A. Consider Adoption of Resolution No. 2010-11 to Ratify the Settlement Agreement and Mutual Release, Substituting Polyvinyl Chloride Pipe for High Density Polyethylene Pipe for the General Jim Moore Boulevard Phase V Project**

Action: Adopt Resolution No. 2010-11.

- B. Consider Adoption of Resolution No. 2010-12 to Approve and Authorize Execution of a Reimbursement Agreement with California American Water Company for Certain Local Agency Expenses Incurred in Application No. 04-09-019 Pending Before the California Public Utilities Commission ("CPUC")

Action: Adopt Resolution No. 2010-12.

8. Directors Comments

9. Adjournment *Set or Announce Next Meeting(s), date(s), time(s), and location(s):*

Special Meeting: Wednesday, March 3, 2010, 6:00 p.m.,
11 Reservation Road, Marina

Regular Meeting: Tuesday, March 16, 2010, 6:45 p.m.,
11 Reservation Road, Marina

Marina Coast Water District
Agenda Transmittal

Agenda Item: 7-A

Meeting Date: February 24, 2010

Submitted By: Gary Rogers

Presented By: Carl Niizawa

Reviewed By: Carl Niizawa/Jim Heitzman

Agenda Title: Consider Adoption of Resolution No. 2010-11 to Ratify the Settlement Agreement and Mutual Release, Substituting Polyvinyl Chloride Pipe for High Density Polyethylene Pipe for the General Jim Moore Boulevard Phase V Project

Detailed Description: On February 23, 2010, the General Manager of MCWD and the President of California American Water Company (CAW) signed a "Settlement Agreement and Mutual Release" document (Agreement) regarding the existing, on-site High Density Polyethylene (HDPE) pipeline for the General Jim Moore Boulevard Phase V Project. This Agreement provides for CAW to acquire and deliver Polyvinyl Chloride Pipe (PVC Pipe) and associated appurtenances in lieu of HDPE Pipe for the General Jim Moore Boulevard Phase V Project for recycled water purposes.

Environmental Review Compliance: None required, financing only.

Prior Board Action: Resolution No. 2009-81 on December 8, 2009 authorizing expenditure of the District's share of construction costs to install various sized potable water lines, recycled water lines and a sewer line within the Fort Ord Reuse Authority's General Jim Moore Boulevard Phase V Improvement Project Alignment and to amend the FY 2009/2010 Budget. Resolution No. 2009-82 on December 8, 2009 authorizing the General Manager to execute an Agreement between CAW and MCWD for transfer from CAW to MCWD of certain HDPE pipe for the General Jim Moore Boulevard Phase V Project and to take all actions and execute all agreements and documents that give effect to this Resolution.

Board Goals/Objectives: *2007/2008 Strategic Plan, Goal No. 2 – To meet 100% of current and future customers' needs and make timely improvements and increase infrastructure and level of services and human resources to meet needs of expanding service areas in an environmentally sensitive way.*

Financial Impact: ___ Yes ___ X No

Funding Source/Recap: Since CAW will purchase the PVC pipe and appurtenances, there will not be a direct fiscal impact upon the District. Additional costs associated with the installation of the PVC pipe and appurtenances are not anticipated at this time.

Material Included for Information/Consideration: Resolution No. 2010-11; and, "Settlement Agreement and Mutual Release" between MCWD and CAW for the General Jim Moore Boulevard Phase V Project Pipe.

Staff Recommendation: The MCWD staff and District Counsel recommend and request that the Board ratify the General Manager's execution of this Agreement.

Action Required: X Resolution Motion Review
(Roll call vote is required.)

Board Action

 Resolution No Motion By Seconded By

Ayes Abstained

Noes Absent

Reagendized Date No Action Taken

Resolution No. 2010-11
Resolution of the Board of Directors
Marina Coast Water District
Ratify a Settlement Agreement and Mutual Release Substituting Polyvinyl Chloride Pipe
for High Density Polyethylene Pipe for the General Jim Moore Boulevard Phase V Project

February 24, 2010

RESOLVED by the Board of Directors ("Directors") of the Marina Coast Water District ("District"), at a special meeting duly called and held on February 24, 2010 at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, the Board of Directors approved Resolution No. 2009-81 on December 8, 2009, authorizing an expenditure to fulfill the District's financial obligation for funding construction costs for the various diameters of potable water pipeline, sewer pipeline, and recycled water pipeline within the Fort Ord Reuse Authority's (FORA's) General Jim Moore Boulevard Phase V Improvement Project alignment; and,

WHEREAS, the District and CAW had negotiated an Agreement for Transfer, Conveyance, and Acceptance of Surplus High Density Polyethylene Pipe (HDPE) between MCWD and CAW and both organizations desired that Agreement to be the vehicle for MCWD to obtain ownership of the HDPE pipe; and,

WHEREAS, that the Board of Directors approved Resolution No. 2009-82 on December 8, 2009 authorizing the General Manager to execute the Agreement between CAW and MCWD and to take all actions and execute all agreements and documents that give effect to the Resolution; and,

WHEREAS, the President of CAW and the General Manager of MCWD have executed a Settlement Agreement to provide that CAW will acquire and deliver Polyvinyl Chloride Pipe (PVC pipe) and associated appurtenances in lieu of HDPE pipe; and,

WHEREAS, the General Manager and the District Engineer advise that the agreed substitution of PVC pipe for HDPE pipe will meet the District's needs at no cost to the District; and,

WHEREAS, the District Counsel recommends that the Settlement Agreement be ratified as within the intent and authority of Resolution No. 2009-82; and,

WHEREAS, the District's Counsel advises and the Directors find that the Settlement Agreement is a financing mechanism and approval of the Settlement Agreement is not a project within the meaning of the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Marina Coast Water District does hereby approve the Settlement Agreement and Mutual Release and ratify the General Manager's execution of the Settlement Agreement and Mutual Release, and authorizes performance thereof.

PASSED AND ADOPTED on February 24, 2010, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors _____
Noes: Directors _____
Absent: Directors _____
Abstained: Directors _____

Kenneth K. Nishi, President

ATTEST:

Jim Heitzman, Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Marina Coast Water District hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 2010-11 adopted February 24, 2010.

Jim Heitzman, Secretary

Settlement Agreement and Mutual Release

This Settlement Agreement and Mutual Release is entered into by and between MARINA COAST WATER DISTRICT, a County Water District organized and operating under the County Water District Law, Sections 30000 and following of the California Water Code ("MCWD"), having its principal address at 11 Reservation Road, Marina, CA 93933; and CALIFORNIA-AMERICAN WATER COMPANY, a California corporation and regulated public utility ("CAW"), having its principal address at 1033 B Avenue, Suite 200, Coronado, CA 92118. CAW and MCWD are referred to herein individually as a "Party" and collectively as the "Parties." This Agreement is effective on the date of its execution by both parties.

I. Recitals

A. A dispute has arisen between the Parties regarding the conveyance of approximately 7000 feet of high density poly ethylene (HDPE) pipe (generally 18 inches in diameter) and related pipe fittings from CAW to MCWD for use in construction of a reclaimed water project being undertaken by MCWD. The Parties contemplated but did not execute a written agreement concerning conveyance of the pipe. MCWD asserts that in reliance on oral representations made by CAW officials that CAW would convey the pipe to MCWD at little or no cost to MCWD, MCWD incurred costs and obtained funding for the project ("the Dispute"). CAW denies liability to MCWD based on the Dispute.

B. Without the admission of liability or fault in any way by either party, and in the interest of avoiding the expense and distraction of litigation, the Parties have agreed to resolve the Dispute in accordance with the terms of this Agreement.

C. The Parties intend that this Agreement will fully and finally resolve all claims and controversies between them that relate in any way to or arise out of the Dispute, including any of the allegations or claims that were made or that could have been made against CAW, or against CAW's representatives, officers, directors, or employees.

II. Provisions

In consideration of the foregoing facts and the mutual covenants and agreements and consideration set forth in this Agreement, the Parties agree as follows:

1. CAW shall procure at CAW's sole cost the materials listed in Exhibit A attached to this Agreement ("the Materials"), and deliver or cause the Materials to be delivered to MCWD at the place designated in writing by MCWD's District Engineer on or before March 17, 2010.
2. MCWD will, after reasonable inspection, take delivery of and accept the Materials. CAW will provide to MCWD from CAW's supplier the material submittals for the Materials as a condition precedent to MCWD's acceptance of the materials.
3. By CAW's delivery of the Materials to MCWD, and MCWD's acceptance thereof, the Parties agree and CAW thereby conveys to MCWD all of CAW's right, title and

interest in and to the Materials. CAW hereby represents and warrants to MCWD that the Materials will be transferred free and clear of all liens and encumbrances. The Parties may execute a bill of sale and acceptance upon delivery. CAW hereby assigns to MCWD any and all rights of CAW against the supplier of the materials for warranty, maintenance, service or guaranty obligations and claims arising from or related to latent deficiencies in the materials. Notwithstanding the foregoing, MCWD EXPRESSLY AGREES THAT AS TO CAW, CAW IS CONVEYING THE MATERIALS AND MCWD IS ACQUIRING THE MATERIALS IN STRICT "AS IS, WHERE IS" CONDITION, AND "WITH ALL FAULTS". CAW HAS MADE NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, WHETHER ORAL, WRITTEN OR IMPLIED TO MCWD AS TO THE QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS OF THE MATERIALS FOR ANY OF MCWD'S PURPOSES OR INTENDED USES WHATSOEVER. MCWD EXPRESSLY WAIVES ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY TYPE WHATSOEVER FROM CAW.

4. By its acceptance of the Materials, MCWD accepts ownership of and responsibility for the Materials.
5. In the event that CAW fails to deliver the Materials on or before March 17, 2010, CAW agrees that it will indemnify and defend MCWD against any claims for payment by the Fort Ord Reuse Authority based on construction delays directly attributable to the delay in delivery of the Materials.
6. MCWD agrees that it will indemnify, defend, protect and hold harmless CAW and its officers, directors, affiliates, shareholders, employees, successors and assigns from and against any and all claims asserted or liability established for damages or injuries to any person or property arising from, connected with, or caused or claimed to be caused by the acts or omissions of MCWD in the installation and use of the Materials and construction of its reclaimed water project.
7. The Parties acknowledge that the execution of this Agreement affects the settlement of claims which are contested and denied. The Parties agree that nothing contained in this Agreement shall be construed as an admission by any party of any liability of any kind to the other party. Each Party acknowledges that the other expressly denies that any of them is in any way liable or obligated to the other regarding the Dispute, except as set forth in this Agreement.
8. The Parties agree that, based upon the consideration of the payments and other provisions as set forth herein, the Parties hereby mutually release each other and their assignees, transferees, employees, servants, successors, heirs, agents, attorneys, insurers, and representatives thereof from any and all claims, demands, damages, debts, liabilities, actions, causes of action, suits, contracts, controversies, agreements, accounts, reckonings, obligations, and judgment, whether in law or in equity, which parties to this Agreement, or any of them, or their successors or assigns, had, owned

or held, or now have, own or hold, or hereafter may have, own or hold which arise out of the matters referred to in Section I above.

9. The Parties do hereby assume the above-mentioned risks and understand that this Settlement Agreement and Mutual Release shall apply to all unknown or unanticipated results of the transactions and occurrences described above, as well as those known and anticipated, and upon advice of legal counsel, the Parties do hereby waive any and all rights under California Civil Code Section 1542, which section has been explained and reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each Party acknowledges that it has read the language of California Civil Code Section 1542, as quoted above, by their signature on this Agreement. The Parties, and each of them, understand and acknowledge that the consequence of this waiver of California Civil Code Section 1542 is that even if a Party should eventually suffer additional damages arising out of the matters referred to in the Agreement, that Party will not be able to make any claim for those damages. Furthermore, the Parties, and each of them, acknowledge that they intend these consequences even as to claims for damages that may exist as of the date of this Agreement but of which they are not presently aware. The Parties acknowledge that they intend to waive even those claims which, if known, would materially affect the decision to execute this release, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

10. In the event of a dispute between the Parties regarding the performance by either Party of obligations set forth in this Agreement, the aggrieved party shall, prior to commencing litigation, send a notice in writing to the other Party describing the nature of the dispute, and requesting informal negotiations, between persons with authority to negotiate on behalf of both Parties, to resolve the dispute. Each Party agrees to participate in such informal negotiations. Such period of informal negotiations shall not extend beyond 30 days from the date of the notice. Should such informal negotiations not result in a resolution of the dispute, the parties agree to submit to mediation of the dispute presided over by a mediator selected by JAMS San Francisco pursuant to procedures then in place for selection by JAMS San Francisco of mediators in such circumstances. Absent an agreement by the Parties to the contrary, the costs of the mediation shall be shared equally by the Parties, with the expenses of participants, consultants, experts or representatives for each Party side paid by the Party producing such participants, consultants, experts or representatives. The mediation shall be conducted no later than 60 days following the expiration of the 30 day period for informal negotiations.
11. In the event of a dispute, this Agreement shall be interpreted under the laws of the State of California. No action on this Agreement may be brought unless it is brought timely in a court of competent jurisdiction in the State of California.

12. If an action is brought to enforce this Agreement, the Parties stipulate this Agreement shall be admissible as evidence.
13. This Agreement is the entire agreement between the Parties regarding the Dispute. There are not other agreements, understandings, or arrangements of any kind between the Parties regarding the Dispute or resolution of the Dispute. No statement or oral representation may be relied upon by any Party, nor shall any have any effect on this Agreement. This Agreement may not be modified or amended unless contained in a writing signed by all Parties.
14. Each person signing this Agreement represents and warrants that he, she, or it has full authority and power to enter into this Agreement. Each person signing this Agreement represents and warrants that he or she has all requisite authority and power to sign for and bind legally the Party on whose behalf he or she signs this Agreement.
15. The Parties agree that time is of the essence in the performance of all covenants and conditions of this Agreement.
16. This Agreement and the covenants and conditions contained herein shall apply to, be binding upon, and inure to the benefit of the respective assignees, successors, and agents of the Parties.
17. The Parties agree that the provisions of this instrument are severable and should any provision be, for any reason, unenforceable, the balance shall, nonetheless, be of full force and effect.
18. Each Party to this Agreement will bear his or her own costs, expenses and attorneys' fees in connection with all matters referred to in this Agreement.
19. This Agreement may be executed in one or more counterparts and shall be binding and effective immediately upon the execution by all Parties of one or more counterparts.
20. The Parties to this Agreement have had the opportunity to seek the advice of counsel concerning this settlement and this Agreement. Further, the Parties expressly represent and warrant that they have had the advice and assistance of counsel concerning this settlement and this Agreement prior to its execution.
21. The Parties agree to execute, acknowledge, deliver, file, and/or record such further certificates, documents, and instruments and to do all such further acts and things as may be necessary to carry out the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth adjacent to their names.

Date: _____

For: California-American Water Company

By: _____
Robert G. MacLean, President

For: Marina Coast Water District

Date: _____

By: _____
Jim Heitzman, General Manager

Approved as to Form:

Date: _____

Noland, Hamerly, Etienne & Hoss

By: _____
Lloyd Lowrey, Jr., District Counsel
Marina Coast Water District

Date: _____

By: _____
Carrie Gleeson, General Counsel
California-American Water Company

Exhibit A

Reclaimed Water Line – List of Materials

<u>Quantity</u>	<u>Unit</u>	<u>Description</u>
6,400	feet	16 inch x 20' DR18 CL235, AWWA C905 Purple PVC Pipe
70	each	16 inch Bell Restraint with carbon steel trim with 316 stainless steel rods, washers and nuts
16	each	16 inch mj x mj 45 degree bend - Epoxy Lined interior, and epoxy coated exterior
32	each	16 inch MJ restraint for C905 PVC with carbon steel trim with mechanical joint wedge-type action restraint

Marina Coast Water District
Agenda Transmittal

Agenda Item: 7-B

Meeting Date: February 24, 2010

Submitted By: Lloyd Lowrey

Presented By: Jim Heitzman

Reviewed By: Carl Niizawa/Jim Heitzman

Agenda Title: Consider Adoption of Resolution No. 2010-12 to Approve a Reimbursement Agreement with California American Water Company

Detailed Description: MCWD and the Monterey County Water Resources Agency (MCWRA) (the Local Agencies) have been cooperating actively with California American Water Company (CAW) to address water supply needs through development of a water supply solution consistent with the public interest as referenced in Application No. 04-09-019 pending before the California Public Utilities Commission ("CPUC") and CPUC Decision No. 06-12-040 (the "Project"). The proposed Reimbursement Agreement would provide a mechanism for reimbursement from CAW to the Local Agencies of specified funds expended by the Local Agencies on specified Project development costs from February 9, 2010, until the earlier of (a) the date the Local Agencies obtain proceeds of financing for the Project sufficient to both meet the Local Agencies' ongoing Direct Project-Related Costs and commence repayment to CAW of funds reimbursed under this Agreement, or (b) December 31, 2010. The proposed Reimbursement Agreement has been negotiated by the General Manager and MCWD's special CPUC Counsel.

Environmental Review Compliance: None required, financing only.

Prior Board Action: The Board of Directors previously has authorized participation in the CPUC proceedings for Application No. 04-09-019 by the following actions:

Resolution No. 2009-18 on March 10, 2009

Resolution No. 2009-83 on December 22, 2009

The Board of Directors has also authorized the use of special counsel and consultants.

Board Goals/Objectives: *2007/2008 Strategic Plan, Goal No. 2 – To meet 100% of current and future customers' needs and make timely improvements and increase infrastructure and level of services and human resources to meet needs of expanding service areas in an environmentally sensitive way.*

Financial Impact: ___ Yes ___ X No

Funding Source/Recap: CAW's reimbursement of costs will reduce the financial impact on MCWD of participating in the CPUC proceedings for Application No. 04-09-019.

Material Included for Information/Consideration: Resolution No. 2010-12; and, "Reimbursement Agreement" between MCWD, MCWRA and CAW.

Staff Recommendation: The General Manager recommends and requests that the Board approve the Reimbursement Agreement and authorize the General Manager to execute of the Reimbursement Agreement as Secretary, and to take the actions and execute the documents necessary or appropriate to give effect to the Reimbursement Agreement.

Action Required: X Resolution Motion Review
(Roll call vote is required.)

Board Action

 Resolution No Motion By Seconded By

Ayes Abstained

Noes Absent

Reagendized Date No Action Taken

Resolution No. 2010-12
Resolution of the Board of Directors
Marina Coast Water District
Approving a Reimbursement Agreement with California American Water Company

February 24, 2010

RESOLVED by the Board of Directors ("Directors") of the Marina Coast Water District ("District"), at a special meeting duly called and held on February 24, 2010, at the business office of the District, 11 Reservation Road, Marina, California as follows:

WHEREAS, the Directors approved Resolution No. 2009-18 on March 10, 2009, and Resolution No. 2009-83 on December 22, 2009, authorizing expenditures for the District to participate and cooperate actively with the Monterey County Water Resources Agency (MCWRA) and California American Water Company (CAW) to address urban water supply needs through development of a water supply solution consistent with the public interest as referenced in Application No. 04-09-019 pending before the California Public Utilities Commission ("CPUC") and CPUC Decision No. 06-12-040 (the "Project"); and,

WHEREAS, the District already has expended significant funds on the cooperative process authorized by the Directors and significant additional costs are projected prior to CPUC approval of a water supply solution; and,

WHEREAS, the District, MCWRA and CAW have negotiated a proposed Reimbursement Agreement that would provide a mechanism for reimbursement from CAW to the District and MCWRA (the Local Agencies) of specified funds expended by the Local Agencies on specified Project development costs from February 9, 2010, until the earlier of (a) the date the Local Agencies obtain proceeds of financing for the Project sufficient to both meet the Local Agencies' ongoing Direct Project-Related Costs and commence repayment to CAW of funds reimbursed under this Agreement, or (b) December 31, 2010; and,

WHEREAS, the General Manager recommends approval, execution and implementation of the Reimbursement Agreement; and,

WHEREAS, the District's Counsel advises and the Directors find that the Reimbursement Agreement is a financing mechanism and approval of the Reimbursement Agreement is not a project within the meaning of the California Environmental Quality Act.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Marina Coast Water District does hereby approve the Reimbursement Agreement and authorizes the General Manager to execute the Reimbursement Agreement as the District's Secretary, and to take the actions and execute the documents necessary or appropriate to give effect to the Reimbursement Agreement and this Resolution.

PASSED AND ADOPTED on February 24, 2010, by the Board of Directors of the Marina Coast Water District by the following roll call vote:

Ayes: Directors_____

Noes: Directors_____

Absent: Directors_____

Abstained: Directors_____

Kenneth K. Nishi, President

ATTEST:

Jim Heitzman, Secretary

CERTIFICATE OF SECRETARY

The undersigned Secretary of the Board of the Marina Coast Water District hereby certifies that the foregoing is a full, true and correct copy of Resolution No. 2010-12 adopted February 24, 2010.

Jim Heitzman, Secretary

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is by and among the MARINA COAST WATER DISTRICT, a County Water District organized and operating under the County Water District Law, Sections 30000 and following of the California Water Code ("MCWD"), having its principal address at 11 Reservation Road, Marina, CA 93933; MONTEREY COUNTY WATER RESOURCES AGENCY ("MCWRA"), a duly constituted Water Resources Agency created pursuant to the Monterey County Water Resources Agency Act, found at California Water Code Appendix §§ 52-3 *et seq.*, having its principal address at 893 Blanco Circle, Salinas, CA 93901; and CALIFORNIA-AMERICAN WATER COMPANY, a California corporation and regulated public utility ("CAW"), having its principal address at 1033 B Avenue, Suite 200, Coronado, CA 92118. Each of MCWD, MCWRA and CAW are referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, MCWD, MCWRA and CAW have cooperatively sought to address the water supply deficit in CAW's Monterey District through development of a Monterey District water supply solution consistent with the public interest as referenced in Application No. 04-09-019 pending before the California Public Utilities Commission ("CPUC") and CPUC Decision No. 06-12-040 (the "Project"); and

WHEREAS, to date MCWD and MCWRA (hereinafter referred to individually as a "Local Agency" and collectively as the "Local Agencies"), in cooperation with CAW, have expended significant sums in developing the Project; and

WHEREAS, the Local Agencies will be required to expend certain project approval and development costs during the Term as set forth in this Agreement, including the costs of (1) designing one or more test wells for the project, (2) National Environmental Policy Act ("NEPA") review necessary to facilitate federal financing for the project, and (3) other project development costs, as identified below; and

WHEREAS, the development of the Project is threatened by cash flow issues affecting further participation by the Local Agencies; and

WHEREAS, the Local Agencies do not presently seek reimbursement of their past Project-related expenditures but shall ultimately seek such reimbursement at a later date; and

WHEREAS, the Local Agencies, by this Agreement, seek reimbursement of Project development costs set forth in this Agreement expended from February 9, 2010, until the earlier of (a) the date the Local Agencies obtain proceeds of financing for the Project sufficient to both meet the Local Agencies' ongoing Direct Project-Related Costs and commence repayment to CAW of funds reimbursed under this Agreement, or (b) December 31, 2010, (the "Term"), unless the parties otherwise agree in writing to extend the Term; and

WHEREAS, the Local Agencies commit to use their best efforts to promptly obtain financing for the Project upon Project approval; and

WHEREAS, CAW seeks to ensure that the Local Agencies expeditiously and reasonably expend the costs necessary to continue the Local Agencies' full participation in the development of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCWD, MCWRA and CAW agree as follows:

1. CAW will reimburse funds to each of MCWD and MCWRA to pay for all direct Project-related costs incurred by the Local Agencies during the Term, not to exceed a total of \$4.3 million unless agreed to by the Parties in writing, which agreement shall not be unreasonably withheld. The funds reimbursed under this Agreement, and the interest thereon, shall be repaid or forgiven as set forth in Paragraph 6 hereof.
2. The funds reimbursed hereunder shall be recorded in CAW's Special Request 1 Surcharge memorandum account, currently before the CPUC in Application No. 09-04-015. Such funds reimbursed shall bear interest, which interest shall be added to the sums to be repaid, at the interest rate established from time to time by the CPUC as being applicable to CAW's Special Request 1 Surcharge memorandum account, with the initial interest rate being that applicable to such memorandum account as of February 9, 2010.
3. The funds reimbursed shall be in an amount sufficient to cover all Direct Project-Related Costs of the Local Agencies during the Term subject to Section 5. "Direct Project-Related Costs" shall include but not be limited to the following:
 - 3.1. Administrative costs for the Project-related expenditures of all non-attorney staff of each of the Local Agencies, including but not limited to:
 - 3.1.1. All costs of staff participation in all activities where a Monterey District water supply solution is addressed (for example and without limitation, meeting preparation and attendance, travel costs, and participation in any proceeding of any jurisdictional entity);
 - 3.1.2. All costs of staff participation in overseeing permitting processes, consultants, engineers, and attorneys;
 - 3.1.3. All costs of staff participation in CEQA review and project approval (if any) by each of the Local Agencies;
 - 3.1.4. All costs of staff participation in legal challenges, including appeals, of any sort to any agreement, CPUC decision, or Local Agency action relating to the Project;
 - 3.1.5. All costs of staff participation in real property negotiations and associated tasks to design a test well or wells, as well as NEPA work preparatory to federal grant acquisition.

- 3.2. Legal costs for participation by inside and outside attorneys representing the Local Agencies in all Project-related activities, including but not limited to:
 - 3.2.1. Completion of ongoing settlement discussions, documentation of a settlement, and pursuit of settlement approvals;
 - 3.2.2. Participation in CEQA review and project approval (if any) by each of the Local Agencies;
 - 3.2.3. Defense of any CEQA or other legal or regulatory challenges, in whatever forum such challenges may be raised, to any approvals of a Monterey District water supply solution; and
 - 3.2.4. Negotiation, documentation, and pursuit of approval of this Agreement.
- 3.3. Consultant, engineering and legal costs for participation on behalf of the Local Agencies in all Project-related activities, including but not limited to:
 - 3.3.1. Pursuing and obtaining any necessary or appropriate permits;
 - 3.3.2. Conducting NEPA review in conjunction with application for federal grants;
 - 3.3.3. Design of a test well or wells;
 - 3.3.4. Selection of a site or sites for a test well or wells;
 - 3.3.5. Consulting related to the selection and procurement of real property interests necessary and appropriate for construction and operation of a test well or wells, including such interests as may be necessary for later conversion of test wells to permanent wells; and
 - 3.3.6. Participation in Project-related activities before jurisdictional agencies.
- 3.4. Purchase costs of real property interests required for construction and operation of a test well or wells, including such interests as may be required for later conversion of test wells to permanent wells.
4. The Parties shall meet and confer at least monthly to review then-current budget, cash flow schedules, and scope of work covered by this Agreement. Any single expenditure item budgeted to cost more than \$300,000.00, or any revision to the budget for any single expenditure item that would result in that item costing more than \$300,000.00, must be agreed upon by the Parties in writing before expenditures or further expenditures for such item may occur. A preliminary cash flow schedule under this Agreement is attached hereto as **Exhibit A**. A preliminary description of the scope of work under this Agreement is attached hereto as **Exhibit B**.

5. Each of the Local Agencies shall submit invoices monthly to CAW for funds to be reimbursed under this Agreement, and CAW shall review and pay such invoices that CAW deems to be reasonably prudent within 30 days of submission of such invoices. CAW shall act in good faith and shall not act arbitrarily and capriciously in choosing not to pay an invoice, and shall pay all portions of any invoice other than those CAW deems not to be reasonably prudent. CAW shall promptly provide written notice to the applicable Local Agency concerning denial of payment of any invoice or portion thereof, after which CAW and the applicable Local Agency shall meet and confer within 5 business days to resolve the issue or issues leading to denial of payment.
6. Subject to Project approval by the CPUC and the governing boards of the Local Agencies, and promptly upon receipt by each Local Agency of the proceeds of bonding or other financing for the Project, the Local Agencies shall repay to CAW the funds reimbursed under this Agreement. Should such approval be denied by the CPUC, CAW shall not seek repayment of the funds reimbursed under this Agreement from the Local Agencies, but CAW shall be entitled to seek recovery of the funds reimbursed under this Agreement through rates, subject to CPUC reasonableness/prudency review. The Local Agencies shall reasonably support CAW in any such reasonableness/prudency review, subject to monthly reimbursement by CAW of the costs of the Local Agencies' support. All Parties recognize the legal rights and obligations of their respective governing boards to exercise prudent business judgment to approve or disapprove the various agreements necessary to proceed with the Project and that each such board will make determinations of whether to approve or disapprove such agreements based upon its view of the appropriate exercise of such prudent business judgment. Notwithstanding the preceding sentence, should any Party act in bad faith in carrying out the terms of this Agreement, any other Party may seek repayment of any costs that would have otherwise been reimbursed under this Agreement (which for CAW shall be limited to funds reimbursed under this Agreement and accrued interest on such funds) incurred as a result of that bad faith.
7. Each Party shall provide such further assurances of performance as any other Party may reasonably request during the Term.
8. This Agreement shall not be binding upon any Party until it has been approved by: 1) each Party's governing board and, 2) a ruling in CPUC Application No. 09-04-015 of the Assigned Commissioner, Assigned Administrative Law Judge, or such other approval as the CPUC shall require.
9. This Agreement may be executed in counterparts and upon execution by all Parties each counterpart shall be considered an original, and all counterparts taken together shall constitute one and the same agreement.
10. If by June 30, 2010, a Motion for Approval of Settlement accompanied by all necessary documentation has not been filed with the CPUC in A.04-09-019, which motion may be joined either by all parties or fewer than all parties to said proceeding, any Party may terminate this Agreement, but only after meeting and conferring in good faith with the other

Parties regarding the filing of a Motion for Approval of Settlement of some but not all issues in A.04-09-019 joined by all or some parties to said proceeding, or other potential courses of action.

11. Signatures affixed to this Agreement by ink, and facsimile or electronically reproduced signatures to this Agreement, shall all be deemed to be original signatures.

DATED: February ___, 2010

MARINA COAST WATER DISTRICT, a
County Water District organized and
operating under the County Water District
Law.

By: Jim Heitzman, Secretary

DATED: February ___, 2010

CALIFORNIA-AMERICAN WATER
COMPANY, a California corporation.

By: Robert G. MacLean, President

DATED: February ___, 2010

MONTEREY COUNTY WATER
RESOURCES AGENCY, a duly constituted
Water Resources Agency
created pursuant to the Monterey County
Water Resources Agency Act.

By: Curtis V. Weeks, General Manager

Exhibit A - Estimated Monthly Cash Flow

	February-10	March-10	April-10	May-10	June-10	July-10	August-10	September-10	October-10	November-10	December-10	Total
NEPA/CEQA - Plus												
Task 1: Project Management/Coordination	\$ -	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 14,217	\$ 142,167
Task 2: NEPA Environmental Documentation	\$ -	\$ 247,650	\$ 138,850	\$ 77,650	\$ 44,550	\$ 28,950	\$ 16,250	\$ 18,450	\$ 7,350	\$ 4,850	\$ 6,650	\$ 591,200
Test Wells												
Task 1: Project Management/Coordination	\$ -	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 19,420	\$ 194,200
Task 2: Test Well	\$ -	\$ 149,687	\$ 149,687	\$ 71,637	\$ 34,203	\$ 34,203	\$ 34,203	\$ 34,203	\$ 34,203	\$ 34,203	\$ 15,870	\$ 592,100
Contingency												\$ 156,830
Agency Administrative, Consultant and Legal Expenses												
MCWD	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 1,600,000
MCWRA	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 1,100,000
TOTAL MONTHLY CASH FLOW	\$ 300,000	\$ 730,973	\$ 622,173	\$ 482,923	\$ 412,390	\$ 296,790	\$ 284,090	\$ 286,290	\$ 275,190	\$ 272,690	\$ 256,157	\$ 4,376,497

Exhibit B – Scope of Work

Background

The Regional Water Project Facilities will provide up to 10,500 AFY of desalinated water supply to northern Monterey County through construction of a 10 mgd desalination plant including intake wells and pipelines, distribution pipelines, storage tanks, and pump stations. The scope of work presented below is limited to initial, time critical tasks associated with work related to permitting and design of test wells and preparation of NEPA/CEQA Plus environmental documentation as a requirement to obtain federal or state funding (e.g., Title XVI grants or SRF loans) for the Project facilities. The work is time-sensitive because of the need to have NEPA completed before funding can be obtained, because of the length of time required for Federal agency review of the document, and because the biological survey for compliance with the Federal Endangered Species Act (FESA), which is required for NEPA, needs to begin in April due to the spring flowering season for sensitive or other special status species such as the Monterey spineflower, and the test well performance results is necessary for development of final design of the proposed facilities. In addition, this scope of work includes Marina Coast Water District and Monterey County Water Resources Agency administrative, consultant and legal support services required to provide continued development of the Monterey District water supply solution as referenced in California Public Utilities Commission (CPUC) Application No. 04-09-019.

NEPA/CEQA-Plus Scope of Work

1 Project Management

RMC will coordinate and manage the various activities, communications, and consultants involved in the program elements included in this scope of work as well as related activities being undertaken by others outside of this scope of work.

1.1 Project Meetings

RMC shall conduct as-needed conference calls and meetings with MCWD and its Project Partners to discuss work progress and outstanding issues. These conference calls and meetings will cover status of work products, schedule, and budget. RMC will identify outstanding issues, concerns, etc. and obtain guidance/direction from MCWD and its Project Partners at these conference calls and meetings. This scope of work assumes the following meetings will occur:

- 10 conference calls with MCWD and its Project Partners
- 10 monthly progress meetings with MCWD and its Project Partners

RMC will also conduct internal meetings to coordinate activities and discuss ongoing issues. These meetings will include individuals involved in each element of the project.

1.2 Project Administration

RMC will procure necessary subconsultants for related studies, and administer the subconsultant contracts. RMC will administer the following:

- Preparation of monthly invoices by task and by individual.
- Preparation of monthly progress report describing specific accomplishments during the reporting period, problems encountered or anticipated, work scheduled for the next reporting period, and cost report.

1.3 Quality Assurance/Quality Control

RMC and its subconsultants will provide internal quality assurance and quality control (QA/QC) activities which will include detailed review of project design documents, drawings, and calculations.

The Proposed Project/Action is a component of the Monterey Regional Water Supply Project, which is being evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) as part of, and as an alternative to, California American Water Company's (CAW) Coastal Water Project (CWP). Specifically, the CWP and Regional Project were evaluated pursuant to CEQA in a draft environmental impact report (EIR) prepared by the California Public Utilities Commission (CPUC) and released to the public in January 2009. The Final EIR was released in October 2009 and was certified by the California Public Utilities Commission on December 17, 2009.

For the basis of this scope of work, it is assumed that the Regional Project is the preferred alternative for implementation and would be the Proposed Project/Action for the NEPA analysis. Key components of the Regional Project include the construction and operation of the intake wells, desalination facility, distribution pipelines, and certain component of the Carmel River Aquifer Storage and Recovery Project. These components constitute the Proposed Project/Action and were described and analyzed in the CWP EIR. Ownership of the Project facilities will be divided among the Project Partners (MCWD, MCWRA, and CAW). It is anticipated that the environmental documents will address any minor adjustments in pipeline alignments/extensions and site specific requirements for selected well locations.

It is the intention of the Project Partners to seek federal funding under the U.S. Bureau of Reclamation's (USBR or Reclamation) Title XVI Water Reclamation and Reuse Program and possible other funding mechanisms such as the State Revolving Fund (SRF), which is administered by the State Water Resources Control Board (SWRCB). As a result, the Proposed Project/Action must comply with the National Environmental Quality Act (NEPA) and/or CEQA-Plus requirements. Reclamation will be the federal lead agency for NEPA. RMC's approach will be to prepare an environmental document that meets the requirements of NEPA and CEQA-Plus along with any technical studies needed to support Reclamation's decision to fund the Proposed Project/Action.

At this time, it is anticipated that this Proposed Project/Action would meet NEPA Requirements through the preparation of an Environmental Assessment (EA) leading to a Finding of No Significant Impact (FONSI). Specifically, this scope, budget and schedule assume that an EA/FONSI document will be prepared and processed to meet NEPA requirements. However, if it is determined that there are any significant environmental impacts that cannot be mitigated to less than significant levels, then an Environmental Impact Statement (EIS) may need to be prepared to meet NEPA requirements. If it is determined that an EIS is required and/or any additional CEQA analysis or processes are required, then RMC will work with MCWD and its Project Partners and/or Reclamation to implement adjustments in the project scope, budget, and schedule, as determined necessary.

2.1 Project Definition and Delineation of Area of Potential Affect

RMC will prepare the project description for the Administrative Draft EA/FONSI that meets NEPA requirements. The project description for the Proposed Project/Action will include the following: articulation of the Project's goals and objectives, the geographic location and footprint for all the physical improvements associated with the Proposed Project/Action, and a comprehensive description of the Proposed Project/Action's technical, operational, economic, engineering, and construction features/details.

As part of this task, RMC will also delineate the area of potential effect (APE), which will be used for conducting any additional field survey work to cover areas not previously surveyed for biological or cultural resources during the preparation of the CWP EIR. RMC has assumed that up to three alternatives, including the No Project/Action Alternative, will be described in the Proposed Action and Alternatives Description in the NEPA document and analyzed at an equal-level of detail as part of the environmental analysis.

After review and comment by the Project partners, this will be the basis for moving forward with the preparation of the EA and technical reports needed to meet CEQA-Plus requirements. Any changes to the

Project Description and/or alternatives following the initiation of the environmental analyses may necessitate the need for additional budget, scope, and schedule.

Deliverables

- Three (3) copies of a Proposed Action and Alternatives Description

2.2 Fill Resource Gaps

During this Task, RMC will identify any gaps in information that may hinder complete or adequate evaluation of potential environmental issues, specifically finalizing the proposed route for the intake pipeline, potentially evaluating alternative routes for the product water pipeline, describing the MCWD tie-in facilities, and describing the metering facilities for brackish water, CAW, and MCWD. The scope and budget assume that CAW will provide any additional information needed for the CAW-owned facilities, specifically the Terminal Reservoir, ASR facilities, Monterey Pipeline, and Valley Greens Pump Station, as needed to complete the Project Description for the NEPA.

With information developed in Task 1, RMC will conduct a preliminary field reconnaissance of the project area to gain a better understanding of the site conditions and issues and concerns associated with the Proposed Project/Action. This effort will include a review of pertinent databases (e.g. the Department of Toxic Substances Control's [DTSC] EnviroStar database, the California Natural Diversity Database (CNDDDB), records of historical and archaeological resources on file with the Northwest Information Center (NWIC), and other appropriate databases to determine if any fatal flaws exist for one or more of the pipeline alignments.

This phase will largely dedicate the level of field effort for the initial field subtasks identified in Tasks 6 and 7 to survey and evaluate any portion(s) of the Proposed Project/Action APE not previously surveyed.

Deliverables

- Database search results, a preliminary bibliography, and list of cumulative projects.

2.3 Agency Consultation

Once we have developed the Proposed Action and Alternatives Description consistent with requirements of NEPA, RMC will organize and facilitate discussions with Reclamation, the U.S. Fish and Wildlife Service (USFWS), and the National Marine Fisheries Service (NMFS). Specifically under this task, RMC will facilitate discussions with these agencies to get their input into the level of analysis and effort required for their respective processes. For this task, we have assumed 100 hours. Any additional efforts in this area will be billed on an additional time and materials basis at the direction of the Project Partners.

Deliverables

- Copies of written (e.g. email, letter) and verbal (e.g. phone notes) correspondence with agency representatives.

2.4 Draft Environmental Assessment and Finding of No Significant Impact

2.4.1 Prepare Administrative Draft Environmental Assessment.

RMC will prepare an Administrative Draft EA on the Proposed Project/Action on behalf of Reclamation to comply with federal environmental laws. An EA is a preliminary analysis involving the use of a checklist of environmental issues to determine whether an EIS is needed to comply with NEPA. In conjunction with the EA, RMC and our subcontractors will prepare several special studies as described in Tasks 2.6 through 2.10 to facilitate compliance with the federal environmental laws and regulations. The format and thresholds of significance used in the EA will follow guidance provided by the Council on

Environmental Quality (CEQ). This will include an evaluation of environmental justice, Indian trust assets, and socio-economics.

For any potentially significant impact(s) identified through the EA, RMC will develop appropriate mitigation measures to attempt to avoid and/or reduce those impacts to less than significant levels. If the EA document concludes and Reclamation concurs that the Proposed Project/Action will not have a significant effect on the environment then a FONSI or Mitigated FONSI may be prepared. However, if significant environmental impacts cannot be reduced to less than significant levels then an EIS may need to be prepared.

For purposes of this task, it is assumed that an EA/FONSI or Mitigated FONSI will be sufficient for complying with NEPA. The EA will be developed using information contained in the Coastal Water Project EIR, and it is assumed that a Word version of this document will be provided to RMC. If it is determined that an EIS is to be prepared, RMC will prepare a detailed scope of work and budget for the completion of the appropriate NEPA documentation effort. RMC assumes that final comments will be returned within three weeks.

2.4.2 Prepare Screen Check and Public Draft EA/FONSI.

Based on comments from the Project partners and Reclamation, RMC will revise the Administrative Draft and prepare a Public Draft EA FONSI document to undergo the required 30-day public review. This task will involve the preparation of a Screen-Check Draft EA/FONSI for proof check review by the Project Partners and Reclamation prior to public distribution of the Public Draft EA/FONSI. RMC will work with Reclamation to determine the appropriate distribution of the Public Draft EA/FONSI.

Deliverables:

- Ten (10) copies of the Administrative Draft EA/FONSI to the Project Partners and Reclamation for review. RMC assumes that final comments will be returned within three weeks.
- Twenty-five (25) copies of the Public Draft EA/FONSI and an electronic PDF for the required 30-day public review.

2.5 Prepare Responses to Comments and Process FONSI

Upon completion of the public review period, RMC will assist the Project Partners and Reclamation in considering any comments received. RMC will help prepare responses to comments received. Because we have no ability to control the number and complexity of comments that we will receive, we have budgeted 100 professional staff hours for responding to comments. Any additional effort by RMC will be billed at an additional time and materials basis as directed by the Project Partners. This task assumes that Reclamation will concur that a FONSI should be prepared. RMC will assist Reclamation in preparing and processing the FONSI.

Deliverables

- Twenty-five (25) copies of the Final EA/FONSI and an electronic PDF.

2.6 Wetland Delineation and Verification

RMC will obtain a jurisdictional determination of waters of the U.S. for the Monterey Regional Water Supply Project. Field surveys will be conducted to create wetland maps based on current conditions within the project study boundary and to determine the total acreage of jurisdictional waters of the U.S. (including wetlands potentially subject to federal Clean Water Act Section 404 and Section 10 of the Rivers and Harbors Act requirements). The wetland delineation will also include identification of features potentially under the jurisdiction of California Fish and Game Code 1600 and potentially non-jurisdictional "isolated waters" subject to state regulation under the Porter-Cologne Act. The report will be submitted to the Corps with a request for field verification and a jurisdictional determination. This task will include one site visit as well as up to 2 site visits with Corps staff to verify jurisdictional waters

of the U.S. and to document any changes to the preliminary wetland maps. Based on preliminary surveys of the project area, wetland features are expected to be minimal, and an Individual 404 Permit is not expected to be necessary for the project. This scope and budget does not include obtaining a 404 permit.

Deliverables:

- Draft and final Wetland Delineation Report and Maps
- Draft and final Verified Wetlands Maps

2.7 Biological Assessment for NOAA Fisheries

The project biologist will prepare a Biological Assessment (BA) for consultation with NOAA Fisheries. Monterey Bay provides potential marine habitat for four animal species that are federally listed that could potentially be affected by project implementation: green sturgeon, steelhead, Chinook salmon, and coho salmon. The Bay was also recently designated as critical habitat for green sturgeon. In addition, federally listed steelhead occur in the Carmel River. As described in the CWP EIR, steelhead within the Carmel River could potentially be affected indirectly and beneficially by the proposed project. The NOAA Fisheries BA will include information regarding the status of each species; its habitat, life history, and potential for occurrence within the project boundary; potential effects to the species resulting from all project activities; and reasonable and prudent measures to avoid and minimize potential for 'take'. The measures identified in the biological resource sections of the CWP EIR will be used as a baseline in developing conservation measures for the BA, but additional measures more specific to the Monterey Regional Water Supply Project will likely be required.

After USBR submits the BA to NOAA Fisheries, RMC will work to determine if formal consultation, leading to a Biological Opinion (BO) will be required, or if NOAA Fisheries will agree to an informal consultation process. If the BA determines that there would be no adverse effect to listed species or critical habitat, and NOAA Fisheries concurs, formal consultation would not be required. If the BA determines that there is a potential to adversely affect critical species or habitat, formal consultation will be required. RMC will assist USBR in the formal consultation process, including development of any additional conservation measures that may be needed to meet the requirements of FESA and the BO/Incidental Take Statement.

Monterey Bay also contains Essential Fish Habitat (EFH) designated under the Magnuson-Stevens Act for species managed under the following Fisheries Management Plans (FMPs): Pacific coast salmon FMP, coastal pelagic species FMP, and Pacific groundfish FMP. The scope includes a consultation with NOAA Fisheries on potential impacts to EFH. EFH assessments in support of consultation under the Magnuson-Stevens Act are similar in content to a BA, and the EFH assessment will be included in, or appended to, the BA. This task will include up to 2 meetings with NOAA Fisheries and ESA staff.

Deliverables:

- Draft BA for local agency/USBR review
- Final Draft BA for submittal to NOAA Fisheries for review and comment
- Final BA for submittal to NOAA Fisheries in support of consultation

2.8 Biological Assessment for U.S. Fish and Wildlife Service (USFWS)

Project biologists will prepare a BA for consultation with USFWS. The CWP EIR listed four terrestrial animal species and three plant species that are either federally listed or proposed for federal listing that could potentially be affected by project implementation:

- California tiger salamander
- Santa Cruz long-toed salamander
- California red-legged frog
- Smith's blue butterfly

- Monterey spineflower
- Yaden's wallflower
- Sand gilia

The USFWS BA will include information regarding the status of each species; its habitat, life history, and potential for occurrence within the project boundary; potential effects to the species resulting from all project activities; and reasonable and prudent measures to avoid and minimize potential for 'take'. The BA will also include discussion of any marine mammals and non-anadromous fish under the purview of the USFWS that may be affected by the project. Project biologists will use the measures identified in the biological resource sections of the CWP EIR as a baseline in developing conservation measures for the BA, but additional measures more specific to the Monterey Regional Water Supply Project will likely be required.

After USBR submits the BA to USFWS, RMC will work to determine if formal consultation, leading to a Biological Opinion (BO) will be required, or if USFWS will agree to an informal consultation process. If the BA determines that there would be no adverse affect to listed species or critical habitat, and USFWS concurs, formal consultation would not be required. If the BA determines that there is a potential to adversely affect critical species or habitat, formal consultation will be required. RMC will assist USBR in the formal consultation process, including development of any additional conservation measures that may be needed to meet the requirements of FESA and the BO/Incidental Take Statement.

Project biologists will also prepare a letter report to document how the reports will meet the requirements of the Fish and Wildlife Coordination Act (FWCA).

This task will include up to 2 meetings with USFWS.

Deliverables:

- Draft BA for local agency/USBR review
- Final Draft BA for submittal to USFWS for review and comment
- Final BA for submittal to USFWS in support of consultation
- Draft and final memorandum documenting requirements of Fish and Wildlife Coordination Act for concurrent review by local agency and USBR followed by submittal to USFWS

2.9 Section 106 Compliance

RMC will complete permitting and consultation requirements associated with Section 106 of the National Historic Preservation Act (NHPA) including inventory efforts, site evaluation, Native American consultation, preparation of a Memorandum of Agreement (MOA) with the State Historic Preservation Officer (SHPO), and the development of a Historic Property Treatment Plan and Archaeological Monitoring Program.

2.9.1 Cultural Resources Survey Report

RMC will complete a Cultural Resources Inventory Report update, including final delineation of the Area of Potential Effects (APE), cultural resources inventory findings, preliminary resource evaluation for National Register of Historic Places (NRHP)-eligibility, and presentation of potential treatment options. This update will utilize existing information to the greatest extent possible, including the results of the field work and investigations completed as part of the CWP EIR effort (Archaeological Survey for the Cal-Am Coastal Water Project, Monterey County, California, July 2009). Portions of the APE were not accessible during the initial inventory performed for the CWP EIR, including the Terminal Reservoir site, the Aquifer Storage and Recovery site, and several new pipeline alignments. These components will be surveyed by a Registered Professional Archaeologist and the results will be included in the update.

Deliverables:

- Administrative Draft Survey Report update for local agency review and comment.
- Final Survey Report update: Submitted to USBR
- One response for additional information from USBR and revision of report and resubmittal of survey report update

2.9.2 Initial Native American Consultation

Project team will contact the Native American Heritage Commission to request information on any known sacred sites within the project area, and to request a list of contacts for Native American tribes/individuals who may have an interest in the proposed undertaking. Each organization or individual on the list will be contacted.

Deliverables:

- Coordination with NAHC and Tribal Representatives: letters and phone calls to appropriate stakeholders
- Incorporation of Tribal Consultation into Inventory Report.

2.9.3 Evaluation of Cultural Resources

The CWP EIR identified five potentially NRHP-eligible cultural resources within the proposed APE including two prehistoric sites, a historic-period fenceline, remnants of the Southern Pacific Railroad, and the foundation of the Del Monte Hotel Depot (Pacific Legacy, 2009). In consultation with the USBR Archaeologist, the project archaeologist will evaluate these resources for eligibility to the NRHP. In the case of prehistoric archaeological sites, evaluation may be completed by examining existing records and reports, detailed recording, and test excavation to determine data potential of the sites. Historic-period resource evaluation may include further study and detailed recording. Results of the evaluation will be presented to USBR for consultation with the SHPO. The SHPO will be presented with APE maps and evaluation results, and will be asked to concur with USBR's finding of either No Historic Properties Affected or Historic Properties Affected. This scope assumes that no new resources beyond those identified above will require evaluation as a result of the additional inventory effort.

2.9.4 Preparation of Memorandum of Agreement and Historic Properties Treatment Plan

For those resources identified as eligible to the National Register that cannot be avoided by the project, a Memorandum of Agreement and Historic Properties Treatment Plan (HPTP) will be developed. The HPTP will identify how a proposed data recovery program would preserve the significant information the archaeological resource is expected to contain and address the scientific/historic research questions applicable to the resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, will be limited to the portions of the historic property that could be adversely affected by the project.

A Memorandum of Agreement (MOA) will be prepared in conjunction with the HPTP. Agencies involved in the development of the MOA could include the project proponent, USBR, the SHPO, and local Indian tribes. The MOA would stipulate the treatment plan outlined in the HPTP, including details about when the work would be done and the responsible parties. This scope does not include data recovery effort or monitoring as potentially required by the MOA and HPTP. This can be scoped as a separate task following completion of the agreement documents.

Deliverables:

- Draft MOA and HPTP for local agency and USBR review and comment.
- Final MOA and HPTP submitted to the Corps and SHPO

2.10 Federal General Conformity Air Quality Assessment

RMC will prepare an Air Quality Assessment Report as part of the development of the EA to determine whether the Proposed Project/Action would conform to the National Ambient Air Quality Standards. The Project is located within the northern portion of the North Central Coast Air Basin (NCCAB) and is subject to the jurisdiction of the Monterey Bay Unified Air Pollution Control District (MBUAPCD). The NCCAB is currently designated non-attainment for the State 8-hr ozone and 24-hour PM10 standards. Based on this attainment status, RMC will prepare a comprehensive air quality analysis that shall include an evaluation of both localized and regional air quality impacts based on the construction and operation of the Proposed Project/Action improvements. RMC will prepare include the analysis in the EA and will include a discussion of the Proposed Project/Action's conformance with the Federal General Conformity Rule.

Our approach will be to quantify emission sources from construction and operational activities and compare these emissions to recommended significance thresholds applied by the MBUAPCD. RMC will also maximize the use of the air quality analysis performed in conjunction with the CWP EIR. With these information sources, RMC will discuss the potential for the combined emissions from the Proposed Project/Action and other projects considered in the cumulative analysis to adversely affect air quality. Based on an anticipated low trip generation, no carbon monoxide modeling (e.g., hot-spot analysis of local intersections) is proposed under this scope of work. Similarly, based on the short-duration of construction, this scope does not include a health risk assessment for the calculation of diesel particulates or other toxic air contaminants (TACs). RMC assumes that the health risk analysis prepared for the Desalination Facility as part of the CWP EIR will be sufficient to cover issues related to TACs.

The air quality analysis shall also include a discussion of the Proposed Project/Action's potential to contribute to global climate change and will include an estimation of greenhouse gas emissions (i.e. carbon dioxide, methane) generated by long-term Proposed Project/Action operations. These estimates will then be compared to significance thresholds adopted by the MBUAPCD to determine the significance of the Proposed Project/Action's incremental contribution to global climate change impacts.

Deliverables:

- Air quality assessment will be included in the EA.

Key Assumptions

The following assumptions were used in preparing this scope of work, budget and schedule:

- The NEPA document will also be acceptable for CEQA Plus documentation
- The NEPA document will be based on data and analysis performed for the Coastal Water Project EIR, augmented as necessary to meet federal agency requirements.
- A Word version of the Coastal Water Project EIR will be provided so that applicable text can be used in the NEPA document.
- Once the NEPA project description chapters are developed, the project description and alternatives will not change substantially and the design of any project level facilities will not change.
- No public scoping meetings are proposed as part of the NEPA process.
- The Project Partners and Reclamation will publish all public meeting advertisements.
- The Project Partners and Reclamation will provide comments that provide clear direction for revisions and the comments would not require new analyses.

- Due to uncertainty in estimating the level of public comment on the EA/FONSI, the scope of work described herein assumes up to 100 hours to provide written response to public comments. Should the estimated level of effort for preparing responses exceed the hours assumed, additional work would need to be authorized through a contract modification.
- There will not be a public hearing for the Draft EA/FONSI.
- The project description and alternatives will not change once the Biological and Cultural Resources investigations are underway.
- The EA/FONSI will evaluate the “Proposed Project/Action”, the ‘No Action’ Alternative as well as one other alternative. Alternatives will be analyzed at an equal level of detail..
- This scope of work does not include noticing for NEPA documents; noticing will be the responsibility of Reclamation.
- Any special or public outreach or education activities other than that proposed in this scope of work will require additional scope and budget for RMC.
- Work will not be stopped or slowed by others beyond the Consultant Team’s control.
- Access to property for the biological and cultural resources surveys will be arranged for and/or provided by CAW, MCWD and MCWRA.

Test Well Scope of Work

1 Project Management

RMC will coordinate and manage the various activities, communications, and consultants involved in the program elements included in this scope of work as well as related activities being undertaken by others outside of this scope of work.

1.1 Project Meetings

RMC shall conduct as-needed conference calls and meetings with MCWRA and its Project Partners to discuss work progress and outstanding issues. These conference calls and meetings will cover status of work products, schedule, and budget. RMC will identify outstanding issues, concerns, etc. and obtain guidance/direction from MCWD at these conference calls and meetings. This scope of work assumes the following meetings will occur:

- Up to ten conference calls with MCWRA and its Project Partners
- 10 monthly progress meetings with MCWRA and its Project Partners

RMC will also conduct internal meetings to coordinate activities and discuss ongoing issues. These meetings will include individuals involved in each element of the project.

1.2 Project Administration

RMC will procure necessary subconsultants for related studies, and administer the subconsultant contracts. RMC will administer the following:

- Preparation of monthly invoices by task and by individual.
- Preparation of monthly progress report describing specific accomplishments during the reporting period, problems encountered or anticipated, work scheduled for the next reporting period, and cost report.

1.3 Quality Assurance/Quality Control

RMC and its subconsultants will provide internal quality assurance and quality control (QA/QC) activities which will include detailed review of project design documents, drawings, and calculations.

2.1 Aquifer Testing Program

The existing computer model of the area will be used to help develop the aquifer testing program for the test wells, including the location and screen intervals of monitoring wells needed to assess the ultimate source of water to project wells. Existing wells will be used as monitoring wells to the extent possible. Accordingly, the location and construction information for nearby existing wells will be compiled and these wells evaluated for incorporation into the test program as appropriate. Proposed monitoring wells will be added to the program as modeling indicates are necessary. The ultimate intent is to develop a test program that will provide results necessary to differentiate sources of water to the intake wells (seawater vs. intruded brackish water).

Based on the results of the modeling exercise, a Technical Memorandum (TM) summarizing the proposed test program will be prepared. The TM will include the location and construction details of the test pumping well; the number, location, and construction details for proposed monitoring wells; recommended test pumping procedures; and recommended approach to analysis of test data. The last step is especially critical to facilitating consensus on meaning of test results and building support for moving the project forward if results are favorable.

This task assumes the following:

- 5 modeling runs will be necessary to develop the aquifer testing program
- Up to 3 meetings with the project stakeholders to review and discuss the aquifer testing program

2.2 Permitting

RMC will acquire the necessary permits needed for the installing of one vertical and one slant test well and associated monitoring wells. Contact will be made and continued to confirm agency jurisdiction and specific issues to be addressed. Once sufficient information has been gathered to complete the necessary permit applications, the draft permit applications will be prepared and submitted.

The following permits will be required;

- Central Coast RWQCB Waste Discharge Permit (compliance under the existing General Permit for Low Threat Discharges)
- Coastal Development Permit
- Monterey County Health Department well permits

Deliverables:

- Permit applications
- Approved Permits

Permit application fees are not included in this scope of services, and are assumed to be paid by MCWRA.

2.3 Preliminary Design – Vertical Well

The preliminary design of the test well will consist of the following items:

- Finalize the location of the test well and monitoring wells. This task will be done in coordination

with Task 3.1

- Acquire easements/approval from the land owner(s) for the test well and/or monitoring well(s)
- Determine the source of water for drilling
- Determine location for disposal of the pumped water
- Conduct a site visit to determine the source of power for the long term pumping test
- Determine location for disposal of cuttings from well installation

Deliverables:

- TM that summarizes the findings and outcomes of the preliminary design including any maps or drawings necessary for final design.

2.4 Preliminary Design – Slant Well

The preliminary design of the test well will consist of the following items:

- Finalize the location of the test well and monitoring wells. This task will be done in coordination with Task 4.1
- Acquire easements/approval from the land owner(s) for the test well and/or monitoring well(s)
- Determine the source of water for drilling
- Determine location for disposal of the pumped water
- Conduct a site visit to determine the source of power for the long term pumping test
- Determine location for disposal of cuttings from well installation

Deliverables:

- TM that summarizes the findings and outcomes of the preliminary design including any maps or drawings necessary for final design.

2.5 Final Design – Vertical Well

This task includes preparing a final design TM and detailed technical specifications for the test and monitoring wells to be included with front end contractual documents (to be provided by others) for formation of a bid package. Additionally, a detailed bid schedule, to be attached to the technical specifications, will be prepared with specific line items showing units and unit quantities for the construction of the wells. Items included in the technical specifications will include (but are not necessarily limited to) the following:

The Final Design TM will include the following items:

- Well location, depth, materials and dimensions;
- Expected geohydrologic conditions;
- Permits to be acquired by the contractor;
- Compliance with discharge requirements, as necessary;
- Job conditions (e.g. noise suppression, drilling waste, runoff management, power, lighting, water, security, sanitation and work damage);
- Abandoned boreholes;

The Contract Documents will include the following:

- Bid documents
- General and Special conditions
- Mobilization, demobilization and cleanup;
- Site access and preparation
- Drilling methods;
- Equipment, materials, and records to be furnished by the contractor;
- Records to be kept by the contractor;
- Well drilling and construction, including:
 - Drilling, installation, and cementing of conductor casing,
 - Pilot-borehole drilling,
 - Geophysical borehole logging (i.e. short- and long-normal resistivity logs, guard or lateral logs, self potential log, gamma ray, and sonic),
 - Isolated aquifer zone testing,
 - Final borehole drilling (reaming pass),
 - Alignment, plumbness, borehole integrity, and drilling speed,
 - Well casing and screen installation,
 - Gravel access and sampling tube installation,
 - Filter pack material selection and approved placement method,
 - Annular cement seal installation.
- Well development, including:
 - Initial airlift development between packers,
 - Development by wireline swabbing and bailing (if necessary), and
 - Development by pumping.
- Aquifer pumping and recovery tests;
- Spinner (flow meter) survey;
- Downhole video camera survey;
- Gyroscopic alignment survey;
- Water quality sampling and analyses
- Wellhead survey; and
- Well cover and final inspection.

RMC will prepare an engineer's estimate of contractor costs for the drilling, construction, development, and testing of the wells based on local conditions and recent contractor cost estimates for similar projects.

This task assumes the design of one vertical extraction well and up to three monitoring wells.

The final deliverable will include one (1) electronic copy and two (2) bound hard copies of the final technical specifications and cost estimate.

2.6 Final Design – Slant Well

This task includes preparing a final design TM and detailed technical specifications for the test and monitoring wells to be included with front end contractual documents (to be provided by others) for formation of a bid package. Additionally, a detailed bid schedule, to be attached to the technical specifications, will be prepared with specific line items showing units and unit quantities for the construction of the wells. Items included in the technical specifications will include (but are not necessarily limited to) the following:

The Final Design TM will include the following items:

- Well location, depth, materials and dimensions;
- Expected geohydrologic conditions;
- Permits to be acquired by the contractor;
- Compliance with discharge requirements, as necessary;
- Job conditions (e.g. noise suppression, drilling waste, runoff management, power, lighting, water, security, sanitation and work damage);
- Abandoned boreholes;

The Contract Documents will include the following:

- Bid documents
- General and Special conditions
- Mobilization, demobilization and cleanup;
- Site access and preparation
- Drilling methods;
- Equipment, materials, and records to be furnished by the contractor;
- Records to be kept by the contractor;
- Well drilling and construction, including:
 - Drilling, installation, and cementing of conductor casing,
 - Pilot-borehole drilling,
 - Geophysical borehole logging (i.e. short- and long-normal resistivity logs, guard or lateral logs, self potential log, gamma ray, and sonic),
 - Isolated aquifer zone testing,
 - Final borehole drilling (reaming pass),
 - Alignment, plumbness, borehole integrity, and drilling speed,
 - Well casing and screen installation,
 - Gravel access and sampling tube installation,
 - Filter pack material selection and approved placement method,
 - Annular cement seal installation.
- Well development, including:
 - Initial airlift development between packers,
 - Development by wireline swabbing and bailing (if necessary), and

- Development by pumping.
- Aquifer pumping and recovery tests;
- Spinner (flow meter) survey;
- Downhole video camera survey;
- Gyroscopic alignment survey;
- Water quality sampling and analyses
- Wellhead survey; and
- Well cover and final inspection.

RMC will prepare an engineer's estimate of contractor costs for the drilling, construction, development, and testing of the well based on local conditions and recent contractor cost estimates for similar projects.

This task assumes the design of one slant extraction well and up to three monitoring wells.

The final deliverable will include one (1) electronic copy and two (2) bound hard copies of the final technical specifications and cost estimate.

MCWD/MCWRA Administrative, Consultant and Legal Scope of Work

MCWD and MCWRA shall provide administrative, engineering, consultant and legal support for the continued development of a Monterey District water supply solution as referenced in California Public Utilities Commission (CPUC) Application No. 04-09-019 (the "Project"). This work includes all administrative and legal tasks necessary to support the development the Project, whether or not they occur in connection with the proceedings in CPUC Application No. 04-09-019, and includes, without limitation, Project administration, financing, permitting and other Project development activities, participation in ongoing Project-related negotiations and agreements and approvals, and participation in ongoing and future Project-related administrative and court proceedings. With respect to the potential maximum term of the Advance and Reimbursement Agreement – February 9, 2010 to December 31, 2010 – the scope of work would include, without limitation, the following Project-related activities:

- Administrative Project-related activities of all non-attorney staff of the agencies, including staff participation in (1) activities where a Monterey District water supply solution is addressed, including the financing and permitting of the Project, (2) oversight of permitting processes, consultants, engineers, and attorneys, (3) CEQA review and Project approval by each agency, (4) legal challenges relating to the Project, and (5) real property negotiations and associated tasks to design a test well or wells, as well as NEPA work preparatory to federal grant acquisition.
- Legal Project-related activities of inside and outside attorneys representing the agencies in all Project-related activities, including (1) completion and documentation of settlement discussions and pursuit of settlement approvals, (2) CEQA review and Project approval by each agency, (3) defense of any CEQA or other legal or regulatory challenges to any Project approval, (4) negotiation, documentation, and pursuit of approval of the Agreement, and (5) pursuit of permits and financing for the Project.
- Consultant, engineering and legal activities on behalf of the agencies in all Project-related activities, including (1) pursuit of any required permits, (2) conduct of NEPA review in conjunction with application for federal grants, and activities in

pursuit of financing options (3) design of a test well or wells, (4) selection of a site or sites for a test well or wells, (5) selection and procurement of real property interests required for construction and operation of a test well or wells, and (6) participation in Project-related activities before jurisdictional agencies.

- Activities related to the purchase of real property interests required for construction and operation of a test well or wells.