

April 5, 2010

## SUMMARY OF WATER PURCHASE AGREEMENT

The Regional Desalination Project contemplates the development, construction, and operation of a regional desalination water supply project. The Final Environmental Impact Report envisions that Marina Coast Water District (“MCWD”) Monterey County Water Resources Agency (“MCWRA”) and California American Water (“CAW”) would own and operate various project components. Specifically, MCWRA will own, install, operate, and maintain wells through which brackish source water will be extracted and transported to a desalination plant. MCWD will own, construct and operate the desalination plant and transport desalinated Product Water to a delivery point, where some of the Product Water will be received by CAW and some will be received by MCWD. MCWD will utilize the Product Water delivered to it for its existing customers, and in the future may utilize some of the Product Water to serve customers in the former Ford Ord. CAW will distribute its portion of the Product Water through facilities it owns for which the Commission should grant a CPCN.

The proposed settlement contemplates the approval of not only the Settlement Agreement, but also the Water Purchase Agreement and the Outfall Agreement. Included below is an attempt to summarize certain terms of the Water Purchase Agreement. For the most part, the summary below is in sequential order, however, certain sections are addressed out of order based on their relevance to related provisions contained in other sections. Please be advised that the attached summary is only a summary of the provisions under the Water Purchase Agreement and not a comprehensive explanation or description of how the Water Purchase Agreement works. As a result, although the attached summary may be helpful in understanding the Water Purchase Agreement, the actual terms and conditions of the Water Purchase Agreement (which may differ from the terms of this summary) are controlling. Capitalized terms used, but not defined, in this summary have their respective meanings as set forth in the Water Purchase Agreement.

### WATER PURCHASE AGREEMENT KEY TERMS AND CONDITIONS:

The Water Purchase Agreement (“WPA”) governs the operations of all the Project Facilities related to the Regional Desalination Project, including the legal requirements and obligations of each of the parties.

<b>CONCEPT:</b>	<b>COMMENTS:</b>
Parties	MCWD, MCWRA and CAW are the parties to the WPA
Purpose	To develop, construct and operate a regional desalination water supply project to supply CAW's Service Area on the Monterey Peninsula and, when needed, MCWD's Service Area, subject to specified peak demand priority for CAW's Service Area, and to recognize and

	preserve MCWRA's statutory duty to protect the Salinas River Groundwater Basin (" <u>Basin</u> ").
Effective Date (§2.1)	The WPA shall be effective and enforceable as of the date on which the Conditions Precedent (§25) have been satisfied.
Conditions Precedent (§25)	<p>The Conditions Precedent are as follows:</p> <ol style="list-style-type: none"> <li>1. All CEQA compliance (except legal challenges) has been completed by each of MCWD, MCWRA and the CPUC (§25.1);</li> <li>2. An Outfall Agreement between MCWD and MRWPCA has been executed (§25.2);</li> <li>3. The receipt from the CPUC of final approval of the WPA and the Settlement Agreement and the Outfall Agreement without modification (§25.3). To the extent modified, the acceptance of any such modifications are solely in the discretion of the Party or Parties that are affected by the CPUC's requested modification.</li> </ol>
Initial Delivery Term (§2.2)	<p>The Initial Delivery Term under the WPA shall be for a period of 34 years starting on the date of Acceptance of the Project Facilities.</p> <p>Under the WPA, "Acceptance" means demonstration that the Project Facilities are ready for operation at the maximum firm capacity of 10 MGD and the Acceptance Tests (§4.13) for each component of the Project Facilities have been passed and that the Project Facilities comply with Legal Requirements (e.g., CA Dept. of Pub. Health).</p>
Renewal Term(s)	<p>The WPA contemplates six automatic renewal terms of 10 years each. The potential Term of the Agreement could be as long as 94 years from the Acceptance Date.</p> <p>A Renewal Term shall be automatic unless MCWD provides CAW a Non-renewal Notice at least 5 years prior to the end of the current Renewal Term (or Initial Delivery Term).</p> <p>However, in order for MCWD to provide a Non-renewal Notice to CAW, CAW must have access to an alternative water supply or supplies that (i) provide Product Water at an equal or lower cost than the Regional Desalination Project; (ii) are of a capacity at least equal to the CAW Allocation; and (iii) have been approved by the CPUC.</p> <p>MCWD can request for CAW to use reasonable and diligent efforts to obtain CPUC Approval for the use of any alternative water supply or supplies.</p>

<p>End of Term – Treatment of Reserve Fund Payments Account (§2.4)</p>	<p>At the end of the Term of the WPA, so long as there is not a decommissioning of the Project Facilities, the amounts in the Reserve Fund Payments Account (§11.2(b)) shall be used to fund future Replacements (§7.2) for the Project Facilities.</p> <p>If there is a contemplated Decommissioning of the Project Facilities, the amounts in the Reserve Fund Payment Account shall be utilized to pay for such Decommissioning. If, after Decommissioning, there are funds remaining, the excess amounts shall be returned to the benefit of CAW and MCWD’s ratepayers and MCWRA’s assessees in proportion to each such Party’s contributions into the Reserve Fund Payments Account. However, if there is a shortfall and Decommissioning exceeds the amount of funds in the account, CAW and MCWD shall be responsible for paying the additional costs for Decommissioning on a pro rata basis to each parties share of the CAW Debt Service Allocation (§11.3(a)) to the MCWD Proportional Share of Debt Service (§11.5(b)).</p>
<p>Project Facilities and Regional Desalination Project (§3)</p>	<p>Article 3 of the WPA describes the respective facilities of each of MCWD, MCWRA and CAW.</p> <p>Collectively, the MCWD and MCWRA owned facilities are referred to as the Project Facilities.</p> <p><b>MCWD Owned Facilities</b> = Brackish Source Water Receipt Point Meters, MCWD Brackish Source Water Pipeline, the Desalination Plant, the MCWD Product Water Pipeline, the MCWD Meter, the CAW Meter, and the MCWD Outfall Facilities.</p> <p><b>MCWRA Owned Facilities</b> = Brackish Source Water Wells, each Brackish Source Water Well Meter, the MCWRA Brackish Source Water Pipeline and the Inland Water Monitoring Wells.</p> <p>The Project Facilities combined with the CAW Facilities make up the Regional Desalination Project.</p> <p><b>CAW Facilities</b> = water delivery system from the Delivery Point (i.e., CAW Meter), including the CAW Pipeline and the ASR).</p> <p>The Regional Desalination Project does not include the Outfall, but does include facilities built and constructed by MCWD in connection with the Regional Desalination Project that tie in to the Outfall (§3.6)</p>
<p>Design, Engineering,</p>	<p>The Parties are each responsible for designing and constructing their own respective facilities. However, the Parties contemplate jointly</p>

<p>Construction and Permitting of the Regional Desalination Project (Article 4)</p>	<p>hiring a Project Manager (§4.1 and 4.2) to oversee the supervision, administration and coordination of certain design, engineering, bidding, permitting and project management components of the Regional Desalination Project</p> <p>It is the intention of the Parties that the Project Manager will be vital in insuring that all of the different components of the Regional Desalination Project are completed in a coordinated fashion.</p> <p>Section 4.4(a) (Regional Desalination Project PMA) establishes that the Parties shall enter into an agreement with the Project Manager within 60 days of the Effective Date of the WPA and addresses the allocation of the Project Manager’s costs to each Party in proportion to the services attributable to each such Party’s facilities.</p> <p>Also, Section 4.5 (Project Management) sets forth some of the required obligations of the Project Manager under the Regional Desalination Project PMA, including the information that needs to be communicated on a monthly basis to each of the Parties and the general responsibilities of the Project Manager.</p> <p>The general responsibilities of the Project Manager are broad, but focus on working with each of the Parties in order to ensure that the Regional Desalination Project is built in a coordinated as well as cost-effective and time-efficient manner (§4.5), provides for constructability review parameters and oversight (§4.6), completion of Preliminary Design Documents (§4.8), obtaining required permits (§4.8), working with the parties to ensure the achievement of the various milestones (§4.9), and preparing a comprehensive Project Schedule (§4.10) for completion of the various components of the Regional Desalination Project.</p> <p>Under the WPA, the Project Manager has the ability to issue notices of Authorization of Construction. Other than in connection with the initial test wells contemplated under Section 8.2 of the Agreement, no party may commence construction on their facilities until they receive an authorization from the Project Manager.</p>
<p>Advisory Committee (§6.1)</p>	<p>In addition to the Project Manager, there will also be an Advisory Committee (§6.1) that will be formed with the intention of consulting on behalf of the Parties with the assistance of the Project Manager, to further coordinate the design, permitting, construction, operations, maintenance, repair and replacements that are necessary for the Regional Desalination Project (§6.2). The Advisory Committee members shall report directly back to each of their respective Parties. Under the WPA, it is typically the Parties and not the Project Manager</p>

	<p>or the Advisory Committee that has final decision making authority in connection with the construction or operations of the Regional Desalination Project.</p> <p>Monterey Peninsula Water Management District (“<u>MPWMD</u>”) shall also be a member of the Advisory Committee. However, due to the fact that MPWMD is not a Party to the WPA, their role will strictly be in an advisory capacity as the WPA makes clear that only “Parties” make decisions. (§§ 6.1, 6.4 and 6.5. Also, see below).</p> <p>However, as part of the various construction (§6.4) and operational (§6.5) oversight duties of the Advisory Committee, there are certain items which may be the subject of binding mediation by an independent 3<sup>rd</sup> party expert (§6.6) in those circumstances where the Parties are unable to unanimously agree on a course of action. Specifically, under Section 6.6 – where there is not a unanimous decision by the Parties (in consultation with the Advisory Committee) on certain matters (§§6.4(a), (d)-(f), (h), (i), (k), (l), and (m); §§6.5 (b)-(h), (j) and (k)), then the matter may be submitted to the 3<sup>rd</sup> party mediator with appropriate expertise to address the issue that needs to be resolved. The decision of the 3<sup>rd</sup> party expert will be binding.</p>
<p>Selection Process of Contractors (§4.2)</p>	<p>The Advisory Committee shall develop recommended minimum qualifications and selection criteria for each contractor and Major Subcontractor associated with the Project. However, ultimate decision authority on contractors (and service providers) is reserved to the Party that is making the hiring decision.</p> <p>For purposes of the WPA a “Major Subcontractor” means a subcontractor designated as major by the Advisory Committee or one that is responsible for 15% or more of the cost of a particular construction contract.</p> <p>Terms evaluated by the Parties in selecting contractors shall include (i) financial terms of the proposal; (ii) technical capabilities of the contractor; (iii) reputation and financial responsibility of the contractor; (iv) experience of the contractor; and (v) ability of the contractor to cost-effectively coordinate with other elements of the Regional Desalination Project.</p>
<p>Cost Management (§4.3)</p>	<p>Section 4.3 of the WPA sets forth numerous provision related to and for the purpose of containing costs associated with the Regional Desalination Project:</p> <p>(§4.3(a) – Cost Estimate);</p>

	<p>(§4.3(b) – Selection Process);</p> <p>(§4.3(c) – Value Engineering);</p> <p>(§4.3(d) – Evaluation of Proposals);</p> <p>(§4.3(e) – Costs in Excess of CPUC Authorization);</p> <p>(§4.3(f) – Cost Effectiveness).</p>
<p>Cost Estimate (§4.3(a)) and Costs in Excess of CPUC Authorization (§4.3(e)).</p>	<p>First and foremost, <b>Exhibit C</b> to the WPA sets forth the estimated Initial Capital Costs of the Project Facilities (excluding interest during construction and debt service coverage).</p> <p>The Cost Estimate reflects the higher end of the range for the costs of the Project Facilities (\$297,470,000).</p> <p>The Cost Estimate ties directly into the concept of the CPUC Settlement Cost Cap (§4.3(e)).</p> <p>“<u>CPUC Settlement Cost Cap</u>” means the total limit for the Cost Estimate approved by the CPUC in the Settlement Agreement, including all related financing, insurance and attorneys’ fees and expenses, but excluding interest during construction and any debt service coverage required to obtain the Indebtedness.</p> <p>If the aggregate costs of the Project Facilities exceed the total estimated costs set forth in the CPUC Settlement Cost Cap (i.e., the \$297,470,000 under the Cost Estimate), the CAW shall seek CPUC approval of any costs in excess of this cap.</p> <p>If the CPUC does not approve the financing of additional costs beyond the CPUC Settlement Cost Cap within 6 months of requesting reimbursement of such costs, then CAW may terminate the WPA; provided, however, that CAW must first meet and confer with MCWD and MCWRA in order to explore potential alternative means of addressing the cost overrun.</p>
<p>Selection Process (§4.3(b)) and Evaluation of Proposals (§4.3(d))</p>	<p>Section 4.3(b) further spells out the parameters of the solicitation and procurement process and indicates that the Parties shall endeavor to obtain at least 3 proposals from qualified contractors for each construction contract.</p> <p>Also, Section 4.3(d) provides criteria that the Parties may utilize in evaluating such proposals.</p>

<p>Value Engineering (§4.3(c))</p>	<p>Provides that the Parties shall engage an engineer to provide Value Engineering reviews of the respective components of the Project Facilities with the goal of analyzing how to best achieve the necessary function, performance and reliability of the Project Facilities at a minimum life cycle cost.</p> <p>Value Engineering under the WPA means “a specialized cost control technique in which the owner and/or operators meet and confer with a Certified Value Specialist to conduct a systematic and creative analysis of the functions of a project or operation to determine how best to achieve the necessary function, performance and reliability at the minimum life cycle cost.”</p>
<p>Cost Effectiveness (§4.3(f))</p>	<p>Provides a general statement that each party shall endeavor in good faith to work to provide the most cost-effective construction and delivery of services under the WPA.</p>
<p>Substantial Completion (§4.12) and Acceptance Testing provisions (§4.13 – 4.18)</p>	<p>Sections 4.12 – 4.18 set forth the standards of what constitutes “Substantial Completion” of the Project Facilities under the WPA (§4.12(a)), as well as the steps and procedures involved in Acceptance Testing for the Project Facilities (§4.13 and §4.14). Finally, these sections describe what steps need to be completed in order to finally reach the Acceptance Date (§§4.15-4.18).</p>
<p>Ownership of Facilities (§5)</p>	<p>Article 5 clearly sets forth that each of MCWD and MCWRA shall be the respective owners of their Project Facilities and makes it clear (§5.4) that CAW shall have no ownership interest in or right to control any of the Project Facilities.</p> <p>This provision does not prevent CAW from serving as a contract service provider to manage, operate or maintain any of the Project Facilities.</p>
<p>Operation of Facilities (§9.1)</p>	<p>Similar to Article 5, Section 9.1 sets forth that each of MCWD, MCWRA and CAW shall be the “Operator” of their respective portions of the Regional Desalination Project. However, the language allows for each of MCWD and/or MCWRA to contract for operation and maintenance services with any third party.</p>
<p>Community Outreach (§6.7)</p>	<p>The provisions of Section 6.7 establish a Community Involvement Forum which will provide the general public with:</p> <p>(A) prior to Acceptance Date, updates regarding design and construction issues (as well as any other relevant issues) pertaining to the completion of the Regional Desalination Project; and after the</p>

	<p>Acceptance Date, discuss regional water quality and water supply issues relevant to the operation of the Regional Desalination Project.</p> <p>Meetings will be held at least quarterly until such point as the meetings are attended by fewer than 5 community members for 2 consecutive meetings; after such point in time, the meetings will be held on an as needed basis;</p> <p>The hosting of these meetings will be on a rotating basis (or with the assistance of a facilitator) at either the offices of Monterey Peninsula Water Management District (at no cost to the Parties) or such other location that the parties can utilize at a minimal costs. All costs of these meetings shall constitute Regional Desalination Project Related Expenses.</p>
<p>Financing of the Project Facilities (§7)</p>	<p>Article 7 lays out the general guidelines surrounding the financing of the Project Facilities.</p> <p>MCWD and MCWRA will obtain financing for the costs of the development, environmental and engineering evaluations, design, permitting, construction, testing and start-up of the Project Facilities. Depending on the best approach for financing the Project Facilities, MCWD and MCWRA may either obtain all of such financing up front or may do so in a number of tranches. (§7.1(a)).</p> <p>MCWD and MCWRA will employ reasonable efforts to obtain the maximum, best available financing, and will most likely issue tax exempt private activity bonds for the entire amount of such costs. To the maximum extent possible, any bonds will provide that prepayments can be made without penalties in order to allow for reduction of Indebtedness throughout the Term of the WPA as well as to allow for repayment of the Indebtedness upon the occurrence of a Regional Desalination Project Cessation.</p> <p>MCWD and MCWRA will also seek State Revolving Fund (“SRF”) loans, any grants that may be available for this type of project and any other similar funding opportunities. To the extent that SRF loans or grants are obtained, proceeds may be used to pay down the outstanding bonds and thereby reduce the Indebtedness.</p> <p>CAW will separately finance all costs and expenses related to the development, design, permitting and construction of the CAW Facilities. (§7.1(b)).</p> <p>To the extent that any of the Initial Capital Costs, Pre-Effective Date Costs and Expenses, Preconstruction Development and Permitting</p>



	<p>Fees and Expenses or Pre-Acceptance Defense Costs are not permitted to be treated as Indebtedness or the Indebtedness is insufficient to fund the full amount of such costs or if the parties determine that they can reduce the weighted average costs of the Indebtedness, then the Parties will discuss alternatives to do so. (§7.1(c)(i)).</p> <p>One alternative may be the receipt from CAW of a CAW Loan up to a total of \$17,500,000. The terms of the CAW Loan are set forth in Section 7.1(c)(iii).</p> <p>In addition to obtaining a CAW Loan, at any time during the Term of the WPA, either MCWD or MCWRA may draw down upon a CAW Credit Line up to the amount of \$8,000,000 (See§7.1(c)(i)). The terms of the CAW Credit Line are set forth in Section 7.1(c)(ii).</p> <p>Any CAW Financing shall be at the rate of the 10 year US Treasury plus 600 basis points (§7.1(c)(iii)). The term of any CAW Financing will be structured, if possible, in order to not result in an increase in the annual cost of Product Water of more than ten percent (10%) (see §§7.1(c)(ii) and (iii)).</p>
<p>Project Cessation</p>	<p>Section 7.4 provides for a Regional Desalination Project Cessation.</p> <p>If for any reason the Regional Desalination Project does not reach Substantial Completion or reaches Substantial Completion, but Acceptance is not achieved within 24 months of Substantial Completion, including without limitation due to CAW’s election of its termination option under Section 4.3(e), a Permit Failure, a Financing Failure or other Force Majeure event, CAW shall have the obligation to:</p> <ul style="list-style-type: none"> <li>(i) reimburse each of MCWD and MCWRA for any and all costs or expenses, including Initial Capital Costs incurred in connection with the WPA;</li> <li>(ii) pay the cost of retiring or prepaying the Indebtedness;</li> <li>(iii) and forgive any CAW Financing.</li> </ul> <p>Section 4.3(e) right to terminate is available to CAW if the costs of the Project Facilities shall exceed the Cost Estimates (i.e., CPUC Settlement Cost Cap);</p> <p>Financing Failure (§7.1(c)(vi)) – an Indebtedness shortfall greater than what can be covered by CAW Loan (\$17,500,000) or the CAW Credit Line (\$8,000,000);</p> <p>Permit Failure (§4.8) – a delay of any milestone by 24 months or more</p>

	due to a failure to obtain a required permit.
Milestones (§4.9)	<p>The Milestones for the construction of each of the MCWD Owned Facilities, MCWRA Owned Facilities and CAW Facilities are set forth in Section 4.9 (a)-(c).</p> <p>Although the Milestones are different for each portion of the Regional Desalination Project, the requirements involve (i) completion of Preliminary Design Documents; (ii) selection of design engineers and contractors, (iii) completion of 100% Construction Documents (iv) Substantial Completion of the respective facilities and/or (v) Acceptance.</p>
Brackish Source Water Supply and Management (i.e., the Agency Act Provisions) (Article 8)	<p>The Monterey County Water Resources Agency Act (the “<u>Agency Act</u>”) requires MCWRA to protect the Basin from sea water intrusion. The Agency Act also prohibits export of Basin groundwater to areas outside the Basin. The WPA contains safeguards designed to assure that the Regional Desalination Project complies with the Agency Act.</p> <p>Subject to its duties under the Agency Act, MCWRA will deliver Brackish Source Water to MCWD in an amount sufficient to produce the quantity of Product Water to CAW to satisfy its customers needs, while taking into account and providing for an amount of Product Water that constitutes MCWD’s Agreed Allocation.</p> <p>Under the WPA, MCWRA would design and construct, in consultation with CAW and MCWD, a series of wells that would extract brackish source water for conveyance to a desalination plant. MCWRA would own and operate these wells. The previously-discussed test wells, each of which is to be designed such that it may later be converted to an operational brackish source water well, would be constructed first. Upon successful completion of the test well program, MCWRA would design and construct the operational brackish source water wells.</p> <p>The WPA commits MCWRA to undertake a groundwater monitoring program to confirm that operation of the Regional Desalination Project will not result in a violation of the Agency Act and, in particular, the Agency Act’s requirement that groundwater from the Basin not be exported outside the Basin.</p> <p>Article 8.2 of the Water Purchase Agreement requires that MCWRA periodically monitor, test, and measure (1) total dissolved solid (“<u>TDS</u>”) levels of water drawn from the source water wells, inland locations in the Salinas Basin, and various locations in the ocean; (2) chloride concentrations; and (3) the elevation of the Salinas Basin. (§</p>

	<p>8.2(b.)</p> <p>In the event that monitoring, testing, and measurement leads MCWRA to reasonably conclude that compliance with requirements of the Agency Act with respect to nonexportation of groundwater from the Salinas Basin is not reasonably ensured, Section 8.2(c) of the Water Purchase Agreement provides that MCWRA shall notify MCWD and CAW and the parties shall meet, confer, and mutually determine whether and what changes should be made to ensure compliance with the Agency Act.</p> <p>Notwithstanding any other provision of the WPA, however, MCWRA has retained all rights, discretion, and authority to ensure both that the pumping, production, desalination, and distribution of Product Water from the Regional Desalination Project complies with the obligations and responsibilities of MCWRA under the Agency Act, and the long-term viability of the Basin as a water supply for water for agricultural, domestic, and municipal use. The WPA further states that it shall not “be interpreted either to diminish or enhance MCWRA’s regulatory authority under the Agency Act, nor to preclude any argument by MCWD or CAW that there is no violation of the Agency Act.” (§ 8.3)</p> <p>Section 8.2(a) contains provisions that provide for the Parties to meet and confer if MCWRA believes (from their monitoring and testing) that the MCWD Agreed Allocation under the WPA would not comply with Legal Requirements. If after meeting and conferring, the Parties are unable to agree upon a plan of action to resolve the issue, any of the Parties shall be authorized to invoke the dispute procedures under Sections 19.2 – 19.4 or provide a notice of termination (which would constitute a Regional Desalination Project Cessation).</p>
<p>MCWD Annual Allocation (§9.3)</p>	<p>Section 9.3 of the Water Purchase Agreement explains that information gathered through the groundwater monitoring program will be used to ensure that the Brackish Source Water that will be extracted from the proposed intake wells, and thereafter desalinated and delivered as Product Water, will not violate the Agency Act’s restrictions against export of groundwater from the Basin.</p> <p>MCWRA shall monitor TDS levels in the Brackish Source Water from the Brackish Source Water Wells to determine the average percentages of seawater and groundwater for the purpose of determining the portion of product water to be delivered to MCWD and CAW.</p> <p>The information gathered during monitoring will be used to identify an amount of Product Water that shall be utilized in the Salinas Basin</p>

	<p>by means of delivering such water to MCWD for distribution in MCWD’s service area within the Salinas Basin. (§§9.3, 9.6.)</p> <p><u>Description of MCWD Agreed Allocation:</u></p> <p>The MCWD Agreed Allocation shall be equal to amount of Product Water that must be delivered to MCWD under the WPA in order to comply with the provisions of the Agency Act (§9.3(a) – (c)). The method of calculating this amount is laid out in <b>Exhibit E</b> (starting on page 1).</p> <p><u>MCWD Permanently Allocated Product Water:</u></p> <p>Once MCWD has “a legally enforceable water supply commitment that requires MCWD Permanently Allocated Water” (i.e., when MCWD needs additional water to satisfy its customers demand that cannot be satisfied by MCWD’s Potable Groundwater Limits), then MCWD shall notify CAW of such requirement.</p> <p>Once there is MCWD Permanently Allocated Product Water it remains for the Term (§11.5(b)).</p> <p>In order to keep CAW up to date on the status of potential MCWD Permanently Allocated Product Water, MCWD shall provide CAW with updates on its current water usage for its Service Area and under the then-current Urban Water Management Plan.</p> <p>The MCWD Annual Allocation shall be equal to the greater of the MCWD Permanently Allocated Product Water or the MCWD Agreed Allocation. (§9.3(d)).</p>
<p>MCWD Agreed Allocation True-Up (§9.6)</p>	<p>Section 9.6 provides for a true up process from year to year that allows an adjustment to the MCWD Agreed Allocation in order to remain in compliance with the MCWD Agreed Allocation if it was missed in the prior calendar year.</p>
<p>Sale of Excess Product Water (§9.5)</p>	<p>MCWD may take and receive for MCWD’s customers within its Service Area additional Product Water that is not taken by CAW in a given calendar year.</p> <p>To the extent that MCWD decides not to take such Product Water, the Parties will explore opportunities for the sale of excess Product Water to 3<sup>rd</sup> parties in an effort to reduce the overall cost of the Product Water.</p>
<p>Water Quality</p>	<p>The Product Water must comply with all applicable local, state and</p>

<p>(§9.7)</p>	<p>federal laws, rules and regulations, including the then-current primary and secondary standards for domestic water quality without requirement for further treatment. MCWD will add or cause to be added to the Product Water pH and other chemical adjustments consistent with Best Industry Practices to minimize in-system water quality degradation and corrosiveness of the Product Water.</p> <p>In addition, a "second pass" treatment of all or a portion of the Product Water will be made as required to satisfy all applicable water quality requirements. MCWD will apply Best Industry Practices to satisfy the blending requirements or objectives of both MCWD and CAW</p>
<p>Measurement of Water (§10)</p>	<p>Article 10 generally provides for the measurement of both the Brackish Source Water deliveries and the Product Water in order to properly allocate costs of water and the MCWRA determinations related to monitoring the water.</p>
<p>Procedures for Payment/Escrow Account (§11.2)</p>	<p>Under the WPA, it is contemplated that each of MCWD, MCWRA and CAW shall enter into a Project Escrow Account Agreement that will be the main method for disbursing proceeds of the Product Water Contract Payments to the Parties (§11.2(a)).</p>
<p>Reserve Fund Payments Account</p>	<p>A reserve fund for the Project Facilities will be established and initially funded from the proceeds of the MCWRA and MCWD Indebtedness, respectively (at an amount equal to the greater of (i) \$6,000,000.00 or (ii) 3% of the estimated financing costs</p> <p>Thereafter, the Reserve Fund Payments Account will be added to by including in the payment for Product Water a percentage of the Debt Service. The Reserve Fund Payments Account will be used to provide for the replacement, repair or upgrade of equipment and facilities as needed to continue to supply the Product Water and to operate the Project Facilities in accordance with Best Industry Practices.</p> <p>The Reserve Percentage shall initially be set at 3%, shall never exceed 5% (§11.3(d)) and may be revised by the Parties in consultation with the Advisory Committee (§6.5(g)).</p> <p><i>[See below for calculation of payments to the Reserve Fund by each of MCWD and CAW. Specifically, §11.3(c) – CAW Reserve Costs Allocation and §11.4(c) – MCWD Reserve Costs Allocation]</i></p>
<p>CAW Payment Obligations (§11.3)</p>	<p>CAW and MCWD Payments for Product Water will be made to an escrow account. Payments for Debt Service and for the Reserve Fund Payments Account will be made on a schedule that coincides with the schedule for payment of the debt service. Payments for O&amp;M Costs</p>

	<p>will be made monthly. CAW and MCWD each will pay their proportional shares of the above-described costs to the escrow account. CAW's payments begin upon initial delivery of Product Water. Until such time as MCWD has insufficient groundwater rights to satisfy its customer demand and requests MCWD Permanently Allocated Product Water from the Desalination Facility (not to exceed 1,700 AFY), MCWD's cost per acre foot of Product Water will be MCWD's then-cost of pumping one acre foot of groundwater (as described on <b>Exhibit F</b>). Subsequent to MCWD notifying CAW of MCWD's need for Permanently Allocated Product Water, MCWD will pay its pro rata share of operations and maintenance costs for each acre foot of Product Water delivered to MCWD and will also pay its pro rata share of the debt service costs, which will equal the number of acre feet of MCWD's Permanently Allocated Product Water divided by 10,500 acre feet (Subject to the Fees Limit).</p>
<p>Payment for Product Water (Article 11)</p>	<p>In addition to the Reserve Fund payments made by each of MCWD and CAW during the Term, payment obligations for the Product Water in any calendar year will be determined by (i) the Debt Service costs during that year of the financing by MCWD and MCWRA of the Project Facilities and (ii) the O&amp;M Costs of the Project Facilities</p> <p>The payment for the Product Water will vary as the costs of Debt Service, O&amp;M Costs, reserve fund requirements and other costs of the Regional Desalination Project vary. Any reduction in Debt Service (due to obtaining grants or more favorable interest rates) during the Term of the WPA will therefore reduce the underlying cost of the Product Water.</p> <p>CAW and MCWD will each also incur their normal costs to deliver the Product Water through their delivery systems to their respective customers.</p> <p><u>CAW Cost Allocations (§§11.3(a) – (c):</u></p> <p><b>CAW Debt Service Allocation</b> (§11.3(a)) – equal to 100% of the Debt Service (on a pro rata basis for the applicable Payment Period) less the MCWD Debt Service Allocation;</p> <p><b>CAW O&amp;M Costs Allocation</b> (§11.3(b)) – equal to 100% of the O&amp;M Costs of the Project Facilities less the MCWD Proportional Share of O&amp;M Costs</p> <p><b>CAW Reserve Costs Allocation</b> (§11.3(c)) – an amount equal to the Reserve Percentage of the CAW Debt Service Allocation.</p>

The intention is to have CAW pay the costs of the Product Water unless MCWD is obligated to pay costs because it is receiving MCWD Permanently Allocated Water.

MCWD Cost Allocations (§§11.4(a) – (c):

**MCWD Debt Service Allocation** (§11.4(a)) – equal to the lesser of (i) MCWD’s Proportional Share of Debt Service or (ii) the Fees Limit Because it is the “lesser of,” the MCWD Debt Service Allocation will generally be the MCWD Proportional Share of Debt Service until such time as the Fees Limit reaches a level below the MCWD Proportional Share of Debt Service.

It is important to understand how MCWD’s Proportional Share of Debt Service is calculated (§11.5) [*See Below*].

The intention is that this amount shall be based on the amount of Product Water that MCWD receives and uses that constitutes MCWD Permanently Allocated Product Water.

**MCWD O&M Costs Allocation** (§11.4(b)) – As calculated under Section 11.6

11.6 →

- (a) So long as there is **NO** MCWD Permanently Allocated Product Water and MCWD has not received and used Product Water in excess of its MCWD Agreed Allocation, then the MCWD Proportional Share of O&M Costs shall be MCWD’s then-current per acre-foot cost of providing potable groundwater to MCWD’s customers (*See Exhibit F*).
- (b) Once there is MCWD Permanently Allocated Product Water or MCWD request to receive and use Product Water in excess of the MCWD Annual Allocation, then the MCWD Proportional Share of O&M Costs shall be equal to the product of 100% of the O&M Costs = The amount calculated under Section 11.6(a) plus the Amount of Product Water received greater than the MCWD Agreed Allocation divided by Total Actual Product Water Quantity.

**MCWD Reserve Costs Allocation** (§11.4(c)) – equal to either:

- (i) so long as the Fees Limit is greater than zero, in addition to the MCWD Debt Service Allocation, the then applicable Reserve Percentage of the concurrently paid MCWD Debt Service Allocation;

	<p>or</p> <p>(ii) from and after the point in time where the Fees Limit is equal to zero, an amount equal to the product of (x) the CAW Debt Service Allocation, (y) the percentage described in clause (ii) of Section 11.5(b), and (z) the Reserve Fund Percentage .</p>
<p>MCWD Proportional Share of Debt Service (§11.5)</p>	<p>If there is <b>NO</b> MCWD Permanently Allocated Product Water nor has MCWD received and used Product Water in excess of the MCWD Agreed Allocation, then the MCWD Proportional Share of Debt Service = 0.</p> <p>Once there is MCWD Permanently Allocated Product Water or MCWD request to receive and use Product Water in excess of the MCWD Annual Allocation, then the MCWD Proportional Share of Debt Service equals:</p> <p>The Product of (i) 100% of the Debt Service of the Project Facilities and (ii) the result obtained by dividing:</p> <p>(A) the sum of :</p> <ul style="list-style-type: none"> <li>(1) MCWD Permanently Allocated Product Water and</li> <li>(2) The greater of (x) Zero or (y) the amount of Product Water received and used by MCWD during such Payment Period less the greater of (I) the MCWD Agreed Allocation and (II) the aggregate amount of MCWD Permanently Allocated Product Water; by</li> </ul> <p>(B) 10,500 AFY.</p> <p><i>SEE EXAMPLES ON Exhibit E, page 6.</i></p>
<p>Water Fees (§11.14)</p>	<p>On the 30<sup>th</sup> day following the first full calendar quarter after the Acceptance Date and on the 30<sup>th</sup> day following the first day of each calendar quarter thereafter and continuing until the Fees Limit is zero, Fees collected by MCWD prior to the first day of such calendar quarter and not already applied as described in this Section 11.14, will be used, to the extent possible, to pay down the MCWD Indebtedness. If either (i) any Fees remain after repaying all possible MCWD Indebtedness or (ii) for any reason, Fees cannot be applied to pay or reduce the MCWD Indebtedness, then MCWD shall apply the remaining Fees collected prior to the first day of such calendar quarter towards the MCWD O&amp;M Costs next incurred</p> <p>“Fees” means rates, fees or charges collected, up to but not in excess</p>



	<p>of the Fees Limit, representing the total of (i) the portion of each connection fee that MCWD charges and collects for new connections to customers within the MCWD Service Area, which are designated to be applied towards water augmentation through capital facilities for desalination in accordance with MCWD’s 2008 rate study and which is subject to adjustment in accordance with any future rate studies; and (ii) all of the water augmentation fees MCWD has received from FORA.</p> <p>“<u>Fees Limit</u>” shall be equal to twenty-two million dollars (\$22,000,000) less the sum of (i) 16.2% of any grant funds obtained by MCWD during the Term of this Agreement which are applied to reduce the MCWD Indebtedness; (ii) all prior payments of MCWD Debt Service Allocation; and (iii) any prior collected Fees that were utilized to pay or reduce either the MCWD Indebtedness or MCWD O&amp;M Costs; provided, however, that the Fees Limit shall never be a negative amount.</p>
<p>Indemnification Provisions (Article 14)</p>	<p>Article 14 contains the indemnification obligations between the Parties.</p> <p>Section 14.1(a) provides that CAW shall indemnify each of MCWD and MCWRA in connection with any claims related to the delivery and distribution of Product Water to CAW’s Service Area customer (excluding issues of water quality for which MCWD is responsible).</p> <p>Section 14.1(b) provides for cross indemnification by and among the Parties for claims related to either (i) a default or breach by a Party under the WPA; (ii) negligence, fraud or willful misconduct of a Party; or (iii) default or breach by a Party in connection with the Settlement Agreement, the Outfall Agreement, the Regional Desalination Project PMA, an Operations and Maintenance Agreement, the Project Escrow Account Agreement or the Regional Desalination Project design construction agreements.</p> <p>Section 14.2 addresses Losses for claims, actions, suits or causes of action, that are not covered by Section 14.1, including such things as litigation challenging the legality or validity of the WPA, litigation under CEQA, litigation under the Agency Act, or inverse condemnation litigation. All of these costs shall be treated as Regional Desalination Project Related Expenses.</p> <p>To the extent these Losses arise prior to Acceptance, they shall be treated as “Pre-Acceptance Defense Costs” and be included in the Indebtedness.</p>
<p>Casualty Loss</p>	<p>Section 15.1 and 15.2 address casualty losses (e.g., damage or</p>

(Article 15)	destruction due to fire, earthquake, etc.) in connection with both the MCWD Owned Facilities (§15.1) or the MCWRA Owned Facilities (§15.2). In both cases, to the extent that the casualty insurance policies are not adequate to restore, replace or rebuild the respective Project Facilities, then CAW and MCWD shall share and pay for such deficiency in proportion to the CAW Debt Service Allocation (§11.3(a)) to the MCWD Proportional Share of Debt Service (§11.5(b)).
Insurance Requirements (Article 16)	<p>Article 16 represents the WPA’s Insurance requirements.</p> <p>The costs of maintaining the Insurance levels required under Article 16 are treated as a Regional Desalination Project Related Expense.</p>
Representations and Warranties (Article 17)	Article 17 contains general representations and warranties by each of the Parties as well as covenants of each of the Parties.
Dispute Resolution Process (Article 19)	<p>Generally speaking, disputes that arise under the WPA (excluding disputes between the Parties subject to resolution by binding mediation under Section 6.6), are subject to the provisions of Article 19. Furthermore, other than a dispute related to (i) interest of expediency and/or the avoidance of irreparable harm (§19.5), (ii) CAW payment failure that continues for more than 30 days (§20.1(a)), or (iii) a default in the performance of a material covenant, agreement or obligation under the WPA the effect of which is to allow or create a problem of an emergency nature relating to the quality or quantity of Product Water that lasts for more than 72 hours (§20.1(b)(i)), no dispute can result in an Event of Default (Article 20) until after completion of the dispute resolution procedures.</p> <p>First, Section 19.2 calls for good faith negotiations regarding the dispute to take place involving the Representatives of each Party. If the Representatives are not able to resolve the dispute, it would then be escalated to senior management of the Parties for resolution.</p> <p>Second, if the dispute is not settled pursuant to Section 19.2, then Section 19.3 calls for the Parties to engage in non-binding mediation.</p> <p>Finally, if non-binding mediation fails to resolve the issue, then Section 19.4 states that each of the Parties shall be entitled to seek judicial relief.</p>
Events of Defaults and Remedies	Section 20.1 sets forth those occurrences or acts, unless excused by an event of Force Majeure, that shall constitute and event of default under the WPA.

(Article 20)	Section 20.2 sets forth the rights and remedies of the non-defaulting Party where an Event of Default has occurred.
Force Majeure Provisions (Article 24)	<p>Article 24 sets forth the steps and procedures to be undertaken in connection with an event of Force Majeure that affects the ability of any Party under the WPA to perform its obligations.</p> <p>The definition of “Force Majeure” under the WPA is as follows:</p> <p>“an event, including but not limited to, any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes (other than of the workforce of the Party asserting the Force Majeure delay), lockouts (other than of the workforce of the Party asserting the Force Majeure delay), acts of the public enemy, wars, sabotage, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, civil disturbances, inability to access financial markets due to a capital market disruption, explosions, power outages, a defect in the Project Facilities not caused by the Party asserting the Force Majeure delay, the breach of another Party of its obligations under this Agreement or a related agreement (provided, however, that the breach of an obligation by a Party under a related agreement shall not be grounds for such Party to assert a Force Majeure under this Agreement where such Party’s breach under the related agreement causes one or more of the other Parties under this Agreement to be unable to meet their obligations hereunder), the acts or omissions of one Party which prevents or delays the ability of another Party to perform any of its obligations hereunder, the enactment or adoption of a Legal Requirement after the date of this Agreement (other than a Legal Requirement enacted by the Party asserting the Force Majeure delay where such Legal Requirement was enacted for the primary purpose of overriding such Party’s obligation to comply with this Agreement), the failure or inability to obtain any necessary governmental authorization (other than that of the Party asserting the Force Majeure delay) which has been sought or requested, as the case may be, in good faith by all reasonable legal and political means, and any other cause, whether of the kinds herein enumerated or otherwise, not reasonably within the control of the affected Party that prevents the performance by the affected Party of an obligation hereunder despite the due diligence of the affected Party to overcome such prevention. The foregoing shall in no way excuse any Party from performing its obligations hereunder to monitor, administer and enforce its contracts with third parties relating to such Party's obligations under this Agreement.”</p>

<p>Costs Categories under the WPA Subject to Reimbursement (Definitions)</p>	<p>Costs under the WPA generally fit into one of three categories – Debt Service, O&amp;M Costs and Regional Desalination Project Related Expenses – all of which are then included as part of the Product Water Contract Payments.</p> <p>The key element of the Debt Service is the Initial Capital Costs. The definition of Initial Capital Costs includes each of the following:</p> <ul style="list-style-type: none"> <li>(i) the Pre-Effective Date Costs and Expenses,</li> <li>(ii) the Initial Capital Outfall Expenses,</li> <li>(iii) Project Administration and Oversight Expenses,</li> <li>(iv) the Real Property Acquisition Costs,</li> <li>(v) all other costs incurred by in connection with the planning, design, development, permitting, construction and proposed operation of the Project,</li> <li>(vi) the Initial Reserve Fund Payment,</li> <li>(vii) Pre-Acceptance Defense Costs,</li> <li>(viii) capitalized interest and Debt Service reserve amounts, and</li> <li>(ix) the costs of obtaining the Indebtedness including all related financing, insurance and attorneys fees and expenses.</li> </ul> <p>Notwithstanding the categories of costs described above, Initial Capital Costs shall not include any O&amp;M Costs.</p> <p>The O&amp;M Costs shall include both the fixed and variable costs of operating and maintaining the Project Facilities, including without limitation:</p> <ul style="list-style-type: none"> <li>(i) all of the Annual Outfall Expenses,</li> <li>(ii) the Operator Expenses,</li> <li>(iii) the Regional Desalination Project Related Expenses,</li> <li>(iv) Sludge Costs, and</li> <li>(v) any other direct and actual costs incurred with respect to operating and maintaining the Project Facilities and performing obligations under the WPA.</li> </ul> <p>Finally, Regional Desalination Project Related Expenses reflects costs that are incurred by each of the Parties in connection with the underlying Regional Desalination Project, but are not necessarily a true component of Debt Service or O&amp;M Costs. These costs include:</p> <ul style="list-style-type: none"> <li>(i) the costs of obtaining a Letter of Credit (§7.5),</li> <li>(ii) Insurance coverage costs (§§16.1 and 16.2),</li> <li>(iii) Third party resolution costs under Section 6.6;</li> <li>(iv) Community Involvement Forum costs under Section 6.7,</li> <li>(v) Costs of arranging and documenting CAW Financing,</li> <li>(vi) Project Escrow Account Fees,</li> <li>(vii) Preparing the Regional Desalination Project Annual Report</li> </ul>
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	<p>(§11.3),</p> <ul style="list-style-type: none"><li>(viii) Losses described in Section 14.2,</li><li>(ix) Deficiency of Casualty insurance in Article 15,</li><li>(x) Taxes payable on the Project Facilities with respect to operations and maintenance, and</li><li>(xi) Cost of negotiating and preparing amendments to the WPA.</li></ul> <p>To better understand what is included in each of the sub-categories of costs, please refer to the applicable definitions.</p>
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