

ALJ/WAC/dc3/sbf

Date of Issuance 1/23/2017

Decision 17-01-011 January 19, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Operations and Practices of Mesa-Crest Water Company (U333W) with Respect to a Series of Financial Transactions, and Possible Threats to the Health and Safety of its Ratepayers.

Investigation 15-06-018
(Filed June 25, 2015)

DECISION RESOLVING INVESTIGATION AND ADOPTING ALL PARTY SETTLEMENT

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DECISION RESOLVING INVESTIGATION AND ADOPTING ALL PARTY SETTLEMENT

Summary

By this decision, the Commission adopts the All-Party Settlement Agreement, dated August 5, 2016, between the Commission's Consumer Protection and Enforcement Division, Mesa Crest Water Company, Timothy J. Flynn and F. Patrick Flynn. Adoption of this Settlement resolves all issues presented in Investigation 15-06-018.

1. Background

Mesa-Crest Water Company (Mesa-Crest) is a Class C water company, located in the Los Angeles County community of La Cañada Flintridge. On June 25, 2015, the Commission issued Investigation (I.)15-06-018, an Order Instituting Investigation (OII) into the operations and practices of Mesa-Crest "With Respect to a Series of Financial Transactions, and Possible Threats to the Health and Safety of its Ratepayers." The Consumer Protection and Enforcement Division (CPED) and the Mesa-Crest, Timothy J. Flynn and F. Patrick Flynn (referred to as the "Flynn's"; Mesa-Crest and the Flynn's are jointly referred to as the "Respondents") are the only parties to this proceeding. The OII was opened in response to CPED's (formerly identified as Safety and Enforcement Division) report regarding various financial activities of the Respondents. The OII directed Respondents to show cause why the Commission should not petition the Los Angeles Superior Court to appoint a receiver for Mesa-Crest.

On August 7, 2015, the Respondents filed and served their "Response to the Commission's Order Instituting Investigation and Orders to Show Cause". On September 2, 2015, a PHC took place in San Francisco to establish the service list, discuss the scope, and develop a procedural timetable for the management

of this proceeding. On September 9, 2015, the assigned Commissioner issued her Scoping Memo and Ruling of the Assigned Commissioner (Scoping Memo), in which she primarily set out the scope and schedule of this proceeding. On September 22, 2015, following issuance of a Scoping Memo and schedule, Mesa-Crest moved for an order holding the proceeding in abeyance and referring the matter to Alternative Dispute Resolution. The order requested by Mesa-Crest was denied by the Assigned Administrative Law Judge (ALJ) on October 7, 2015. Subsequently, Mesa-Crest requested an extension of time to serve rebuttal testimony, which was granted, in part, November 25, 2015. On December 3, 2015, the assigned ALJ denied Mesa-Crest's request for a further extension of time to serve rebuttal testimony. Mesa-Crest served its rebuttal testimony was served on December 23, 2015.

On January 5, 2016, Mesa-Crest submitted its "Motion to Continue Hearing and Set Status Conference to Facilitate Sale of Utility" to the ALJ by electronic mail (e-mail). Following an all-party telephone status conference with the Assigned ALJ on January 6, 2016, the Assigned ALJ issued an e-mail ruling that the scheduled hearings were taken off the Commission's calendar, initiating procedures for Mesa-Crest to inform CPED of potential sale offers received by the utility from qualified buyers, and providing for further status conferences. CPED and Mesa-Crest then commenced settlement discussions, seeking to reach agreement for sale of the utility and a complete resolution of this proceeding.

On May 5, 2016, CPED and Respondents reached agreement in principle on most of the terms of a potential settlement among all parties, the details of which they commenced to document and negotiate. On June 23, 2016, the Commission issued Decision (D.) 16-06-057, extending the statutory deadline for this proceeding to December 24, 2016, in order for the Commission "to review

the provisions of the settlement agreement and to prepare a proposed decision for Commission consideration.”¹ On July 25, 2016, CPED and Respondents confirmed their consent to all terms of their settlement agreement and on August 5, 2016, the Respondents and CPED executed the Settlement. On August 18, 2016, CPED and Respondents filed and served their “Joint Motion of the Commission’s Consumer Protection and Enforcement Division and Respondents Mesa Crest Water Company, Timothy J. Flynn and F. Patrick Flynn for Expedited Treatment and Approval of All-Party Settlement” (Joint Motion). Attached to the Joint Motion is the “All-Party Settlement Agreement” (Settlement).

In further support of their Joint Motion for approval of their settlement agreement, filed August 18, 2016, and pursuant to Judge Seaneen M. Wilson’s email rulings on September 19, 2016 and October 12, 2016, and her verbal ruling during a telephonic conference with all parties on October 25, 2016, CPED and the Respondents - Mesa Crest, Timothy J. Flynn and F. Patrick Flynn, jointly filed a supplement on October 27, 2016. CPED and Respondents filed this joint supplement in the interest of completing the Commission’s record on their prior respective litigation positions before entry into the Settlement Agreement. The documents provided in this joint supplement, as detailed below, are provided by the parties in order to provide the Commission with a robust record upon which it may assess and rule on the Settlement Agreement. The following documents are not treated as sworn testimony, but as supporting documents to the Settlement Agreement filed on August 18, 2016:

1. Attachment 1 is a copy of the March 10, 2015 staff report of CPED (“Staff Report”), as referenced in the Order

¹ See D.16-06-057 at 2.

Instituting Investigation (“OII”) herein. Ordering paragraph 16 of the OII directs that the Staff Report “be entered into the record for this proceeding.”

2. Attached hereto as Attachment 2 is a copy of the September 30, 2015 testimony of Ke Hao Ouyang, which was served on or about that date on behalf of CPED.
3. Attached hereto as Attachment 3 is a copy of the December 23, 2015 rebuttal testimony of Timothy Flynn, which was served on or about that date on behalf of Mesa Crest.
4. Attached hereto as Attachment 4 is a copy of the December 23, 2015 rebuttal testimony of Christian Aldinger, which was served on or about that same date on behalf of Mesa Crest.

All rulings by the ALJ and Commissioner are affirmed herein.

2. Overview of Parties’ Positions

2.1. CPED

The Commission opened I.15-06-018, a formal investigation, to determine whether the Respondents had violated any provisions of the California Public Utilities Code (Pub. Util. Code), Commission general orders (GO), decisions, or Commission Rules of Practice and Procedure (Rules), or other applicable laws or requirements, regarding a series of financial transactions between the Respondents, that took place between about 1997 and the present (the subject years), and their alleged failure to ensure the safety and reliability of their supply of water to ratepayers. CPSD staff prepared an investigative report (Staff Report) underlying I.15-06-018. In summary, the issues raised by CPSD are as follows:

1. Have Respondents, collectively or individually, violated any provisions of the Pub. Util. Code, GOs, decisions, Rules, or other applicable laws or requirements in the operation of Mesa-Crest?

2. Have the Respondents, collectively or individually, violated any provisions of the Pub. Util. Code, GOs, decisions, Rules, or other applicable laws or requirements?

3. Have the Respondents, collectively or individually, violated any provisions of the Pub. Util. Code, GOs, decisions, Rules, or other applicable laws or requirements regarding a series of financial transactions between the Respondents that took place between about 1997 and subject years, including but not limited to the following?

- a. Extraction of \$307,629 from Mesa-Crest's cash reserves by F. Patrick Flynn and Timothy J. Flynn, recorded as unsecured, zero-interest, short-term loans on the books of Mesa-Crest;
- b. Loan of \$110,000 from F. Patrick Flynn to Mesa-Crest.

4. Have Respondents, collectively or individually, failed to ensure the safety and reliability of their supply of water to ratepayers pursuant to Pub. Util. Code, GOs, decisions, Rules, or other applicable laws or requirements, including but not limited to the maintenance of and improvements to Mesa-Crest's plant in service?

5. Have Respondents, collectively or individually, failed to ensure that Mesa-Crest has sufficient funding pursuant to Pub. Util. Code, GOs, decisions, Rules, or other applicable laws or requirements, including but not limited to?:

- a. Extraction of funds from Mesa-Crest by the individual Respondents;
- b. Increase in salaries; and
- c. Payment of and increase in dividends paid to sole shareholder.

6. Should a Receiver be appointed to operate, assume possession of, and dispose of Mesa-Crest?

7. Should penalties and/or fines be levied against Respondents, collectively or individually?

2.2. Respondents

In response to the concerns raised by CPED and detailed in the Scoping Memo, Respondents countered that: 1) Mesa-Crest provides service to its customers in a safe and healthy manner, maintaining its infrastructure and distribution system, therefore is not subject to imposition of an Equitable Remedy pursuant to Pub. Util. Code §855 or fines pursuant to Rule 1.1; 2) Loans to and from Mesa Crest were fully disclosed, and did not impact service to ratepayers; 3) Salaries paid to individual Respondents were commensurate with time and efforts spent working; 4) The guidelines relied on by CPED with regarding to issuance of dividends (D.10-10-019), is not applicable to Class C and D water utilities; 5) Mesa-Crest is unaware of any customer complaints regarding water service; and 6) Mesa-Crest had sufficient funds to meet its capital, financial, and operating needs.

3. Settlement Overview

Pursuant to Rule 12.1, CPED and Respondents, the only parties to this proceeding, and the only parties to the Settlement, filed a motion on August 18, 2016, requesting approval and adoption of the Settlement. The settling parties agree that the Settlement is a compromise of any disputed issues, and acknowledge that no party admits wrongdoing.

The Settlement obligates Respondents to sell Mesa-Crest according to specific terms agreed to by CPED in the Settlement and subject to Commission approval. Those terms are:

1. Sell Mesa-Crest to a Class A, Commission-regulated buyer, pursuant to the terms of a the Letter of Intent executed on March 31, 2016, including:

a) consistency with the Settlement; b) consistency with law; c) Commission approval of the sale; d) CPED's being informed, on a confidential basis, of ongoing sale agreement negotiations and terms; e) "Replacement cost new less depreciation" study to be performed by an appraiser selected from a list provided by CPED, the results of which will both provide a cap for the purchase price and establish a rate base equal to the purchase price going forward; and f) capital improvement plan or schedule for such a plan to be submitted with the buyer and Mesa-Crest's application for approval of the sale.

2. CPED and Mesa-Crest's agreement to commence an auction process for the sale of Mesa-Crest, if the negotiation and execution of an asset purchase agreement and the filing of an application for Commission approval of the contemplated sale to the already-identified buyer should not be accomplished by February 15, 2017, unless that date is extended for good cause by the parties and the Commission.

Second, the Settlement requires one-time financial obligations by the Flynn's, which will be carried out concurrently with the closing of the Commission-approved sale. The Flynn's financial obligations are:

1. Repayment by the Flynn's of their debt to Mesa-Crest in the total amount of \$384,000, which amount will be dedicated exclusively by the buyer to capital improvements that may be included in rate base if and when they become used and useful;

2. Payment by Flynn's of the sum of \$217,000 exclusively designated for capital improvements, which will not be included in rate base;

3. Waiver of recovery of Mesa-Crest's purchased water balancing account in the approximate amount of \$53,000;

4. Waiver by F. Patrick Flynn of the net outstanding balance of \$12,448.92 remaining on a loan from him to Mesa-Crest;
5. Payment by the Flynn's of \$105,000 to the State General Fund; and
6. Limitations on the scope and nature of buyer contracts for employment of Mesa-Crest's officers during the transition period following sale.

The Settlement incorporates standard provisions for release and waiver, warranty, choice of law and other terms of agreement.

The proposed sale would be presented to the Commission by Mesa-Crest and the buyer in a separate application. Upon Commission approval and the subsequent closing of the sale, pursuant to the Settlement, CPED and the Respondents request that the Commission close this proceeding.

4. Discussion and Conclusion Regarding the Settlement

The Commission finds that the Settlement, that resolves all outstanding issues between CPED and the Respondents, complies with Commission requirements for approval of settlements (Rule 12.1(d)), because it is reasonable in light of the whole record, consistent with the law, and in the public interest. The Commission therefore adopts the Settlement as detailed in the Ordering Paragraphs of this decision.

4.1. The Settlement is Reasonable in Light of the Whole Record

This proceeding includes a full record of written testimony and other filed documents, including but not limited to the Joint Motion and Settlement. The Settlement was reached after careful analysis of the issues by each party involved, all of whom are knowledgeable and experienced, and includes detailed instructions regarding implementation of the terms of the Settlement.

The Settlement is consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record. This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. Thus, we conclude the Settlement is reasonable.

4.2. The Settlement is Consistent With the Law

The terms of the Settlement complies with all applicable statutes. These include Pub. Util. Code § 451 which in part requires, that utility rates must be just and reasonable, and Pub. Util. Code § 454, which in part prevent a change in public utility rates unless the Commission finds such an increase justified. Nothing in the Settlement contravenes statute or prior Commission decisions.

4.3. The Settlement is in the Public Interest

The Settlement is in the public interest and in the interest of parties involved. The agreed-upon revenue requirement and its piece parts, pursuant to the Settlement resolves all items at issue in this proceeding.

Approval of the Settlement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties. The parties to the Settlement comprise all of the active parties in this proceeding. Thus, the Settlement commands the unanimous sponsorship of the affected parties who fairly represent the interests affected by the Settlement. We also find that the record of this proceeding contains sufficient information for us to determine the reasonableness of the Settlement and for us to discharge any future regulatory obligations with respect to this matter. For all these reasons, we approve the Settlement.

5. Waiver of Comments

Pursuant to Rule 14.6, this decision, the 30-day comment period is waived because the decision is on an uncontested matter where no hearings were conducted.

6. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ in this proceeding.

Findings of Fact

1. Mesa-Crest Water Company is a Class C water company, located in the Los Angeles County community of La Cañada Flintridge.

2. On June 25, 2015, the Commission issued I.15-06-018, an OII into the operations and practices of Mesa-Crest “With Respect to a Series of Financial Transactions, and Possible Threats to the Health and Safety of its Ratepayers.”

3. CPED and the Respondents are the only parties to this proceeding. The OII was opened in response to CPED’s (formerly identified as Safety and Enforcement Division) report regarding various financial activities of the Respondents.

4. The OII directed Respondents to show cause why the Commission should not petition the Los Angeles Superior Court to appoint a receiver for Mesa-Crest.

5. The Respondents filed their response on August 7, 2015, denying all allegations.

6. On August 7, 2015, the Respondents filed and served their “Response to the Commission’s Order Instituting Investigation and Orders to Show Cause”.

7. On September 2, 2015, a PHC took place in San Francisco to establish the service list, discuss the scope, and develop a procedural timetable for the management of this proceeding.

8. On September 9, 2015, the assigned Commissioner issued her Scoping Memo, in which she primarily set out the scope and schedule of this proceeding.

9. On September 22, 2015, following issuance of a Scoping Memo and schedule, Mesa-Crest moved for an order holding the proceeding in abeyance and referring the matter to Alternative Dispute Resolution. The order requested by Mesa-Crest was denied by the Assigned ALJ on October 7, 2015.

Subsequently, Mesa-Crest requested an extension of time to serve rebuttal testimony, which was granted, in part, November 25, 2015. On December 3, 2015, the assigned ALJ denied Mesa-Crest's request for a further extension of time to serve rebuttal testimony.

10. Mesa-Crest served its rebuttal testimony was served on December 23, 2015.

11. On January 5, 2016, Mesa-Crest submitted to the ALJ by e-mail its "Motion to Continue Hearing and Set Status Conference to Facilitate Sale of Utility." Following an all-party telephone status conference with the Assigned ALJ on January 6, 2016, the Assigned ALJ issued an e-mail ruling taking the hearings off the calendar, initiating procedures for Mesa-Crest to inform CPED of potential sale offers received by the utility from qualified buyers, and providing for further status conferences. CPED and Mesa-Crest then commenced settlement discussions, seeking to reach agreement for sale of the utility and a complete resolution of this proceeding.

12. On May 5, 2016, CPED and Respondents reached agreement in principle on most of the terms of a potential settlement among all parties, the details of which they commenced to document and negotiate. Thereafter, they notified the Assigned ALJ of the likelihood they would reach a complete settlement.

13. On June 23, 2016, the Commission issued D.16-06-057, extending the statutory deadline for this proceeding to December 24, 2016 in order for the

Commission “to review the provisions of the settlement agreement and to prepare a proposed decision for Commission consideration.” (D.16-06-057, p. 2.)

14. On July 25, 2016, CPED and Respondents confirmed their consent to all terms of their settlement agreement and on August 5, 2016, the Respondents and CPED executed the Settlement.

15. On August 18, 2016, CPED and Respondents filed and served their Joint Motion. Attached to the Joint Motion is the Settlement.

16. On September 19, 2016, an ALJ e-mail ruling was issued, requesting that the parties file motions requesting identification and receipt of their respective testimonies.

17. On September 28, 2016, all parties requested that they not be required to request receipt of testimony that they characterize as “now-outdated” and that they are not aware of “any requirement that evidence be received in order for the Commission to evaluate an unopposed all-party settlement”.

18. On October 12, 2016, issued an e-mail ruling denying the parties request, stating in part that “A settlement must be reasonable in light of the whole record. If there is no record, there is no way to assess whether it meets this test.”

19. On October 27, 2016, CPED and the Respondents - Mesa Crest, Timothy J. Flynn and F. Patrick Flynn, jointly filed a supplement to their August 18, 2016 Joint Motion and Settlement. CPED and Respondents filed this joint supplement in the interest of completing the Commission’s record on their prior respective litigation positions before entry into the Settlement Agreement. The following documents are not treated as sworn testimony, but as supporting documents to the Settlement Agreement filed on August 18, 2016:

- a. Attachment 1 is a copy of the March 10, 2015 staff report of CPED (“Staff Report”), as referenced in the Order Instituting Investigation (“OII”) herein. Ordering

paragraph 16 of the OII directs that the Staff Report “be entered into the record for this proceeding.”

- b. Attached hereto as Attachment 2 is a copy of the September 30, 2015 testimony of Ke Hao Ouyang, which was served on or about that date on behalf of CPED.
- c. Attached hereto as Attachment 3 is a copy of the December 23, 2015 rebuttal testimony of Timothy Flynn, which was served on or about that date on behalf of Mesa Crest.
- d. Attached hereto as Attachment 4 is a copy of the December 23, 2015 rebuttal testimony of Christian Aldinger, which was served on or about that same date on behalf of Mesa Crest.

20. The parties to the Settlement include all parties, and are fairly reflective of the affected interests.

21. No term of the Settlement contravenes statutory provisions or prior Commission decisions.

22. The Settlement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

23. The Settlement is reasonable in light of the record, is consistent with law, and is in the public interest.

Conclusions of Law

1. The Settlement is reasonable in light of the whole record, consistent with law, in the public interest and should be approved.

2. Mesa-Crest should be sold according to specific terms agreed to by CPED in the Settlement and subject to Commission approval. Those terms are:

- a. Sell Mesa-Crest to a Class A, Commission-regulated buyer, pursuant to the terms of a the Letter of Intent executed on March 31, 2016, including: a) consistency

with the Settlement; b) consistency with law; c) Commission approval of the sale; d) CPED's being informed, on a confidential basis, of ongoing sale agreement negotiations and terms; e) "Replacement cost new less depreciation" study to be performed by an appraiser selected from a list provided by CPED, the results of which will both provide a cap for the purchase price and establish a rate base equal to the purchase price going forward; and f) capital improvement plan or schedule for such a plan to be submitted with the buyer and Mesa-Crest's application for approval of the sale.

- b. CPED and Mesa-Crest's agreement to commence an auction process for the sale of Mesa-Crest, if the negotiation and execution of an asset purchase agreement and the filing of an application for Commission approval of the contemplated sale to the already-identified buyer should not be accomplished by February 15, 2017, unless that date is extended for good cause by the parties and the Commission.

3. The Flynn's should pay one-time financial obligations, which will be carried out concurrently with the closing of the Commission-approved sale.

Respondents' financial obligations are:

- a. Repayment by the Flynn's of their debt to Mesa-Crest in the total amount of \$384,000, which amount will be dedicated exclusively by the buyer to capital improvements that may be included in rate base if and when they become used and useful;
- b. Payment by the Flynn's of the sum of \$217,000 exclusively designated for capital improvements, which will not be included in rate base;
- c. Waiver of recovery of Mesa-Crest's purchased water balancing account in the approximate amount of \$53,000;
- d. Waiver by F. Patrick Flynn of the net outstanding balance of \$12,448.92 remaining on a loan from him to Mesa-Crest;

- e. Payment by the Flynn's of \$105,000 to the State General Fund; and
4. The proposed sale should be presented to the Commission by Mesa-Crest and the buyer in a separate application. Upon Commission approval and the subsequent closing of the sale, the Commission should close this proceeding.
5. All rulings by the ALJ and Commissioner are affirmed herein.

O R D E R

IT IS ORDERED that:

1. The All-Party Settlement Agreement filed jointly by the Commission's Consumer Protection and Enforcement Division, Mesa-Crest Water Company, Timothy J. Flynn, and F. Patrick Flynn, which is attached in Appendix A to this decision, is reasonable in light of the whole record, consistent with law, in the public interest and is approved.
2. Mesa-Crest Water Company (Mesa-Crest) shall be sold according to specific terms of the All-Party Settlement Agreement (Settlement), and subject to Commission approval. Those terms are:
 - a. Sell Mesa-Crest to a Class A, Commission-regulated buyer, pursuant to the terms of a the Letter of Intent executed on March 31, 2016, including:
 - a) consistency with the Settlement; b) consistency with law;
 - c) Commission approval of the sale; d) Consumer Protection and Enforcement Division's (CPED) being informed, on a confidential basis, of ongoing sale agreement negotiations and terms; e) "Replacement cost new less depreciation" study to be performed by an appraiser selected from a list provided by CPED, the results of which will both provide a cap for the purchase price and establish a rate base equal to the purchase price going

- forward; and f) capital improvement plan or schedule for such a plan to be submitted with the buyer and Mesa-Crest's application for approval of the sale.
- b. CPED and Mesa-Crest's agreement to commence an auction process for the sale of Mesa-Crest, if the negotiation and execution of an asset purchase agreement and the filing of an application for Commission approval of the contemplated sale to the already-identified buyer should not be accomplished by February 15, 2017, unless that date is extended for good cause by the parties and the Commission.
3. Timothy J. Flynn, and F. Patrick Flynn (the Flynn's) shall pay one-time financial obligations, which shall be carried out concurrently with the closing of the Commission-approved sale. These financial obligations are:
 - a. Repayment by the Flynn's of their debt to Mesa-Crest Water Company (Mesa-Crest) in the total amount of \$384,000, which amount will be dedicated exclusively by the buyer to capital improvements that may be included in rate base if and when they become used and useful;
 - b. Payment by the Flynn's of the sum of \$217,000 exclusively designated for capital improvements, which will not be included in rate base;
 - c. Waiver of recovery of Mesa-Crest's purchased water balancing account in the approximate amount of \$53,000;
 - d. Waiver by F. Patrick Flynn of the net outstanding balance of \$12,448.92 remaining on a loan from him to Mesa-Crest;
 - e. Payment by the Flynn's of \$105,000 to the State General Fund; and
 4. The proposed sale shall be presented to the Commission by Mesa-Crest Water Company and the buyer in a separate application. Upon Commission

approval and the subsequent closing of the sale, the Commission shall close this proceeding.

5. Investigation 15-06-018 shall remain open to address Ordering Paragraph 4 herein.

This order is effective today.

Dated January 19, 2017, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners

I.15-06-018 ALJ/WAC/dc3/sbf

Appendix A

Settlement Agreement Addressing All Outstanding Issues



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ATTACHMENT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into on August 5, 2016 (“Execution Date”) by and between the Utility Enforcement Branch of the Consumer Protection and Enforcement Division (“CPED”)¹ of the California Public Utilities Commission (“Commission”), and Mesa Crest Water Company, a Class C water company regulated by the Commission (“Mesa Crest”), F. Patrick Flynn, both individually and as Trustee of the Flynn Bypass Trust UTA dated 08/06/91, as amended, its sole shareholder, and Timothy J. Flynn, its president. CPED, Mesa Crest, F. Patrick Flynn and Timothy J. Flynn are each referred to herein as a “Party” and shall be collectively known as the “Parties.”

RECITALS

WHEREAS, Mesa Crest is a Class C water company with 709 metered connections subject to the Commission’s jurisdiction and the Commission’s general orders, rules and decisions;

WHEREAS, Mesa Crest identified a capital improvement plan in Advice Letter (AL) No. 52 in January 2004 that was filed in conjunction with an application to sell Mesa Crest to California-Michigan Land and Water Company, which sale failed to close. On May 26, 2005, the Commission adopted Resolution W-4531, authorizing Mesa Crest’s request for a general rate increase. Resolution W-4531 also authorized Mesa Crest to file one advice letter per year in 2005, 2006, and 2007, seeking authorization to include in rate base plant additions set forth in its proposed capital improvement plan, and receive a corresponding rate adjustment for the additional rate base;

WHEREAS, certain transactions (the “Financial Transactions”) took place as follows:

a. From 1997 through 2009, Mesa Crest from time to time advanced funds to F. Patrick Flynn, Mesa Crest’s sole shareholder, in the total principal amount of \$90,937.07 now owing (the “Shareholder Debt”); Mesa Crest reported these advances as “other current assets” on Schedule A-4 (“Other Current Assets”) and as “short-term receivables” on Schedule C-2 (“Loans to Directors, Officers or Shareholders”) of its annual reports to the Commission, and it executed a promissory note for these transactions on July 2, 2013;

b. From 2006 through 2013, Mesa Crest from time to time advanced funds to Timothy J. Flynn, Mesa Crest’s president, in the total principal amount of \$212,205.47 now owing (the “Officer Debt,” and together with the Shareholder Debt, the “Officer and Shareholder Debt”); Mesa Crest reported

¹ The Branch used to be part of the Safety and Enforcement Division.

these advances as “other current assets” on Schedule A-4 (“Other Current Assets”) and as “short-term receivables” on Schedule C-2 (“Loans to Directors, Officers or Shareholders”) of its annual reports to the Commission, and it executed a promissory note for these transactions on July 2, 2013; and

c. In January and February of 2010, F. Patrick Flynn advanced to Mesa Crest loans in the total principal amount of \$110,000.00 (the “Mesa Crest Loan”) (together with the Officer and Shareholder Debt, the “Financial Transactions”), which was documented in a promissory note dated June 15, 2010 from Mesa Crest to F. Patrick Flynn to be repaid in equal monthly installments from September 14, 2010 through March 15, 2015, of which \$23,847.80 remains unpaid. Mesa Crest reported the Mesa Crest Loan each year on Schedule A-11 of its annual reports to the Commission. On August 29, 2013, Mesa Crest filed AL 64 requesting authority under Public Utilities (PU) Code Sections 816, 817, 818, and 851 for the Mesa Crest Loan. On April 3, 2014, the Commission rejected AL 64.

d. The Parties agree to disagree about the nature of these transactions, when and how Mesa Crest first reported these transactions to the Commission, or whether these transactions complied with the applicable provisions of the Public Utilities Code, the Commission's rules and regulations or any other legal requirements.

WHEREAS, on June 25, 2015, the Commission issued an Order Instituting Investigation on the Commission’s Own Motion into the Operations and Practices of Mesa Crest Water Company (U333W) with Respect to a Series of Financial Transactions, and Possible Threats to the Health and Safety of its Ratepayers (“OII”) initiating Investigation (“I.”) 15-06-018 against Mesa Crest, F. Patrick Flynn and Timothy J. Flynn (together, the “Respondents”);

WHEREAS, the Commission issued the OII in I.15-06-018 based upon a March 10, 2015 CPED investigative report contending that over a period commencing in 1997 and continuing to the present time, Respondents entered into a series of unlawful financial transactions between Mesa Crest, on the one hand, and F. Patrick Flynn and/or Timothy J. Flynn, on the other hand; that the manner in which the Respondents reported these transactions to the Commission made it impossible for Commission staff to understand the true nature of the transactions; that the conduct of Respondents threatened the health and safety of Mesa Crest’s ratepayers; that the Respondents should be subject to financial and equitable penalties; and that the Commission's General Counsel should petition the Los Angeles County Superior Court to appoint a receiver over Mesa Crest;

WHEREAS, on August 17, 2015, Respondents filed a response to the OII contending that the OII was unmeritorious, that Respondents had disclosed the Financial Transactions to the Commission in each of Mesa Crest’s annual reports to the Commission commencing in 1997 and continuing to the present, without any statement

of complaint or concern by Commission staff prior to 2013, that Respondents had not violated any laws or Commission rules, regulations or decisions, that the imposition of penalties and fines upon Respondents was neither appropriate nor supportable, that Respondents had not threatened the health and safety of Mesa Crest ratepayers, that the institution of a costly and time-consuming Superior Court receivership proceeding was unwarranted, and that multiple additional meritorious defenses to the claims stated in the OII existed;

WHEREAS, all active parties entered into settlement discussions during the weeks preceding the scheduled evidentiary hearings and agreed to continue any hearing date;

WHEREAS, Mesa Crest solicited offers to purchase all, or substantially all, of Mesa Crest's operating assets ("Mesa Crest System") and executed a letter of intent on March 31, 2016 ("Letter of Intent") with a Class A, Commission-regulated public utility (the "Buyer") to negotiate a definitive asset purchase agreement on terms consistent with a settlement of the OII with CPED;

WHEREAS, the Parties agree that a sale of the Mesa Crest System that is consistent with the terms of this Agreement is in their mutual best interests and in the best interest of Mesa Crest's ratepayers and the public interest, and that a settlement and complete resolution of the OII predicated on the sale of the Mesa Crest System will avoid unnecessary, wasteful and costly litigation and conserve the resources of the Parties and of the Commission;

WHEREAS, the Parties desire to compromise, settle, and resolve fully and finally all claims that were raised or could have been raised as part of I.15-06-018 or on the facts giving rise to that proceeding;

WHEREAS, this Agreement is contingent on Commission approval of this settlement agreement and on Commission approval of the sale of the Mesa Crest System and the subsequent completion of such sale;

NOW THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and stipulate as follows:

AGREEMENT

1. **Compromise:** This Agreement is entered into in full compromise of any disputed claims, allegations or outstanding issues raised between or among the Parties. The Parties agree to disagree about the claims set forth in the CPED report and the OII, and in Mesa Crest's responses to the OII. It is therefore fully acknowledged by all Parties hereto that the execution of this Agreement and the exchange of any consideration provided for herein, whether tangible or intangible, is not and shall not be construed in any way as an admission of wrongdoing or liability, or violation of law, or Commission rule or

regulation on the part of any of the Respondents, who merely intend, by their actions pursuant to this Agreement, to avoid any further dispute or litigation. Nor shall the approval of this Agreement by the Commission constitute or be deemed an admission or finding of wrongdoing or liability, or violation of law, or Commission rule or regulation on the part of any of the Respondents.

2. **Sale of the Utility:** Mesa Crest has agreed to sell all of its water utility assets (“Utility Assets”), including, without limitation, all plant, property and assets, real, personal, tangible and intangible, all water works, all books and records used in the conduct of the water utility business, and its authorization from the Commission to conduct its water utility business within its Commission-approved service territory. Mesa Crest executed a Letter of Intent on March 31, 2016, with a qualified Buyer, and is in the process of negotiating the terms of a definitive asset purchase agreement (the “APA”). The APA will include the following terms:

- a. **Consistent with Agreement:** The APA shall contain terms and conditions consistent with this Agreement.
- b. **Consistent with Applicable Law:** The APA shall contain terms and conditions consistent with applicable law and Commission decisions, and that satisfy Cal. Pub. Util. Code §§ 851 and 854.
- c. **Commission Approval:** The sale of the Mesa Crest System will be subject to Commission approval. Mesa Crest and the purchaser will file the necessary documentation with the Commission for Commission approval pursuant to sections 851 and 854 (the “Application”).
- d. **Confidentiality:** The Buyer has agreed to allow Mesa Crest to keep CPED informed of ongoing sale negotiations and terms on a confidential basis.
- e. **RCNLD Study:** Mesa Crest and the Buyer have agreed to submit a replacement cost new less depreciation study (the “RCNLD Study”) performed by an appraiser selected from a list of appraisers provided by CPED. The agreed-upon purchase price will not exceed the valuation of the assets determined from the RCNLD Study and will result in the establishment of a rate base equal to the purchase price.
- f. **Capital Improvement Plan:** The Application will include either a detailed capital improvement plan or a schedule for submitting a detailed capital improvement plan to the Commission, along with rate impact estimates.

3. **Repayment of the Officer and Shareholder Debt:** The outstanding Officer and Shareholder Debt will be repaid from the proceeds of the sale in the total amount of \$384,000.00, including \$303,142.54 in principal and \$80,857.46 in interest. Interest is based on the 90-day commercial paper rate, and at an amount representing the difference

between CPED's principal and interest calculation using a fixed method and Mesa Crest's principal and interest calculation using a variable method. The repayment amount of the Officer and Shareholder Debt shall be used by the Buyer, or other purchaser of Mesa Crest's Utility Assets, exclusively for capital improvements within Mesa Crest's Commission-approved service territory, and such capital improvements may be included in rate base at such time as they become used and useful. At the time of the closing of the sale of the Mesa Crest System (the "Closing"), CPED will provide Respondents with a written statement confirming that the Officer and Shareholder Debt have in fact been repaid.

4. **Payment for Capital Improvements:** At the Closing, Respondents will make a separate payment of \$217,000.00 to the Buyer, which shall be designated for capital improvements within the Mesa Crest service area. Terms of the APA will include a provision that these capital improvements shall not be included in rate base and/or collected from ratepayers in any way by the Buyer. The separate payment of \$217,000 pursuant to this section shall not result in a reduction of or a deduction from the otherwise negotiated purchase price in any way, nor shall it affect the Buyer's establishment of a rate base equal to the purchase price, subject to the RCNLD Study.

5. **Purchased Water Balancing Account and Mesa Crest Loan:** Mesa Crest shall waive recovery of its purchased water balancing account from ratepayers in the approximate amount of \$53,000.00. F. Patrick Flynn shall not recover the net outstanding balance of \$12,448.92 (\$23,847.80 outstanding balance less \$11,398.88 in interest already paid to F. Patrick Flynn) due on the Mesa Crest Loan from Mesa Crest or from the ratepayers. Terms of the APA will include the Buyer's waiver of recovery of the purchased water balancing account from ratepayers in the approximate amount of \$53,000.00.

6. **General Fund Payment:** At the Closing, the Respondents will make a payment to the State General Fund of \$105,000.00. The Parties agree that CPED may (but need not) characterize this payment as a penalty, but that Mesa Crest will characterize it as not being a penalty but a negotiated reimbursement of the cost of the investigation.

7. **Failure to Consummate a Final Asset Purchase Agreement/Auction:** If Mesa Crest is unable to consummate a final APA with the Buyer by February 15, 2017, or sooner if the Buyer and Mesa Crest voluntarily terminate negotiations, Mesa Crest will commence an auction process for the sale of its Utility Assets. The auction process will be in accordance with bidding procedures ("the "Bid Procedures") agreed to by Mesa Crest and CPED and submitted to the Commission for pre-approval. The Bid Procedures will be designed to establish the framework for a prompt sale of the assets and to facilitate final approval by the Commission of the sale. For all purposes of implementing and carrying out the Bid Procedures, including publicizing the auction, permitting potential bidders to conduct due diligence, evaluating bids and generally guiding the course of the auction process, Mesa Crest will continue to consult with CPED.

8. **Commission Approval:** This Agreement is subject to the approval of the Commission, which approval the Parties agree they will seek promptly and on an expedited basis.

9. **Forbearance:** The Parties shall forbear from exercising any of their rights and remedies available at law in connection with the OII from the Execution Date of this Agreement in order to facilitate an efficient and timely sale of the Mesa Crest System.

10. **Dismissal of I.15-06-018:** The dismissal of I.15-06-018 without any findings adverse to any of the Respondents upon the Closing of a Commission-approved sale of the Mesa Crest System is and will be an express condition of this settlement and of the sale of the Mesa Crest System. The parties will jointly ask the Commission to order that I.15-06-018 be dismissed concurrently with the Closing of the Commission-approved sale of the Mesa Crest System without entering any findings that are adverse to Respondents.

11. **Releases:** Upon the Closing of the sale of the Mesa Crest System, each of the Parties hereto hereby fully, finally and forever releases, waives, and discharges the other Parties and their respective representatives, agents, officers and directors, heirs, subsidiaries, affiliates, successors and assigns of any claims that were raised or could have been raised as part of I.15-06-018 or on the facts giving rise to that proceeding. For purposes of the OII, upon the Closing, the Parties waive the right to any further hearing, administrative law judge decision, Commission decision, and other briefs, and all further and other proceedings to which the parties may be entitled under the California Public Utilities Code and Commission regulations and rules. In furtherance of such intention, the Parties agree that the releases contained in this Agreement will remain in effect and will be fully binding notwithstanding the discovery or existence of any additional or different facts; provided, however, nothing in this Agreement shall be deemed to release the Parties from any obligation under this Agreement.

12. **Acknowledgment of Release and Waiver of Section 1542:** The Parties agree that upon the Closing for sale of the Mesa Crest System, this Agreement will forever bar every claim, demand, and cause of action described in the OII, or related to that proceeding, that may be brought by each of the Parties, as applicable. Each Party expressly waives all rights or benefits which it now has, or in the future may have, under Section 1542 of the California Civil Code, and any law or common law principle of similar effect. Section 1542 of the California Civil Code states as follows:

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

The Parties hereby acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to exist with respect to the matters covered by this Agreement. The Parties also acknowledge that such different or additional facts, if they exist, may have given rise to causes of action, claims, demands, controversies, damages, costs, and expenses which are presently unknown, unanticipated, and unsuspected. The Parties further agree, represent, and warrant that the releases contained herein have been negotiated and agreed upon in light of that realization, and that it is their intention through this Agreement, and with the advice of counsel, fully, finally, and forever to settle and release to the fullest extent permitted by law any and all existing claims, causes of action, disputes, and differences, that were raised or could have been raised, arising out of or related to the OII which exists, as of the Execution Date of this Agreement. In furtherance of such intention, the Parties agree that the releases contained in this Agreement will remain in effect and will be fully binding notwithstanding the discovery or existence of any additional or different facts; provided, however, nothing in this Agreement shall be deemed to release the Parties from any obligation under this Agreement.

13. **No Admissions or Adverse Findings:** Nothing in this Agreement shall signify or be deemed an admission or finding of wrongdoing or violation of law or of any Commission rule, regulation or decision, nor shall any action or statement of any of the Respondents be construed as an admission of wrongdoing, liability or violation.

14. **Employment:** The Buyer has expressed interest in contracting with Timothy J. Flynn and Thomas Flynn in operational roles with no financial oversight duties during the transition period. The terms of contract will be negotiated between the Buyer and the respective employee, but the terms shall be customary in the industry and the salary shall reflect the market rates for the specific job duties and responsibilities. The contract shall cover a period of no more than two years.

15. **Warranties:** By entering into this Agreement, the Parties will resolve the OII, along with any other matters, claims, or actions related to the OII which are known to exist by the CPED or the Commission, whether filed or unfiled. No further litigation with respect to the OII will be continued by any Party in any forum, except to enforce the terms of this Agreement, if necessary. CPED represents and warrants that as of the Execution Date there are no existing claims, causes of action, or issues, related to the OII, that have accrued but have not yet been disclosed, pertaining to Mesa Crest or any of the other Respondents. To the extent that any such claims, causes of action, or issues have accrued and are known but not disclosed as of the Execution Date, by CPED or the Commission, they will be waived with prejudice.

16. **Voluntary Agreement; No Construction Against Drafter:** Each Party hereby represents and agrees that this Agreement is freely and voluntarily executed. Each Party further represents that this Agreement has been negotiated and they have had the opportunity to consult with legal counsel prior to signing this Agreement. Accordingly, the Parties agree that any legal or equitable principles that might require the construction

of this Agreement or any of its provisions against the party responsible for drafting this Agreement will not apply in any construction or interpretation of this Agreement.

17. **Counterparts:** This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument.

18. **Other People Bound by this Agreement:** The rights conferred and obligations imposed on any Party by this Agreement shall inure to the benefit of or be binding on that Party's representatives, agents, officers, directors, heirs, subsidiaries, affiliates, successors, or assigns as if those people or entities were themselves parties to the Agreement.

19. **Authorization:** Each Party represents and warrants that it has the necessary power and authority, and has been duly authorized, to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

20. **Governing Law:** This Agreement shall be construed and enforced in accordance with, and the rights of the Parties shall be governed by, the laws of the State of California.

21. **Entire Agreement:** This Agreement sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may be pleaded as a complete defense to, and may form the basis for an injunction against, any action, suit or other legal proceeding which may be initiated, prosecuted, or attempted in breach of this Agreement that is related to the OII.

22. **Severability/Commission Modification of the Agreement:** No individual term of this Agreement is agreed to by any Party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and no term is severable. Any Party may withdraw from this Agreement if the Commission modifies or fails to approve the Agreement. But the Parties agree to negotiate in good faith with regard to any Commission-ordered changes in order to restore the balance of benefits and burdens, and to exercise the right to withdraw only if those negotiations fail.

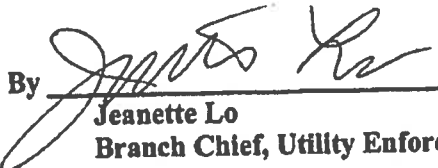
23. **Alternative Dispute Resolution:** Should any dispute arise between the Parties concerning the meaning of this Agreement or the Parties' compliance with it, the Parties will try in good faith to mediate the dispute using a mediator selected by the Commission's Alternative Dispute Resolution panel. Should good faith mediation fail to resolve the dispute, the Parties may then exercise any other remedies they might have.

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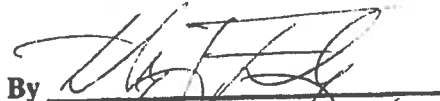
Accepted to and agreed as of the Execution Date.

CONSUMER PROTECTION AND ENFORCEMENT DIVISION (CPED), CPUC

By 
Jeanette Lo
Branch Chief, Utility Enforcement Branch

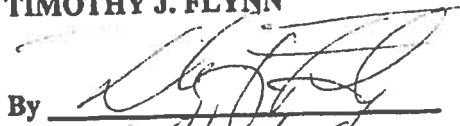
Date 8-5-2016

MESA CREST WATER COMPANY


By 
Its P. Flynn

Date 8/5/16

TIMOTHY J. FLYNN

By 
Date 8/5/16

F. PATRICK FLYNN

By 
Date 8/5/16

F. PATRICK FLYNN, AS TRUSTEE
OF THE FLYNN BYPASS TRUST UTA DATED 08/06/91, AS AMENDED

By Francis Patrick Flynn

Date 8/5/16