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

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

Application 12-04-019  
(Filed April 23, 2012)

**ADMINISTRATIVE LAW JUDGE'S RULING**

**Summary**

This ruling grants motions for party status, denies a motion to dismiss, requests briefing on select legal issues, and proposes a two-day workshop for July 2012.

**Pending Motions**

**A. Motions for Party Status**

For adequate cause shown, the following motions for party status made in the wake of the April 23, 2012, filing of the instant application are granted: Marina Coast Water District (Marina Coast) (April 30); Coalition of Peninsula Businesses (May 8); County of Monterey (May 10); Monterey County Water Resources Agency (May 10); Monterey Peninsula Regional Water Authority (May 14); Water Plus (May 14); City of Pacific Grove (May 18); Citizens for Public Water (May 18); Monterey Regional Water Pollution Control Agency (May 25); Salinas Valley Water Coalition (May 25); and Sierra Club (June 1).

**B. Motion to Dismiss**

On April 30, 2012, Marina Coast moved for dismissal of Application (A.) 12-04-019 on the grounds that it contravenes Commission policy, as reflected in Decision (D.) 10-12-016 that was rendered in A.04-09-019, and fails to allege sufficient facts to warrant a change in that policy. That motion seeks, in the alternative, to have the Commission declare a cessation of the Regional Desalination Project approved in D.10-12-016.

On May 11, 2012, I circulated to the service lists for A.04-09-019 and A.12-04-019 an e-mail ruling<sup>1</sup> postponing the date for responding to the motion to dismiss A.12-04-019 in the instant proceeding pending a decision as to whether the movant, Marina Coast, would be granted party status. Marina Coast is now a party and, pursuant to the authority granted by Rule 11.1(g), I am ruling on the motion to dismiss at this time.

I deny the motion to dismiss because there is good cause for the Commission to proceed with an examination of the Monterey Peninsula Water Supply Project proposed in A.12-04-019. The people and entities in the Monterey Division service area of the Applicant face the risk of losing -- in less than five years -- most of the water supply that presently serves them. Circumstances clouding the financing, contractual underpinnings, partnership relations and implementation of the Regional Desalination Project led the Applicant to withdraw from the pursuit of that project. Any issues from A.04-09-012 that remain unresolved will be addressed, but not in A.12-04-019. Given the overarching public interest in finding a source or sources of replacement water

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<sup>1</sup> That informal ruling is hereby confirmed and memorialized, subject to the effects of this formal ruling.

for the Monterey Peninsula as soon as practicable, it is reasonable to proceed with A.12-04-019.

### **Legal Issues That Warrant Early Resolution**

#### **Is the County Ordinance Governing Desalination and Limiting Desal Plant Ownership and Operation to Public Agencies Preempted by Commission Authority?**

Subsection 10.72.030(B) of Monterey County Code of Ordinance, Title 10, Chapter 10.72, limits the ownership and operation of a desalination facility in the County to public agencies. The remainder of that ordinance contains oversight and permitting provisions purporting to govern the construction and operation of desalination facilities. In a letter addressed to the Monterey County Counsel by the Commission's General Counsel during the week before the Application here was filed, an opinion was offered that Subsection 10.72.030(B) was preempted by the authority given the Commission under the California Constitution and Public Utilities Code.<sup>2</sup> Since the instant application calls for California-American Water Company (Cal-Am) to own and operate a desalination facility in Monterey County, this issue of preemption is critical to this proceeding. Accordingly, the parties are requested below to brief the issue of the applicability of the ordinance to the proposed Monterey Peninsula Water Supply Project, and the extent, if any, to which the Commission's authority preempts that ordinance in part or whole.

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<sup>2</sup> April 18, 2012, letter from Frank R. Lindh to Charles J. McKee.

**Does or Will Cal-Am, or Another Entity Participating in the Separate Groundwater Replenishment and Aquifer Storage Projects of Cal-Am's Proposal for Replacement Water, Possess Adequate Rights to the Slant Well Intake Water, Groundwater Replenishment Water and to the Outfall for Purposes of Project Feasibility?**

These issues of legal rights have been posed in several of the protests filed against A.12-04-019 and relate to key factors of Cal-Am's proposal. As such, they warrant being addressed early in the proceeding. Accordingly, the parties are requested to brief the issue of whether the project is feasible based upon the foregoing water-related right claims of the participating entities.

**Proposal for a Workshop**

At the prehearing conference on June 6, 2012, I plan to discuss the advisability of holding a two-day workshop at the Commission in July during which the Parties can discuss technical and other non-legal concerns and questions relating to the Application. The workshop would not address legal issues, such as the ones that are being separately briefed pursuant to this ruling. The Parties should be prepared to report on their availability concerning the following possible workshop dates: July 19-20 or 26-27, 2012.

**IT IS RULED that:**

1. The following motions for party status made in 2012 are granted: Marina Coast Water District (April 30); Coalition of Peninsula Businesses (May 8); County of Monterey (May 10); Monterey County Water Resources Agency (May 10); Monterey Peninsula Regional Water Authority (May 14); Water Plus (May 14); City of Pacific Grove (May 18); Citizens for Public Water (May 18); Monterey Regional Water Pollution Control Agency (May 25); Salinas Valley Water Coalition (May 25); and Sierra Club (June 1).

2. The Marina Coast Water District's April 30, 2012, motion to dismiss Application 12-04-019 is denied.

3. Opening Briefs on the two legal issues posed on pages 3 and 4 of this ruling shall be limited to 25 pages (exclusive of attachments, if any) and be due by July 11, 2012, and Reply Briefs shall be limited to 15 pages (exclusive of attachments, if any) and be due by July 25, 2012.

4. Parties need to be prepared at the June 6, 2012 prehearing conference to discuss the workshop proposal, the possible dates of July 19-20 and 26-27 for a workshop and other calendaring issues.

5. This ruling shall also be served upon the Service List in Application 04-09-019.

Dated June 1, 2012, at San Francisco, California.

/s/ GARY WEATHERFORD

Gary Weatherford  
Administrative Law Judge