

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



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In the Matter of the Application of California-American Water Company (U 210 W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**MARINA COAST WATER DISTRICT'S REPLY TO THE
COMMENTS OF COUNTY OF MONTEREY AND THE
MONTEREY COUNTY WATER RESOURCES AGENCY
ON PROPOSED DECISION DECLARING PREEMPTION
OF COUNTY ORDINANCE AND THE EXERCISE OF
PARAMOUNT JURISDICTION**

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Date: October 16, 2012

In accordance with Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, Marina Coast Water District (“MCWD”) respectfully submits its reply to the comments of Monterey County (“the County”) and the Monterey County Water Resources Agency (“MCWRA”) on the Proposed Decision Declaring Preemption of County Ordinance and the Exercise of Paramount Jurisdiction filed on September 21, 2012 (the “PD”).

MCWD noted, on page 8 of its comments to the PD, that the County’s suit against California American Water Company (“Cal-Am”) is not ripe for adjudication under the standard of *Pacific Legal Found. v. California Coastal Com.* (1982) 33 Cal.3d 158. Not only is there no “actual controversy” because no privately-owned desalination plant in violation of the ordinance has been certificated by the Commission (and no privately-owned desalination plant in violation of the ordinance may ever be so certificated), but it is not clear that the County and Cal-Am are in fact adverse to each other on the issue of preemption. If they are not – *e.g.*, if both parties desire the ordinance to be preempted as it applies to Cal-Am – such a “collusive” suit would also preclude the finding of an “actual controversy.”

County/MCWRA state on page 2 of their comments that they are pursuing an outcome to the San Francisco Superior Court litigation with Cal-Am that “would resolve longstanding issues over application of the Ordinance to Cal-Am.” In response, MCWD wishes to point out that the Commission indeed has exclusive jurisdiction over the application of the county ordinance to Cal-Am’s proposed project (PD, p. 7), due to the Commission’s active consideration of Cal-Am’s project in this proceeding. Therefore the County’s suit against Cal-Am clearly and directly interferes with the Commission’s performance of its official duties in violation of Public Utilities Code section 1759, subdivision (a), as would any effort of the County and Cal-Am to reach a resolution of that suit outside the reach of the Commission’s jurisdiction. The suit should

forthwith be dismissed. The suit is unripe and – under section 1759 – the superior court is without jurisdiction to entertain it.

On page 2 of their comments, County/MCWRA “reserve their rights to raise substantive legal issues in an application for rehearing of a final decision and thereafter during the appellate process.” Such a reservation of rights is unnecessary. Commission Rule of Practice and Procedure 16.2(a) permits any party to a proceeding to request rehearing, without a reservation of rights, and an application for rehearing is of course a mandatory prerequisite to appellate review.

DATED: October 16, 2012

Respectfully submitted,
FRIEDMAN & SPRINGWATER LLP

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