



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

**FILED**

10-11-12  
04:59 PM

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)

**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**

DOWNEY BRAND LLP  
Dan L. Carroll  
Kevin M. O'Brien  
Steven P. Saxton  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 444-1000  
Facsimile: (916) 444-2100  
Email: dcarroll@downeybrand.com

Attorneys for Monterey County Water Resources Agency

Dated: October 11, 2012

Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, the County of Monterey (“County”) and the Monterey County Water Resources Agency (“Agency”) comment on Administrative Law Judge Gary Weatherford’s Proposed Decision Declaring Preemption of County Ordinance and the Exercise of Paramount Jurisdiction (“PD”).

The PD would have the Commission determine “that the authority of the Commission in regard to this [proceeding] preempts Monterey County Code of Ordinance, Title 10, Chapter 10.72, concerning the construction, operation and ownership of desalination Plants” and “that the findings, conclusions and orders” the PD would have the Commission adopt “are an exercise of jurisdiction that is paramount to that of a county Superior Court concerning the same subject.”<sup>1</sup>

A. The County Seeks a Resolution of the Ordinance Issue That Is in Aid of, Not in Derogation of, the Commission’s Authority.

The County is concerned that the Commission misapprehends the purpose of *County of Monterey v. California-American Water Company*, San Francisco County Superior Court, Case No. CGC-12-521875 (“San Francisco litigation”). That lawsuit was intended as a vehicle to resolve issues regarding application of the County’s Ordinance to California-American Water Company (“Cal-Am”) in a fashion that would strike an appropriate balance between the Commission’s jurisdiction and the County’s interest in certain exclusively local matters. The parties are mindful of the preemption issues but are also mindful of separate, local issues, that do not conflict with the Commission’s authority. The County seeks common ground with Cal-Am that maintains the local public health and safety underpinnings of the Ordinance while taking into account the Commission’s authority, and doing so at a reasonable cost.

To that end, the parties had been working diligently toward a mutually agreeable resolution of the issues under the framework that litigation provides when the PD was issued. Progress toward a favorable resolution of the San Francisco litigation has slowed since release of the PD.

The Commission has recognized that Cal-Am may agree to cooperate with public agencies.<sup>2</sup> Cal-Am thus may agree to abide by those aspects of the Ordinance that do not conflict with the Commission’s authority despite the fact that other aspects of the Ordinance cannot be applied to

---

<sup>1</sup> PD, p. 1.

<sup>2</sup> See PD, p. 20, fn. 23.

Cal-Am under the PD. Resolution of the San Francisco litigation along those lines would not be in derogation of the Commission's authority. Rather, such a resolution would be in aid of the Commission's authority and would accelerate project completion because it would resolve long-standing issues over application of the Ordinance to Cal-Am and would qualify as an "other favorable outcome" under Ordering Paragraph 4 proposed in the PD.

Despite diligent efforts, the County and Cal-Am have not yet reached a resolution but the County believes such a resolution can be reached expeditiously. Ultimately, a resolution must be reached that ensures a safe, reliable, cost-effective and long-term supply of water for the citizens of Monterey County.

B. The County and the Agency Reserve All Rights With Respect to Substantive Legal Comment.

The County and the Agency are focused on resolution. Therefore, the County and the Agency have not submitted substantive legal comment concerning the PD. This does not mean the County and Agency agree with all of the legal analysis advanced in the PD. It is rather a recognition of the likelihood that legal disputation will not advance the goal of resolving the issues.

However, the County and the Agency reserve their rights to raise substantive legal issues in an application for rehearing of a final decision and thereafter during the appellate process.

Dated: October 11, 2012

Respectfully submitted,  
DOWNEY BRAND LLP

By:                     /s/ Dan Carroll                      
Dan L. Carroll

**Attorneys for County of Monterey and the  
Monterey County Water Resources Agency**

**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)

**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**

DOWNEY BRAND LLP  
Dan L. Carroll  
Kevin M. O'Brien  
Steven P. Saxton  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 444-1000  
Facsimile: (916) 444-2100  
Email: dcarroll@downeybrand.com

Attorneys for Monterey County Water Resources Agency

Dated: October 11, 2012

Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, the County of Monterey (“County”) and the Monterey County Water Resources Agency (“Agency”) comment on Administrative Law Judge Gary Weatherford’s Proposed Decision Declaring Preemption of County Ordinance and the Exercise of Paramount Jurisdiction (“PD”).

The PD would have the Commission determine “that the authority of the Commission in regard to this [proceeding] preempts Monterey County Code of Ordinance, Title 10, Chapter 10.72, concerning the construction, operation and ownership of desalination Plants” and “that the findings, conclusions and orders” the PD would have the Commission adopt “are an exercise of jurisdiction that is paramount to that of a county Superior Court concerning the same subject.”<sup>1</sup>

A. The County Seeks a Resolution of the Ordinance Issue That Is in Aid of, Not in Derogation of, the Commission’s Authority.

The County is concerned that the Commission misapprehends the purpose of *County of Monterey v. California-American Water Company*, San Francisco County Superior Court, Case No. CGC-12-521875 (“San Francisco litigation”). That lawsuit was intended as a vehicle to resolve issues regarding application of the County’s Ordinance to California-American Water Company (“Cal-Am”) in a fashion that would strike an appropriate balance between the Commission’s jurisdiction and the County’s interest in certain exclusively local matters. The parties are mindful of the preemption issues but are also mindful of separate, local issues, that do not conflict with the Commission’s authority. The County seeks common ground with Cal-Am that maintains the local public health and safety underpinnings of the Ordinance while taking into account the Commission’s authority, and doing so at a reasonable cost.

To that end, the parties had been working diligently toward a mutually agreeable resolution of the issues under the framework that litigation provides when the PD was issued. Progress toward a favorable resolution of the San Francisco litigation has slowed since release of the PD.

The Commission has recognized that Cal-Am may agree to cooperate with public agencies.<sup>2</sup> Cal-Am thus may agree to abide by those aspects of the Ordinance that do not conflict with the Commission’s authority despite the fact that other aspects of the Ordinance cannot be applied to

---

<sup>1</sup> PD, p. 1.

<sup>2</sup> See PD, p. 20, fn. 23.

Cal-Am under the PD. Resolution of the San Francisco litigation along those lines would not be in derogation of the Commission’s authority. Rather, such a resolution would be in aid of the Commission’s authority and would accelerate project completion because it would resolve long-standing issues over application of the Ordinance to Cal-Am and would qualify as an “other favorable outcome” under Ordering Paragraph 4 proposed in the PD.

Despite diligent efforts, the County and Cal-Am have not yet reached a resolution but the County believes such a resolution can be reached expeditiously. Ultimately, a resolution must be reached that ensures a safe, reliable, cost-effective and long-term supply of water for the citizens of Monterey County.

B. The County and the Agency Reserve All Rights With Respect to Substantive Legal Comment.

The County and the Agency are focused on resolution. Therefore, the County and the Agency have not submitted substantive legal comment concerning the PD. This does not mean the County and Agency agree with all of the legal analysis advanced in the PD. It is rather a recognition of the likelihood that legal disputation will not advance the goal of resolving the issues.

However, the County and the Agency reserve their rights to raise substantive legal issues in an application for rehearing of a final decision and thereafter during the appellate process.

Dated: October 11, 2012

Respectfully submitted,  
DOWNEY BRAND LLP

By:                     /s/ Dan Carroll                      
Dan L. Carroll

**Attorneys for County of Monterey and the  
Monterey County Water Resources Agency**