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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.

A.12-04-019

(Filed April 23, 2012)

**PUBLIC TRUST ALLIANCE RESPONSE TO APPLICATIONS FOR REHEARING
OF DECISION NO. 12-10-030**

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Dated December 14, 2012

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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.

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**PUBLIC TRUST ALLIANCE RESPONSE TO APPLICATIONS FOR REHEARING
OF DECISION NO. 12-10-030**

Pursuant to Rule 16.1, the Public Trust Alliance submits this response to the two Applications for Rehearing of Decision 12-10-030, the Decision announcing pre-emption of a Monterey County Ordinance requiring public ownership and operation of any desalination facilities in the county. We support the legal analyses and petitions for rehearing included in both applications and here request oral argument pursuant to Rule 16.3 if the pre-emption decision is actually implemented as written. While no-one seriously doubts the power of the Commission to take such action, the unnecessary resort to such arbitrary and reflexive exertion of power may not be helpful to local problem-solving efforts. It may be valuable for the public to be able to see and understand exactly which actors are advocating what positions and why they are taking (or not taking) the positions that they are on this issue of potentially great public concern.

In application, pre-emption is neither completely arbitrary nor automatic, as more than amply demonstrated by the many cases cited in the two applications for rehearing. Rather, the procedure has roots in the protection of important public interests on a rational basis. And just as with any other mechanism for implementing separation of legislative, judicial and executive powers or functions, there is thought and deliberation involved, even in the choice of whether or not to exercise the pre-emption power in an arbitrary capacity.

Pre-emption is not a procedure implemented simply because it can be, and the Public Trust Alliance is deeply concerned that an unnecessarily broad stance, one perhaps overly generous to a regulated applicant and less protective of public interests and community values, may have been taken here.

This particular decision could test the bounds of current legal precedent and impose a premature and un-necessary endorsement of a particular project rather than aiding a search for the most appropriate solution to a water supply problem within a rational range of options. While that range of options may become increasingly clear to various parties as the proceeding develops, the final determination of "pre-emption" at this point may serve rather to extend consideration of a particular project, and potentially avoid discussion of important concerns and values, many of which are just now being articulated within the community and are increasingly reflected in the positions, statements and tactics of the parties engaged in this proceeding.

Our current view is that a great deal of public institutional machinery put in place to balance long-established public interests in relation to private initiatives in the financing, construction and operation of essential public infrastructure is overstepped by what seems to us a premature and unnecessary final determination of pre-emption. Instead, a particular project is given an early nod of approval and a pronouncement supported by little or no explicit consideration of community concerns is substituted for a deliberated legislative act that many have understood for decades to be a guiding principle to be followed by any water desalination projects in Monterey County. While this action can indeed be taken, it does not have to be, and the Rules of Practice and Procedure explicitly provide for the opportunity we are taking here to request an oral argument.

Rule 16.3 Criteria

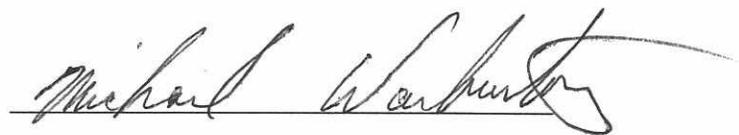
Rule 16.3(b) is clear regarding the conditions under which any party responding to an application for rehearing may make its own request for oral argument. The party must show why issues of major significance are raised for the Commission because the challenged order or decision:

- (1) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;
- (2) changes or refines existing precedent;
- (3) presents legal issues of exceptional controversy, complexity, or public importance; and/or
- (4) raises questions of first impression that are likely to have significant precedential impact.

Basically, no regulated utility in California has ever applied to privately own and control the capital and energy intensive technology needed to desalinate a major portion of a multi-city public water supply and include it in its rate base in a county, which has for decades, and on the basis of health and safety concerns, limited such activity to public agencies. Many concerns have been noted in both applications for rehearing presently before the Commission. This request for oral argument will be withdrawn immediately if the unnecessary final pre-emption finding is withdrawn from the Decision.

Respectfully submitted,

Executed in Berkeley, CA December 3, 2012

A handwritten signature in black ink, reading "Michael Warburton", written over a horizontal line.

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