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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
ON PENDING MOTIONS AND OTHER SUBJECTS**

1. Summary

This ruling grants in part and denies in part a motion to require quarterly reporting of compliance and progress. It defers acting on a motion to establish criteria for decision on desalination plant sizing. It grants a motion for official notice of facts and another to protect an Intervenor's personal financial information from public inspection. It also notes the rejection of an unrequested submission for filing. Further, it sets out guidelines in an attachment that Parties are to follow in preparation for and during the Evidentiary Hearings scheduled to start on April 2, 2013; and it directs the Applicant to coordinate the time allotment and sequencing of cross-examination.

2. Background

Four motions by Parties are pending. On December 12, 2012, the Planning and Conservation League Foundation (PCLF) moved to have the Commission "establish criteria to guide the decision on whether to downsize the desalination

project based on progress toward implementation of the Groundwater Replenishment Project.”¹ On the same date PCLF moved to have the Commission require the Applicant (Cal-Am) “to publish quarterly reports on the status of its compliance with the ... cease and desist order (Order WR 2009-0060) and on its progress toward implementing the desalination project as well as alternatives in the event that Cal-Am fails to complete the desalination project by the cease and desist order’s December 31, 2016 deadline.”² Cal-Am responded to each of those motions on December 27, 2012, proposing compromises.³

On January 15, 2013, Cal-Am moved to have the Commission:

...take official notice of the following actions taken in a matter adjudicated by the Superior Court of California, County of San Francisco (“San Francisco Superior Court”): 1) the County of Monterey’s (“County”) Complaint for Declaratory Relief, dated June 26, 2012; 2) the County’s Request for Dismissal with prejudice of entire action of all parties and all causes of action filed, dated December 11, 2012; and 3) a print out of the San Francisco Superior Court’s docket which shows that the matter was taken off the calendar on December 13, 2012. [Footnotes omitted.]

Copies of those documents are contained in Attachment 1 to Cal-Am’s motion. The law suit to which that motion refers sought judicial resolution of the issue whether Monterey County Ordinance pertaining to the construction and operation of desalination facilities (Chapter 10.72, Monterey County Code) is

¹ PCLF’s Motion to Establish Criteria for Decision on Desalination Plant Sizing (filed December 12, 2012), hereinafter “Criteria Motion” at 1.

² PCLF’s Motion to Require Quarterly Publication of Compliance and Progress Report (filed December 12, 2012), hereinafter “Quarterly Reporting Motion” at 1.

³ Cal-Am’s December 27, 2012 Response to PCLF’s Motion to Establish Criteria at 2-3, and Response to Quarterly Reporting Motion at 2-4.

preempted by authority of the California Public Utilities Commission, which the Commission has answered affirmatively in this proceeding in Decision 12-10-030, issued on October 31, 2012.

On January 30, 2013, Citizens for Public Water filed a Motion for Protective Order concerning personal financial information of George T. Riley to be offered in support of a revised Notice of Intent to Claim Intervenor Compensation.

On December 11, 2012, the Salinas Valley Water Coalition submitted to the Commission's Docket Office for filing a Pre-Hearing Conference Statement and an attached "Exhibit 'A'" (Technical Memorandum from Timothy Durbin to Salinas Valley Water Coalition, dated December 3, 2012).⁴ The Docket Office rejected the filing on January 17, 2013 on the ground that the submission was not authorized for filing.

Each of the foregoing subjects is discussed below.

Given the number of Parties, the time sensitivity of the proceeding and the complexity of the factual issues involved, it is imperative that preparation for and the conduct of the evidentiary hearings be as efficient as is practicable. The guidelines set out in Attachment A are designed to help achieve that end. Toward the same end, I am directing Cal-Am to contact the Parties, obtain cross-examination time estimates and coordinate the sequencing of the cross-examinations. Parties are to cooperate in that undertaking and, where possible, to consolidate cross-examination questions to limit unnecessary duplication. Cal-Am is directed to file and serve a compliance report proposing

⁴ The stated subject of the memorandum was "California-American Water Company -- Comments on proposal to pump groundwater from the Salinas Valley basin."

an allocation and sequencing of cross-examination time, preferably in matrix format, as soon as is practicable but not later than Friday, March 22, 2013.

3. Discussion

3.1. Deferral of Ruling on the Motion to Establish Project Sizing Criteria

Action on this particular PLCF motion will be taken at a later date.

3.2. Ruling on the Motion to Require Status and Progress Reports

In its Motion to Require Quarterly Publication of Compliance and Progress Report at 2-3, PCLF seeks to have:

...the Commission require Cal-Am to publish, on a quarterly basis, the status of its compliance with the cease and desist order, as well as its progress toward implementation of the desalination project and any alternatives that might become necessary if Cal-Am fails to meet the State Board's deadline. PCLF requests that the Commission order these reports to be published in a readily accessible location on Cal-Am's website and a notice of availability and summary of these reports in a newspaper of general circulation within Cal-Am's Monterey County District. The information in these reports should include updates on the timeline for the desalination project (anticipated permit approvals, test well drilling and plant design status, current negotiations for public participation, etc.), as well as details on Cal-Am's preparation of alternative supply options in the event of a delay in, or termination of, Cal-Am's desalination project. The reports should also disclose the water use restrictions and any additional measures that Cal-Am will have to impose if sufficient desalination or other supplies are not available by the end of 2016. These reports may repeat or refer to information already prepared by Cal-Am to meet State Board quarterly reporting requirements under the cease and desist order.

They would also likely contain updated summaries of the information previously submitted by Cal-Am in compliance with

the Administrative Law Judge's Ruling Concerning Contingency Plans, issued on August 30, 2012.

Cal-Am is concerned that PCLF's reporting proposal could cause further delays and that the information requested "may end up confusing ratepayers due to its technical and complex nature."⁵

Instead, California American Water proposes that it provide the parties and ratepayers with a two to three-page quarterly report providing updates on significant milestones reached in the MPWSP. Beginning 30 days after the second quarter of 2013 and continuing in the same manner in subsequent quarters, California American Water can notice ratepayers, via bill messages, of the location and availability of new quarterly progress reports on California American Water's Water Supply Project's website (<http://www.watersupplyproject.org>). [Footnote: California American Water will provide, upon request from a ratepayer, a copy of the quarterly progress report via U.S. Mail.] California American Water also commits to make these same quarterly progress reports available to the above-captioned proceeding's service list. [Footnote: All of the quarterly progress reports will remain available on California American Water's Water Supply Project's website.] Lastly, in order to provide greater transparency, California American Water will also interlink its company website (<http://www.amwater.com/caaw>) with its Water Supply Project's website.

This PCLF motion is denied in part and granted in part as follows. The request for periodic reporting of the status of compliance with the Cease and Desist Order (CDO) of the State Water Resources Control Board (SWRCB) is denied. The CDO is multifaceted in the requirements to which Cal-Am is to

⁵ December 27, 2012 Response of Cal-Am to the PCLF's Motion to Require Quarterly Publication, at 2. Clear descriptions and explanations, without regard to the degree of complexity of the subject, are warranted to eliminate confusion in this circumstance. The stakes are high for ratepayers and they deserve to understand the reality they face.

respond and the SWRCB, not the Commission, is the state agency that monitors (e.g. through receipt of quarterly reports), interprets and enforces those requirements. Progress reporting on the Monterey Peninsula Water Supply Project (MPWSP) application pending before the Commission, as this ruling requires below, will serve to reveal the status of Cal-Am's efforts toward weaning its system off the Carmel River to the extent of the illegal diversions and thereby contribute toward the transparency that PCLF seeks.

PCLF's motion is granted to the following extent. Beginning 30 days after the end of the second quarter of 2013 and continuing in the same manner in subsequent quarters until the Commission acts finally on Application 12-04-019 or, if that final action is approved, until the MPWSP is on line, Cal-Am shall notice the Service List and a newspaper of general circulation (both electronically) and ratepayers (via bill messages) of the location and availability of new quarterly MPWSP progress reports on Cal-Am's Water Supply Project website: <http://www.watersupplyproject.org>. All of the quarterly MPWSP progress reports will remain available on the website. Upon the request of a ratepayer, Cal-Am will provide a copy of a progress report via U.S. Mail. Cal-Am will interlink its company website, <http://www.amwater.com/caaw>, with its Water Supply Project's website. The progress reports are to be as lengthy, textured and free of overly technical verbiage as appropriate for keeping a lay readership informed of the important features, milestones (reached and/or missed) and challenges of the MPWSP, including the Groundwater Replenishment and Aquifer Storage & Recovery components as relevant. The progress reports should include a time line or a Gantt chart for all major activities on the MPWSP and an explanation of the same. The actual time line can be appended to the report. For each major activity in the MPWSP the

progress reports are to include the budgeted amounts, the amounts actually spent, the amounts remaining and the percentage completed. Significant developments and updates pertaining to the contingency options covered in Attachment 9 of Richard C. Svindland's Supplemental Testimony of January 11, 2013 also are to be included.

3.3. Ruling on the Motion for Official Notice

Official notice of facts is allowed under our Rules of Practice and Procedure⁶ as permitted in the Cal. Evidence Code, selected provisions of which are set out in the footnote below.⁷ Under the authority variously provided in

⁶ Rule 13.9: "Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq."

⁷ § 450. Judicial notice may not be taken of a matter unless authorized or required by law.

§ 451. Judicial notice shall be taken of the following:

- (a) The decisional ... law of this state
- (b) Any matter made a subject of judicial notice by Section 11343.6, 11344.6, or 18576 of the Government Code....

§ 452. Judicial notice may be taken of the following matters to the extent that they are not embraced within [the prior section]:

- (a) The decisional law of any state of the United States ...
- (b) Regulations and legislative enactments issued by or under the authority of the United States and of any state of the United States or any public entity in the United States.
- (c) Official acts of the ... judicial departments ... of any state of the United States.

- (d) Records of (1) any court of this state...

Footnote continued on next page

Evidence Code §§ 451(a), 452(a), (c) and (d), official notice is hereby taken of those documents of record in the San Francisco Superior Court Case No. CGC-12-521875 that are contained in Attachment 1 of Cal-Am's Motion for Official Notice, namely the County of Monterey's (County) Complaint for Declaratory Relief, dated June 26, 2012; 2) the County's Request for Dismissal with prejudice of entire action of all parties and all causes of action filed, dated December 11, 2012; and 3) a print-out of the San Francisco Superior Court's docket which shows that the matter was taken off the calendar on December 13, 2012. Pursuant to the authority provided by Evidence Code § 452(h) and §453(a) and (b), official notice is hereby taken of Ordinance No. 3439 (Chapter 10.72, Monterey County Code, relating to the operation of a desalination facility) also included in Attachment 1 of Cal-Am's motion for official notice.

3.4. Ruling on the Motion for a Protective Order

On October 8, 2012 George T. Riley of Citizens for Public Water filed a revised Notice of Intent to Claim Intervenor Compensation with attached

- (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

§ 453. The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and:

- (a) Gives each adverse party sufficient notice of the requests, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and
- (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter

personal financial information under seal. On January 30, 2013 he moved, pursuant to General Order (GO) 66-C,⁸ for a protective order directing that his personal financial information be withheld from general public inspection. In his signed moving papers, Riley represents that the personal financial information filed under seal is confidential in nature, that making it “generally available for public inspection would unnecessarily intrude on [his] privacy, and that making it available to Commission staff should be permissible for evaluating a representation of significant financial hardship. Further, he consents to the Commission, using an appropriate non-disclosure agreement, to allow requesting parties of record to review of such information.

Finding that the information filed by Riley deals with personal finances and that it is confidential in nature, I hereby grant the protective order withdrawing that information from general public inspection. Any Party of record to this proceeding may be allowed by the assigned Administrative Law Judge to review the information that is under seal upon 1) written request, 2) a showing of good cause, and 3) execution of an appropriate non-disclosure agreement.

3.5. Rejected Pre-Hearing Conference Statement

The Docket Office’s rejection of the pre-hearing conference statement of the Salinas Valley Water Coalition is without prejudice to that Party’s opportunity to proffer information in and/or attached to that document in the form of Intervenor Testimony.

⁸ GO 66-C § 2.2 provides for the exclusion from public inspection “[r]ecords or information of a confidential nature furnished to, or obtained by the Commission.”

IT IS RULED that:

1. California-American Water Company is directed to contact the Parties, obtain cross-examination time estimates and coordinate the sequencing of the cross-examinations. Parties are to cooperate in that undertaking and, where possible, to consolidate cross-examination questions to limit unnecessary duplication. California- American Water Company is directed to file and serve a compliance report proposing an allocation and sequencing of cross-examination time, preferably in matrix format, as soon as it is practicable but not later than Friday, March 22, 2013.

2. Action on the Planning and Conservation League's Motion to Establish Project Sizing Criteria will be taken at a later date.

3. Beginning 30 days after the end of the second quarter of 2013 and continuing in the same manner in subsequent quarters until the Commission acts finally on Application 12-04-019 or, if that final action is approval, until the Monterey Peninsula Water Supply Project (MPWSP) is on line, Cal-Am shall notice the Service List and a newspaper of general circulation (both electronically) and ratepayers (via bill messages) of the location and availability of new quarterly MPWSP progress reports on California-American Water Company's Water Supply Project website: <http://www.watersupplyproject.org>. All of the quarterly MPWSP progress reports will remain available on the website. Upon the request of a ratepayer, Cal-Am will provide a copy of a progress report via U.S. Mail. California-American Water Company will interlink its company website, <http://www.amwater.com/caaw>, with its Water Supply Project's website. The progress reports are to be as lengthy, textured and free of overly technical verbiage as appropriate for keeping a lay readership informed of the important features, milestones (reached and/or missed) and challenges of the

MPWSP, including the Groundwater Replenishment and Aquifer Storage & Recovery components as relevant. The progress reports should include a time line or a Gantt chart for all major activities on the MPWSP and an explanation of the same. The actual time line can be appended to the report. For each major activity in the MPWSP the progress reports are to include the budgeted amounts, the amounts actually spent, the amounts remaining and the percentage completed. Significant developments and updates pertaining to the contingency options covered in Attachment 9 of Richard C. Svindland's Supplemental Testimony of January 11, 2013, also are to be included.

4. Under the authority variously provided in Evidence Code §§ 451(a), 452(a), (c) and (d), official notice is hereby taken of those documents of record in the San Francisco Superior Court Case No. CGC-12-521875 that are contained in Attachment 1 of California-American Water Company's Motion for Official Notice, namely the County of Monterey's (County) Complaint for Declaratory Relief, dated June 26, 2012; 2) the County's Request for Dismissal with prejudice of entire action of all parties and all causes of action filed, dated December 11, 2012; and 3) a print-out of the San Francisco Superior Court's docket which shows that the matter was taken off the calendar on December 13, 2012.

Pursuant to the authority provided by Evidence Code § 452(h) and §453(a) and (b), official notice is hereby taken of Ordinance No. 3439 (Chapter 10.72, Monterey County Code, relating to the operation of a desalination facility) also included in Attachment 1 of California-American's motion for official notice.

5. The protective order sought by George T. Riley, on behalf of Citizens for Public Water, in the January 3, 2013 motion is hereby granted pursuant to General Order 66-C. The personal financial information submitted under seal is withdrawn from general public inspection. Any Party of record to this

proceeding may be allowed by the assigned Administrative Law Judge to review the information that is under seal upon 1) written request, 2) a showing of good cause, and 3) execution of an appropriate non-disclosure agreement.

6. The Docket Office's rejection on January 17, 2013 of the pre-hearing conference statement of the Salinas Valley Water Coalition, on the ground that the submission was not authorized for filing, was without prejudice to that Party's opportunity to proffer information in and/or attached to that document in the form of Intervenor Testimony

Date February 13, 2013, at San Francisco, California.

/s/ GARY WEATHERFORD

Gary Weatherford
Administrative Law Judge

ATTACHMENT A

Evidentiary Hearing Guidelines

ATTACHMENT A

EVIDENTIARY HEARING GUIDELINES

1. Summary

The Evidentiary Hearings (EH) in this matter are scheduled for April 2-5 and 8-11, 2013, Hearing Room A, 505 Van Ness Avenue, San Francisco. The first day of hearings will begin at 10 a.m. Certain Commission rules are highlighted here, and procedures, protocols and presiding Administrative Law Judge's (ALJ's) practices are cited, for the purpose of achieving a fair and efficient EH.

2. Evidentiary Hearings Generally

See Article 13 of the California Public Utilities Commission (CPUC) Rules of Practice and Procedure. The Rules are available at:
http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF.

The evidentiary hearings focus primarily on the: (1) cross-examination of the sworn witnesses whose written prepared direct testimony has been previously served, with re-direct and re-cross examination as appropriate, and (2) on the marking of documentary exhibits and their admission (or not) into the evidentiary record.

3. Prepared Testimony, Exhibits and Exhibit Format

Proposed exhibits must have a blank space two inches high by four inches wide on the top sheet, preferably in the upper right corner. (Rule 13.7(a).) If necessary to accommodate the Commission's exhibit stamp, a cover page or cover sheet

should be added to the front of the exhibit. Prepared testimony of more than 20 pages must contain a subject index. (Rule 13.8(c).) All exhibits must be clear and concise. Exhibits must contain footnotes to explain sources, as necessary. (*See*, for example, Decision (D.) 92-12-019, 46 CPUC 2d 538 at 555, 764 (footnote 17); D.93-04-056, 49 CPUC 2d 72 at 85-88 on the adequacy and clarity of showings.)

4. Corrections to Exhibits

Errata shall be in writing and served before the hearing, to the fullest extent feasible. If necessary, written errata (with copies for other parties, the presiding ALJ and the reporter) may be brought to the hearing. Only as a last resort will oral errata be taken from a witness on the stand. Corrections need not be made to typographical, wording or other minor errors which do not alter the substance of the proposed testimony.

5. Cross-Examination

Witnesses (i.e., each individual whose prepared testimony has been served in the proceeding) will testify under oath. The Applicant will be the first to present witnesses for the other Parties to cross-examine. The other Parties' witnesses will follow in the sequence agreed upon by the Parties or, failing agreement, as determined by the presiding ALJ. Absent good cause, cross-examination shall not be used for discovery. (Discovery should have been completed before hearings began.) Witnesses should be instructed to answer the question asked, and to avoid evasive answers or long explanations. Non-responsive answers may be stricken from the record.

6. Cross-Examination Documents

A copy of a document to be used during cross-examination must be provided to the witness's attorney or representative, and the witness, no later than before the witness takes the stand on the day the document is to be used, with sufficient time for reasonable review. Documents in excess of two pages should generally be provided the day before. This procedure helps use limited hearing time efficiently, by avoiding delays while counsel and witness read new material. Advance copies need not be provided to opposing counsel and witness if the document is to be used for the purpose of impeachment or to obtain a spontaneous reaction.

7. Cross-Examination Time and Sequencing

It may be necessary to limit the number of witnesses, or the times for cross-examination, redirect examination or recross-examination. (Rules 9.1, 13.5.) Cal-Am is being instructed to contact the Parties, obtain cross-examination time estimates and coordinate the sequencing of the cross-examinations. Parties are to cooperate in that undertaking, where possible consolidating cross-examination questions to limit unnecessary duplication. Parties should be aware of what cross-examination of a witness by other parties has already occurred, to avoid unnecessary duplication.

8. Exhibit Numbering, Exhibit Lists and Exhibit Exchange

The exhibit prefixes below are assigned to the Parties. Exhibits will be numbered consecutively (CA-1, CA-2, CA-3, etc.)

Party	Exhibit Prefix
Cal-Am	CA
Coalition of Peninsula Businesses	CPB
Division of Ratepayer Advocates	DRA
Monterey County Farm Bureau	FB
Latino Water-Use Coalition-Monterey Peninsula; Latino Seaside Merchants Association; Comunidad En Accion	LC
Landwatch Monterey County	LMC
County of Monterey; Monterey County Water Resources Agency	MC
Marina Coast Water District	MCD
Monterey Peninsula Water Management District	WD
Monterey Regional Water Pollution Control Agency	PCA
Planning and Conservation League	PCL
Pacific Grove	PG
The Public Trust Alliance	PTA
Monterey Peninsula Regional Water Authority	RWA
Citizens for Public Water	PW
Sierra Club	SC
Surfrider Foundation	SF
Salinas Valley Water Coalition	SV
Water Plus	WP

Joint exhibits shall bear the prefix JE-followed by the number, followed by joiners' prefixes in parenthesis (e.g., JE-1 (CA/DRA/PG)). No later than fourteen (14) days before the first day of hearing, each Party shall serve both a copy of its exhibit list and of its pre-marked exhibits on every other Party. Each Party may use an exhibit description that best describes the item. At the outset of the first day of the evidentiary hearings each party shall submit two copies of the exhibit list and of the pre-marked exhibits to the presiding ALJ and an additional copy of each to the reporter.

9. Stipulations as to Facts and as to Authenticity and Admissibility; Written Objections to Exhibits

No later than four (4) days before the first day of evidentiary hearings the Parties shall jointly serve their written stipulation, if any, as to uncontested facts and their written stipulation, if any, as to the authenticity and further, where possible, as to the admissibility of exhibits shown on the exhibits lists. Such stipulations are encouraged. Each party should, to the extent possible, at the outset of the evidentiary hearings provide to the opposing party, reporter and presiding ALJ a copy of written objections to the opposing party's exhibits. The provision of written objections will not constitute a waiver of the opportunity later to make oral objections, or change position as to objections, during the evidentiary hearings.

10. Hearing Hours

Hearings will generally run from 10:00 a.m. to 12:00 noon, with one morning break, and from 1:00 p.m. to 4:00 p.m., with at least one afternoon break. The presiding ALJ may, however, alter these hours as necessary.

11. Court Reporters, Language Translation, and Clear Record

It is vital that the record be clear. Common courtesy should always be extended to hearing room reporters and other participants. Counsel should wait for witnesses to finish their answers, and witnesses should similarly wait for the whole question to be asked before answering. Counsel shall refrain from simultaneous arguments on motions and objections. Conversations at the counsel table or in the audience are often distracting to the reporter and other participants. Such conversations should be avoided by either writing notes or requesting of the presiding ALJ time to converse off the record.

12. Post-Evidentiary Hearing Matters

Parties have 30 days after the last day of hearing to propose, if they so elect, a settlement by written motion. *See* Article 12 of the Rules of Practice and Procedure. Generally, at the end of the evidentiary hearings, a schedule will be set for common-outline opening briefs and reply briefs. After the close of the evidentiary hearings, the taking of evidence and the filing of briefs, the presiding ALJ will determine when to close the record by submitting the proceeding.

13. Modifications to Procedures and Protocols

For good cause any party may move for modification of any of these procedures and protocols. Under Rule 1.2, the Commission may permit deviations from the rules in “special cases and for good cause shown.”

(End of Attachment A)