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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
AFTER EVIDENTIARY HEARINGS**

1. Summary

This ruling memorializes earlier e-mail rulings, restates the modified scope of the proceeding, rules on motions to modify the schedule, circulates the draft agenda for the June 12, 2013 workshop concerning groundwater replenishment milestones, and notifies the parties that the content of that workshop can be referenced in the legal briefing.

2. Memorializing Previous Administrative Law Judge E-mail Rulings

E-mail rulings by the Administrative Law Judge (ALJ) since March 12, 2013 are memorialized and confirmed in Attachment A.

3. Restatement of Modified Scope

Effective April 1, 2013, by ALJ e-mail ruling memorialized in Attachment A, the scope of the proceeding was modified to read:

Is the proposed Monterey Peninsula Water Supply Project (MPWSP)

* required for public convenience and necessity and

- * a reasonable and prudent means of securing an adequate, reliable and cost-effective water supply that meets Cal-Am's legal requirements for the Monterey District; and
- * would the granting of the application be in the public interest?

4. Modification of Schedule and Ruling on Pending Motion

4.1 Extension of Time Needed for DEIR

In the wake of the evidentiary hearings, I have been informed by the Commission staff preparing the EIR that there are gaps in the hydrogeologic data that need to be filled before the Draft Subsequent Environmental Impact Report (DEIR) is completed and circulated. This will require new bore holes, recommended jointly by the hydrology experts for the CEQA staff, California American Water Company (Cal-Am) and Salinas Valley Water Coalition, to be drilled and the logs analyzed. Such an undertaking will be responsive to and compatible with a draft recommendation made by staff of the State Water Resources Control Board (SWRCP).¹

Drilling and analyzing the logs of the new borings will cause a delay in the issuance of the DEIR, requiring a resetting of the DEIR circulation date (previously set for July 1, 2013) to February 28, 2014. This change, combined with the decision described below to have the Opening Common Outline Briefing occur after the DEIR has been circulated and commented on, prompts a modification in the schedule for this proceeding as reflected in the chart in

¹ Draft Final Review of California American Water Company's Monterey Peninsula Water Supply Project, May 22, 2013, at 50: "... , the effects of the MPWSP on the Basin need to be evaluated. Specifically, a series of test boring/wells would be needed to assess the hydrogeologic conditions at the site."

Section 5 below. These modifications in the schedule occur against the backdrop of the motion and related responses next discussed.

4.2 Motion to Modify Procedural Schedule

On May 2, 2013, Marina Coast Water District (MCWD) filed a motion requesting:

that the procedural schedule be modified to provide that (1) Cal-Am and all Parties be afforded an opportunity to request limited additional hearings following publication of the Commission's final Subsequent Environmental Impact Report ("EIR") with written public comments, which hearings, if any, shall conclude no less than seven days prior to the deadline for filing Opening Briefs; and (2) Opening Briefs be due on a date no less than the later of thirty days after publication of the Commission's final Subsequent EIR with written public comments or thirty days after the close of additional hearings, if any, with the Reply Brief deadline to follow no less than fourteen days later. (Id. at 1.)

Timely responses supporting the motion were filed by Salinas Valley Water Coalition, Public Trust Alliance, and Water Plus (on May 9, 10 and 15, 2013, respectively). A response supporting the motion was tendered for filing by Citizens for Public Water on May 14, 2013. On May 17, 2013 timely responses were filed by Coalition of Peninsula Businesses opposing the motion; by Surfrider Foundation² agreeing in part with the motion but proposing an alternative schedule from that sought by the motion; and by Cal-Am and the Division of Ratepayer Advocates (DRA) opposing the motion.

² The same position was tendered for filing by Landwatch Monterey County on May 17, 2013.

Cal-Am and DRA argue that the schedule should remain as previously set, and Marina Coast's proposal would result in unnecessary delay, particularly given the impending deadline set by the SWRCB.³ Surfrider and Landwatch propose a compromise, under which briefing would occur after the issuance of the Draft EIR, rather than the Final EIR.

As stated earlier in this proceeding, no evidentiary hearing is required or, given the outstanding cease and desist order (CDO), appropriate for the environmental reporting track.⁴ Consistent with CEQA, parties will have the opportunity to comment on the DEIR before the FEIR is certified. Those comments, as reflected in the FEIR, will be considered in the Proposed Decision, and parties will also have the opportunity to comment on that PD before the Commission acts. MCWD's request to have the Opening Briefing occur after the publication of the FEIR or "thirty days after the close of additional hearings, if any," is denied.

To allow the parties to reference the DEIR and its analysis in their legal briefing (where relevant to the legal analysis and argument of issues covered in opening and reply briefing), the schedule is modified as follows: the due date for the Common Outline Opening Briefs now will be April 29, 2014 (shortly after the April 14, 2014 date when comments on the DEIR will be due), and the due date for Reply Briefs will be May 14, 2014. This approach is consistent with the schedule recommended by Surfrider Foundation and Landwatch Monterey

³ Cal-Am Response at 2-3 joined by DRA.

⁴ MCWD's effort, joined by other parties, to have project alternatives and environmental impacts addressed in evidentiary hearings was rejected in the August 29, 2012 ALJ's Directives to Applicant and Ruling on Motions (at 5-7).

County.⁵ Parties may use the information in the DEIR to support their arguments on the issues to be addressed in their briefs; the briefs are not to be used for critiquing the DEIR. The appropriate place to critique the DEIR is in comments on the DEIR. To repeat, critiques of the DEIR should not take place in the opening and reply legal briefing, but rather in comments on the DEIR.

4.3 Request to Allow Briefing References to be made to the June 12 Workshop

Downloadable materials are expected to be presented at and in the wake of the upcoming Workshop on Groundwater Replenishment milestones. Those materials will be made available on the Commission's Division of Water and Audits web site and may be referred to in the scheduled legal briefing.⁶ In preparing the Proposed Decision the ALJ will decide what recommendation to make to the Commissioners concerning milestones and criteria for determination of the inclusion or not of a groundwater replenishment component of water supply for the Monterey Peninsula Water Project.⁷

⁵ This schedule differs in one minor respect from that proposed by Surfrider and Landwatch, in that it lengthens the interval between the issuance of the DEIR and opening briefs from 45 days to 60 days, allowing parties to complete comments on the DEIR before completing the opening briefing.

⁶ Landwatch Monterey County requested clarification on this point in its May 17, 2013 Response to MCWD's Motion.

⁷ On December 12, 2012, the Planning and Conservation League (PCL) filed a Motion to Establish Criteria for Decision on Desalination Plant Sizing. In that Motion, at 3, PCL seeks "to require Cal-Am to specify the final moment when it will retain the ability to change the plant's size, and the Commission should establish this moment [not a future date certain, but a relative time] as the proper time for conclusive analysis of the groundwater project's status." It is expected that the June 12, 2013 Workshop and related legal briefing will inform any treatment of groundwater replenishment

Footnote continued on next page

5. New Calendar

Management of this proceeding, now entering its second year, continues to be a challenging one of trying to honor two mandates: the SWRCB CDO deadline and the Commission’s responsibility to fully vet Cal-Am’s application for a project to bring supplemental water to the Monterey Peninsula. Public trust values, endangered species and environmental protection, as well as water rights enforcement, underlie the CDO. Ratepayer interests, public safety and community welfare, as well as environmental protection, hinge on the application proceeding. Regrettably, the need to collect additional hydrogeologic data for important environmental reporting purposes requires a lengthening of the proceeding at this juncture, delaying the timing of the legal briefing and both the mailing of a Proposed Decision and action by the Commission in Phase 1 by several months, further diminishing any prospect that Cal-Am will be able to meet the December 2016 CDO deadline. The new schedule is:

CPCN Track		CEQA Track	
June 12, 2013 10 AM – 4 PM	GWR Project Milestones Workshop, CPUC Auditorium, 505 Van Ness Ave, S.F.		
June 14, 2013	Settlement Proposal (if any) re: non-groundwater replenishment issues		

milestones and criteria by the ALJ in the Proposed Decision. Coverage of the subject in the Proposed Decision likely will moot the need for a ruling on the PCL Motion.

June 28, 2013	Settlement Proposal (if any) re: groundwater replenishment issues		
July 27, 2013	Prehearing Conference: Status of Settlement Motion (if any), of CEQA work & other matters		
		February 28, 2014	DEIR circulated for comment
		April 14, 2014	Comments on DEIR due
April 29, 2014	Common Outline Opening Briefs due		
May 14, 2014	Reply Briefs due		
		June 17, 2014	FEIR published
July, 2014	Phase 1 Proposed Decision Mailed		
August, 2014	Commission Action		

6. Workshop Concerning Criteria for Go/No Go Decision on Groundwater

6.1 Replenishment Component and Project Sizing

The draft agenda for this Workshop is appended as Attachment B. The Workshop will be facilitated by Michael Zelazo and Ravi Kumra of the Division of Water and Audits and will begin at 10:00 p.m. on Wednesday June 12, 2013, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue,

San Francisco, CA 94102. Plans are being made for the Workshop to be viewable on the Commission website via video webcast:

www.californiaadmin.com/cpuc.shtml

7. No Solicitation of Further Exhibits

I have decided not to solicit further evidence for the record concerning letters from counsel to the Monterey Peninsula Regional Pollution Control Agency concerning legal constraints, if any, on that agency's expenditures.⁸

IT IS RULED that:

1. The previous Administrative Law Judge e-mail rulings set out in Attachment A are hereby memorialized and confirmed.
2. The scope of the proceeding has been modified as restated in Section 3 of this Ruling.
3. The May 2, 2013 Motion of Marina Coast Water District to Modify the Procedural Schedule is denied but a different modified schedule is adopted, delaying the circulation of the Draft Subsequent Environmental Indirect Report, in order for additional hydrogeologic data to be collected and analyzed, and deferring legal briefing until after the date comments on the DEIR are received. The modified calendar for the proceeding is set out in Section 5 of this Ruling.

⁸ See EH RT at 2029.

4. The draft agenda for the June 12, 2013 Workshop concerning groundwater replenishment milestones is set out in Attachment B. The Workshop begins at 10:00 p.m. on Wednesday June 12, 2013, in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102, and will follow that draft agenda, subject to any changes deemed appropriate by the facilitators.

Dated May 30, 2013, at San Francisco, California.

/s/ GARY WEATHERFORD

Gary Weatherford
Administrative Law Judge

A.12-04-012 GW2/jv1

ATTACHMENT A

ATTACHMENT A

Previous ALJ E-mail Rulings Memorialized and Confirmed

Official Notices Taken

This will memorialize and confirm, except where otherwise indicated, the e-mail ruling of March 12, 2013 that:

- took official notice under Evidence Code §452(c) of the 1995 contract (No. 5-07-20-W1283) between the U.S. Bureau of Reclamation and the Monterey County Water Resources Agency as a product of an official act of the executive branch of the United States;
- denied official notice of the map and enlargement of Zone2C for the Salinas Valley Water Project, an action later reversed orally by the ALJ at the Evidentiary Hearing on April 2, 2013 (Tr., Vol.2, at 146-148), allowing official notice of that map and enlargement to be hereby confirmed;
- took official notice under Evidence Code § 452(b) and (c) of the Monterey county Water Resources Agency Ordinance No. 3709 as a legislative enactment of a public entity in the United States and an official legislative act of a subdivision of the State of California; and
- took official notice under Evidence Code § 452(c) of the Monterey County Water Resources Agency Act of the State Legislature.

Cross-Examination Guidelines and Request to Subpoena Witnesses

This will memorialize and confirm the e-mail ruling of March 18, 2013 that stated:

1. Cross-Examination Parameters. In response to the March 13, 2013 e-mail from Ms. Dolqueist (Cal-Am) and the March 16, 2013 e-mail from Mr. Warburton (Public Trust Alliance):
 - a. Cross-examination supportive of a witness' position is not prohibited, but is discouraged and will be allowed only when not repetitive of previous cross-examination

or related testimony, including the witness' written testimony or the testimony of the cross-examining party. Rule 13.5 provides: "To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony upon a particular issue."

- b. Parties knowingly having common positions concerning a witness's testimony should, to the extent practicable, combine and share lines of questioning through a single examiner at the hearing. When such joint examination occurs, an identification of the parties joining in the examination may be announced on the record.
2. Requests to Subpoena Commission Staff as Witnesses. In response to the March 15, 2013 e-mail from Ms. Muzzin (Marina Coast Water District) and the March 16, 2013 e-mail from Mr. Warburton (Public Trust Alliance):
 - a. The requests, treated here as motions, to make available at the upcoming Evidentiary Hearing either or both Andrew Barnsdale, a Commission staff person working on the environmental reporting aspects of Application 12-04-019, and Eric Zigas, a consultant to the Commission concerning the same environmental reporting assignment, are denied.
 - b. Staff of, and consultants to, the Commission employed to fulfill its responsibility for completing environmental reporting on a proposed project in an application pending before the Commission are not parties or witnesses, but rather are an integral part of the deliberative process of the Commission itself.
 - c. The proceeding has been structured to receive prepared testimony in advance of the Evidentiary Hearings, as provided in Rule 13.8 and indicated by the schedule issued in the ALJ Ruling of August 29, 2012. The time for an Intervenor to serve direct testimony has passed and the Evidentiary Hearing will commence in 15 days. No direct testimony of Mr. Barnsdale or Mr. Zigas has

been served and I find no basis under Rule 13.10 or otherwise to require the production of testimony from either of those persons.

Modification of the Scope of the Proceeding

This will memorialize and confirm the e-mail ruling of April 1, 2013 that stated:

The scope of the proceeding A. 12-04-019 is being modified as provided below expressly to enclose the range of issues and concerns presented in the prepared testimony served by parties. This action is being taken pursuant to the following portion of the Assigned Commissioner's June 28, 2012 Scoping Memo and Ruling (at 6):

While this scoping memo provides guidance regarding the manner in which each identified issue will be considered, the assigned Administrative Law Judge may make any revisions or provide further direction regarding the manner in which issues are to be addressed, as necessary for a full and complete development of the record.

As modified by the ALJ Ruling of August 29, 2012, the question defining the Scope of A. 12-04-019 has been:

Is the proposed Monterey Peninsula Water Supply Project

- * required for public convenience and necessity and
- * a reasonable and prudent means of securing replacement water for the Monterey District of Cal-Am; and
- * would the granting of the application be in the public interest?

The question defining the Scope is hereby modified to read:

Is the proposed Monterey Peninsula Water Supply Project

- * required for public convenience and necessity and
- * a reasonable and prudent means of securing an adequate, reliable and cost-effective water supply

that meets Cal-Am's legal requirements for the Monterey District; and

- * would the granting of the application be in the public interest?

Suspension of 30-day Rule and of Legal Briefing Schedule

This will memorialize and confirm the May 6, 2013 e-mail ruling that stated:

This e-mail ruling suspends the previously set legal briefing dates of May 24 and June 7, 2013. Notice of new dates for common-outline legal briefing will be provided at a later time. In light of the complexity of issues presented and the setting of a post-evidentiary hearing workshop for June 12, 2013, the 30-day provision of Rule 12.1(a) will not be applied; instead the deadlines for proposing settlement are: June 14, 2013, for non-groundwater replenishment issues and June 28, 2013, for groundwater replenishment issues.

(END OF ATTACHMENT A)

A.12-04-012 GW2/jv1

ATTACHMENT B

ATTACHMENT B

**Draft Agenda for June 12, 2013 Groundwater Replenishment (GWR)
Workshop in A.12-04-019, June 12, 2013, 10 am – 4 pm,
CPUC Auditorium, 505 Van Ness Ave., San Francisco
(Viewable on the Commission website via video Webcast:**

www.californiaadmin.com/cpuc.shtml

Please refer to the attached list of proposed draft criteria for the GWR Workshop.

10:00 a.m. – 10:15 a.m.	Welcome and Introduction – Division of Water and Audits Staff
10:15 a.m. – 10:30 a.m.	Introduction of GWR Project
10:30 a.m. – 11:00 a.m.	Presentation of GWR Criteria
11:00 a.m. – 12:00 p.m.	Discussion of Proposed Criteria
12:00 p.m. – 1:00 p.m.	Lunch
1:00 p.m. – 2:30 p.m.	Continue Discussion
2:30 p.m. – 3:30 p.m.	Presentation and Discussion of Proposed Additional Criteria by Parties
3:30 p.m. – 4:00 p.m.	Conclude Workshop

**CRITERIA FOR THE GWR RECOMMENDATION
BY THE
GOVERNANCE COMMITTEE
FOR THE
MONTEREY PENINSULA WATER SUPPLY PROJECT**

A. Purpose and Intent

The criteria below are intended for use by the Governance Committee in making⁹ the “GWR Recommendation” as to whether Cal-Am should build, in Application A.12-04-019, a 6.4 MGD desalination plant combined with a water purchase agreement for the product water of the Groundwater Replenishment (GWR) Project of the Monterey Regional Water Pollution Control Agency (MRWPCA) or, alternatively build a 9.6 MGD desalination plant without a water purchase agreement for the GWR product water. In determining whether completion or substantial compliance is demonstrated on the following criteria, the Governance Committee shall take into consideration the relative progress and the comparative stages of development of each of the two projects, Cal-Am’s Desalination Project and MRWPCA’s GWR Project.

B. The Criteria.

1. The CEQA process for the GWR Project is complete, with a certified Final Environmental Impact Report,¹⁰ the MRWPCA has approved the Project, and the status of required permits is consistent with the published project schedule.

⁹ Assuming the California Public Utilities Commission (CPUC) approves California American Water Company’s (Cal-Am’s) participation in the Agreement to Form the Governance Committee.

¹⁰ With no pending lawsuit challenging the FEIR, or if there is a lawsuit, no injunction staying the Project and the MRWPCA (as lead agency) indicating its intent to proceed with the Project in any event.

2. Agreement or agreements in place to secure the source water(s) required for recommended project, and with no then-present written objections to any such agreement(s), or with legal determinations obtained of the validity of the agreement(s).

3. The California Department of Public Health (CDPH), to the extent feasible, has expressed a reasonable level of acceptance or approval as to the GWR Project treatment process, injection and overall permitting, consistent with a) the stage of development of the Project and b) with uniform standards to be adopted by CDPH in 2013 per SB 918 for water recycling criteria for indirect potable water reuse for groundwater recharge, or in the absence thereof, interim standards.

4. Approve GWR plus the 6.4 MGD desal plant even if the combination comes with a modest revenue requirement premium over 9.6 MGD desal, provided that the premium does not exceed the following:

- a. if GWR is anticipated to be operable sooner than the desal project by at least one year, the premium shall not exceed the lesser of __ percent of the estimated cost of the Desalination Infrastructure (as defined in the Governance Committee Agreement) or \$_____;
- b. if GWR is not anticipated to be operable sooner than the desal project by at least one year, the premium shall not exceed the lesser of __ percent of the estimated cost of the Desalination Infrastructure or \$_____; and
- c. comparisons between the estimated costs of the GWR project and the desal project shall be made based upon the most recent cost estimates for the respective projects as refined through the engineering process.

5. The GWR Project is on schedule to be operable prior to the then-effective date of the Cease and Desist Order of the State Water Resources Control Board or, if not, on schedule to meet or beat the Desalination Project schedule.

6. Preliminary design for the GWR Project is at least at the 10% level (so that an accurate project cost estimate can be generated) or is at a level similar to or more advanced than the level of design for all cost components of the Desalination Project.

7. The required wholesale water purchase agreement has been drafted and the parties thereto (Cal-Am and the MPWMD) have reached substantial agreement on the terms of the agreement.

8. A project funding plan, in sufficient detail as would be required to qualify for a State Revolving Fund loan, is in place.

C. The Process

The timing and process for consideration and action by the Governance Committee on a GWR Recommendation is set forth at length in Section V.D of the Governance Committee Agreement. Additional procedures as necessary for the Governance Committee's consideration of the matter should include a public hearing at a regular or special meeting of the Governance Committee, upon 30 days prior written notice to all parties to Application 12-04-019, and full opportunity for MRWPCA to present reports and evidence to demonstrate to the Governance Committee completion of or substantial compliance with the above-stated criteria.

(END OF ATTACHMENT B)