

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



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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)

SETTLING PARTIES' MOTION TO BIFURCATE PROCEEDING

Russell M. McGlothlin
Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo street
Santa Barbara, CA 93101
For: Monterey Peninsula Regional Water
Authority
rmcglathlin@bhfs.com
(805) 963-7000

David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950-4221
For: Monterey Peninsula Water
Management District
dave@laredolaw.net
(831) 646-1502

Robert Wellington
Wellington Law Offices
857 Cass Street, Ste. D
Monterey, CA 93940
For: Monterey Regional Water Pollution
Control Agency
attys@wellingtonlaw.com
(831) 373-8733

Bob McKenzie
Water Issues Consultant
Coalition of Peninsula Businesses
P.O. Box 223542
Carmel, CA 93922
For: Coalition of Peninsula Businesses
jrbobmck@gmail.com
(831) 595-4204

[ADDITIONAL COUNSEL LISTED INSIDE FRONT COVER]

Gabriel M.B. Ross
Attorney
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
For: Surfrider Foundation
rpss@smwlaw.com
(415) 552-7272

Jonathan P. Knapp
Calif. Public Utilities Commission
Legal Division
Room 5129
505 Van Ness Avenue
San Francisco, CA 94102-3214
For: DRA
jp8@cpuc.ca.gov
(415) 703-5377

Laurens H. Silver
Attorney
California Environment Law Project
P.O. Box 667
Mill Valley, CA 94942
For: Sierra Club
larrysilver@earthlink.net
(415) 515-5688

Barton Lounsbury
Rossmann and Moore, LLP
380 Hayes Street, Suite One
San Francisco, CA 94102
For: Planning and Conservation League
Foundation
bl@landwater.com
(415) 861-1401

John H. Farrow
M.R. Wolfe & Associates, P.C.
1 Sutter Street, Suite 300
San Francisco, CA 94104
For: LandWatch Monterey County
jfarrow@mrwolfeassociates.com
(415) 369-9405

Thomas Frutchey
City Manager
City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950
For: City of Pacific Grove
tfrutchey@ci.pg.ca.us
(831) 648-3106

Sarah E. Leeper
Attorney
California American Water
333 Hayes Street, Suite 202
San Francisco, CA 94102
For: California-American Water Company
sarah.leeper@amwater.com
(415) 863-2960

Dan L. Carroll
Attorney at Law
Downey Brand, LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
For: County of Monterey and
Monterey County Water Resources Agency
dcarroll@downeybrand.com
(916) 444-1000

George T. Riley
1198 Castro Road
Monterey, CA 93940
For: Citizens for Public Water
georgetriley@gmail.com
(831) 645-9914

August 21, 2013

**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)

SETTLING PARTIES' MOTION TO BIFURCATE PROCEEDING

I. INTRODUCTION

Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission and the terms of the Settlement Agreement submitted on July 31, 2013 and described herein, California-American Water Company (“California American Water”), Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey (the “County”), Division of Ratepayer Advocates (“DRA”), Landwatch Monterey County (“LandWatch”), Monterey County Water Resources Agency (“MCWRA”), Monterey Peninsula Regional Water Authority (“MPRWA”), Monterey Peninsula Water Management District (“MPWMD”), Monterey Regional Water Pollution Control Agency (“MRWPCA”), Planning and Conservation League Foundation, , Sierra Club, and Surfrider Foundation (“Surfrider”) (collectively, the “Parties”) submit this motion requesting that the Commission approve the bifurcation of this proceeding.¹

The purpose of the requested bifurcation is to establish a separate phase of this proceeding and a procedural schedule leading to a Commission decision whether to authorize California American Water to build, as part of the Monterey Peninsula Water Supply Project

¹ The parties to this Motion include all parties to the July 31, 2013 Settlement Agreement except for Monterey County Farm Bureau (“MCFB”) and Salinas Valley Water Coalition (“SVWC”). MCFB and SVWC indicated that this Motion was outside of the scope of their participation in the proceeding and further indicated that they do not oppose this Motion.

(“MPWSP”), a smaller desalination plant combined with a water purchase agreement (“WPA”) for water produced from the separate joint MRWPCA/MPWMD Groundwater Replenishment Project (“GWR Project”). The Parties propose that this determination, referred to hereafter as the “GWR Decision,” be based on findings related to schedule, cost, benefits and feasibility. In addition, the Parties propose a specific schedule for that separate phase, as described herein.

This Motion is made consistent with and pursuant to the Parties' settlement agreement, submitted to the Commission by motion on July 31, 2013, which provides for the development, construction, operation and financing of the Monterey Peninsula Water Supply Project (“MPWSP”), and the recovery of the costs in rates (“Settlement Agreement”). The Settlement Agreement resolves many of the contested issues in this proceeding and enjoys the support of a broad coalition of parties representing diverse interests. The Settlement Agreement, among other matters, seeks a bifurcated phase for the Commission to make the GWR Decision to allow sufficient time for essential aspects of the GWR Project to develop. As with other aspects of this proceeding, timing is critical, and this proposal for a bifurcated schedule is based upon the ability of the Parties to obtain a decision before California American Water reaches the decision point relative to the sizing of the desalination project.

Under Article 4 of the Settlement Agreement, the Parties agreed to “file and support a Motion for Bifurcation of the GWR Decision into a separate phase,” and agreed such a Motion for Bifurcation would “[i]dentify GWR Decision criteria to be addressed in the separate phase;” “[s]eek additional amendments in the scope of this proceeding as may be necessary;” and “[p]resent an agreed-upon procedural schedule and scope . . . including the possibility that an advice letter process may be used to demonstrate fulfillment of some criteria after the Commission decision in the bifurcated phase.”²

II. BACKGROUND

On April 23, 2012, California American Water Company filed an application for a Certificate of Public Convenience and Necessity (“CPCN”) for the MPWSP and authorization to

² Settlement Agreement § 4.1(c)(i)–(iii).

recover all present and future costs in rates. The purpose of the MPWSP is to replace a significant portion of the existing water supply from the Carmel River, as directed by the State Water Resources Control Board (“SWRCB”). Acquisition of an alternative water supply is necessary for California American Water to comply with SWRCB Order No. WR 95-10, which directed California American Water to develop and implement a plan to replace what the SWRCB determined to be unlawful diversions from the Carmel River. On October 20, 2009, the SWRCB issued a Cease and Desist Order (“CDO”) (Order No. WR 2009-0060), which requires California American Water to undertake additional measures to reduce its unpermitted diversions from the Carmel River and to terminate all diversions in excess of 3,376 acre feet per year by 2017.

California American Water’s application initially sought authorization to size the MPWSP desalination plant at 9.0 million gallons per day (“mgd”), but also requested authorization to reduce the plant size to 5.4 mgd and supplement water supplies with water purchased from the GWR Project if the GWR Project reaches certain milestones by the time California American Water is ready to construct the desalination plant, and the cost of GWR Project water is reasonable. The GWR Project will create a source of supply by treating source water through a new advanced water treatment facility, and injecting the highly treated product replenishment water into the Seaside Basin Aquifer, where it will be diluted and stored. California American Water has entered into a Memorandum of Understanding with MRWPCA and MPWMD to collaborate on developing the GWR Project.

In response to comments from interested parties, California American Water updated the proposed plant sizes to 9.6 mgd without the GWR Project and 6.4 mgd with the GWR Project.³ The smaller 6.4 mgd option is premised on the availability of 3,500 acre feet-per year from the GWR Project. After further negotiations between the Parties, it was agreed that if the GWR Project can secure only 3,000 acre feet per year of water, then a desalination plant would need to produce an additional 500 acre feet per year above the smaller version.

³ *Supplemental Testimony of Richard C. Svindland* (Jan. 11, 2013), at p. 5.

III. NEED FOR SEPARATE PHASE

The Settlement Agreement, if adopted by the Commission, will resolve many of the issues in this proceeding. However, the Settlement Agreement does not address the issue of the appropriate sizing of the desalination plant, which is addressed in a separate settlement agreement entered into between California American Water and eight of the other parties to the proceeding, and submitted to the Commission by a motion filed on July 31, 2013. Through the Settlement Agreement, the Parties affirmed their belief that, consistent with Public Utilities Code Section 1002(a), the MPWSP will serve the public convenience and necessity.⁴ On that basis, they support granting the CPCN, with certain conditions, subject to the terms and conditions of the Settlement Agreement, including, for example, review under California's Environmental Quality Act ("CEQA"), findings required by Public Resources Code Section 21081, and resolution of plant sizing. With the pending CDO deadline, time for implementing the MPWSP is of the essence.

In relevant part here, through the Settlement Agreement, the Parties agreed the Commission will decide whether to authorize California American Water to build a smaller desalination plant combined with a WPA for the GWR Project water. As noted above, this determination is referred to as the "GWR Decision." In the Settlement Agreement, the Parties agreed that the GWR Decision should rest on various Commission findings outlined in the Settlement Agreement concerning issues such as schedule, cost, benefits, accounting and rating agency treatment, and feasibility of the GWR Project. As the information necessary to reach those findings is not yet available, the Parties agreed that the GWR Decision should be made in a separate phase of the proceeding to occur promptly after all or most of that information is

⁴ Support by five of the sixteen Parties is contingent on the resolution of certain issues. Surfrider's support is contingent on resolving brine discharge to include a pressurized diffuser. SVWC, MCFB, LandWatch, and Citizens for Public Water are concerned about potential harm from California American Water's production of source water to the Salinas River Groundwater Basin ("SRGB") and its users. Their CPCN support is therefore contingent on resolving certain source water issues to be informed by the Hydrogeologic Study and the Technical Report provided for in the Settlement Agreement.

available. The Parties, therefore, agreed to file this joint motion to bifurcate the GWR Decision into a separate phase and propose a specific schedule for that phase.

Under the Settlement Agreement, the Parties further agreed that in the separate phase the Commission should make the GWR Decision based on whether it can make the necessary findings.⁵ The Parties further agreed that if all findings are made or addressed, either during the separate GWR phase or subsequently through advice letters, the Commission should order California American Water to enter into a WPA and build the smaller plant. The findings concern whether: (1) the GWR Project receives approval pursuant to a Final EIR, (2) adequate progress was made and is expected to continue for obtaining permits for the GWR Project, (3) sufficient legal certainty exists concerning the long-term availability of GWR source water, (4) the weight of the evidence does not show that health and water quality regulators will deny permits or approval, (5) the GWR Project is on schedule for completion, (6) the GWR Project's design is at the required level, (7) a sufficiently detailed funding plan is in place, (8) terms to a WPA have been agreed to, and (9) the revenue requirement for the combination smaller plant/GWR is just and reasonable compared with the larger plant. The Settlement Agreement provides that a revenue requirement premium for the combined smaller desalination plant/GWR may be just and reasonable if the combination affords significant benefits (including scheduling, diversification of water supply, and environmental benefits) over the larger, stand-alone desalination plant.

IV. SEPARATE PHASING OF THE COMMISSION'S DECISION REGARDING GROUNDWATER REPLENISHMENT PROJECT IS APPROPRIATE BECAUSE CERTAIN INFORMATION NECESSARY TO MAKE THE GWR DECISION IS CURRENTLY UNAVAILABLE

The Parties have asked the Commission to decide whether to authorize California

⁵ On this point, the Parties recognized that while the Commission should be able to adopt findings supporting the GWR Decision by the end of the separate phase, some necessary actions may not have occurred or information may not be available by that point. To accommodate such circumstances, the Parties agreed that California American Water may file advice letters with the Commission demonstrating that actions (such as MRWPCA's approval of the GWR Project and execution of the WPA) have occurred.

American Water to build, as part of the MPWSP, a smaller desalination plant to accommodate the WPA for the product water of the separate GWR Project or, alternatively, to build a larger desalination plant without a WPA for the GWR product water, based on findings related to schedule, cost, benefits, and feasibility.⁶ The Parties agree that the decision whether these findings are or will be made requires additional information that is currently not available, including more detailed information regarding the schedules and designs of the GWR Project and MPWSP desalination plant, as well as agreements for source and product water for the GWR Project. Accordingly, the Parties agree that the GWR Decision should be made in a separate phase of this proceeding after the Parties have developed necessary information. A bifurcated proceeding as proposed is appropriate because the incorporation of the GWR Project into the MPWSP may afford substantial public benefits in comparison to a larger, stand-alone desalination project, and because the schedule for the bifurcated GWR phase will not delay the construction schedule for the desalination plant (*i.e.*, the Commission's decision in the GWR phase will be issued before California American Water reaches the decision point relative to the sizing of the desalination project).

As discussed in Section IV(A) below, the Parties have developed and set forth in the Settlement Agreement certain criteria for consideration by the Commission to facilitate its adopting findings necessary to make the GWR Decision after evidentiary hearings in the separate phase. In addition, as discussed in Section IV(B) below, the Parties have agreed upon a procedural schedule and scope that will not delay the desalination project.

⁶ Settlement Agreement § 4.1(a).

A. Findings Required for GWR Decision Pursuant to Settlement Agreement

After careful consideration and negotiations, the Parties request that the Commission make the GWR Decision based upon the findings set forth below and/or information supplied pursuant to the advice letter process described in Section IV(B) below. The Parties request that if all of the findings are made or addressed, either within the bifurcated phase or subsequently through the advice letter process, before California American Water must make decisions relative to the sizing of the desalination facilities, then the Commission should order California American Water to enter into a WPA and build the smaller desalination plant. If such findings are not made or addressed through the advice letter process, then California American Water may proceed with a larger desalination plant. The Parties recommend that the Commission approve California American Water's execution of a WPA for GWR if, in the separate phase, it makes the following findings :

“(i) MRWPCA has approved the GWR Project pursuant to a certified Final EIR; and no CEQA suit has been filed within 30 days of a Notice of Determination (‘NOD’), or if a CEQA suit is filed, no stay of the GWR Project has been granted.

(ii) The status of required permits is consistent with the published project schedule, and for any required permits not yet obtained, the weight of the evidence in the record does not show that any of the required permits for the GWR Project are unlikely to be obtained in a timeframe consistent the published project schedule;

(iii) There is sufficient legal certainty as to agreements or other determinations in place to secure delivery of source water(s) necessary to produce between 3,000 to 3,500 acre feet per year of GWR product water for the recommended project.

(1) The parties acknowledge that MCWRA and MRWPCA are the parties to that certain Agreement Between The Monterey County Water Resources Agency and the Monterey Regional Water Pollution Control Agency For Construction and Operation of a Tertiary Treatment System dated June 16, 1992, as amended by Amendment No. 1 on May 30, 1995, Amendment No. 2 on February 16, 1998,

and Amendment No. 3 executed by MRWPCA on May 10, 2002 and MCWRA on May 29, 2002 (all collectively hereinafter referred to as ‘Tertiary Treatment Agreement’) and that MCWRA and MRWPCA disagree as to the amounts of ‘tertiary treated water,’ as that term is defined in Section 2 of aforementioned Amendment No. 3 to the Tertiary Treatment Agreement, to which each is entitled under the Tertiary Treatment Agreement. With respect to the availability of such tertiary treated water from the Tertiary Treatment Agreement for the GWR Project in an amount that would support a Commission finding of sufficient legal certainty, such availability shall be determined pursuant to the dispute resolution provisions in the Tertiary Treatment Agreement and shall not be determined through action by this Commission. Therefore, the parties agree that with respect to any product water(s) to be conveyed by MRWPCA to implement the GWR Project that are provided pursuant to rights to such tertiary treated water under the Tertiary Treatment Agreement, for the purposes of this Settlement Agreement, no Party shall request either the Commission or the Governance Committee to interpret, rule on, or provide any opinion as to contract rights under the Tertiary Treatment Agreement, and further agree that neither the Commission nor the Governance Committee should so interpret, rule on, or provide any opinion as to any such contract rights;

(iv) The weight of the evidence in the record does not show that the California Department of Health or the Regional Water Quality Control Board will decline to accept or approve the GWR extraction or GWR treatment and injection processes, respectively;

(v) The GWR Project is on schedule, as verified by a report issued by an engineer licensed in California, to be operable,⁷ on or before the later of (a) the then-effective date of the Cease and Desist Order of the SWRCB or such other date as the SWRCB states in writing is acceptable, or (b) the date the MPWSP desalination project is scheduled to become operable. The Parties acknowledge that the actual date of operation for the GWR Project and the desalination project could vary from the operation date projected in the schedules, and therefore agree to a range of up to an additional four months from the projected date of operation, before the GWR

⁷ “The operable date of the GWR Project is the date when extractions may first be made by California American Water from the Seaside Groundwater Basin as the result of the injection and storage of GWR Project recycled water.” Settlement Agreement § 4.2(a)(v) n.2.

Project schedule would no longer be considered on an acceptable schedule;

(vi) Preliminary design for the GWR Project is at least at the 10% level, represented by a basis of design report (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 the desalination project portion of the MPWSP;

(vii) A GWR Project funding plan, sufficient in detail to be accepted as an application for a State Revolving Fund loan, is in place;

(viii) California American Water, MPWMD, and MRWPCA have agreed on a WPA whose terms are just and reasonable; and

(ix) The revenue requirement for the combination of the GWR Project and the smaller desalination project, including the projected debt equivalence for the GWR Project determined pursuant to Section 4.4, is just and reasonable when compared to the revenue requirement for a larger desalination project alone.”⁸

With respect to the accounting treatment of the WPA, the Parties agree that the Commission should determine in this separate phase any adjustments to the revenue requirement required to address either the debt equivalence associated with imputed debt or the capitalized obligation of the WPA.

B. Procedural Schedule and Scope Pursuant to Settlement Agreement

The bifurcated schedule set forth in the Settlement Agreement and excerpted below is intended to allow determination of the GWR Decision by the Commission before California American Water reaches the decision point relative to the appropriate sizing of the desalination facilities. The Parties hereby request that the Commission establish the following procedural schedule, designed to achieve a timely determination of the GWR Decision:

(i) **Testimony of Interested Parties** – December 2014

⁸ Settlement Agreement § 4.2(a) (footnote omitted).

- (ii) **Settlement Discussions** – commencing in January 2015
- (iii) **Concurrent Rebuttal Testimony** – January 2015
- (iv) **Evidentiary Hearings** – February 2015
- (v) **Briefing** – March 2015
- (vi) **Proposed Decision** – June 2015
- (vii) **Final GWR Decision** – July 2015⁹

While the Parties recognize that a procedural schedule may be established with deadlines different from the dates listed above, the Parties' proposal is based on the ability to obtain a final decision by the end date, with a target of July 2015.

The Parties agree the proposed schedule is intended to provide time for the following:

- (i) finalization of source water agreements and determinations;
- (ii) refinement of the design of the GWR and MPWSP desalination projects to support accurate cost comparisons;
- (iii) agreement on the form and terms of a WPA, as evidenced by an executed agreement between the parties to the WPA;
- (iv) assessment of the benefits of the GWR Project that may reflect a revenue requirement premium that is just and reasonable;
- (v) estimation of the revenue requirement adjustment, if any, the Commission determines necessary for the WPA pursuant to Section 4.4 of the Settlement Agreement; and
- (vi) completion of other GWR Project milestones prior to testimony and hearings.¹⁰

⁹ Settlement Agreement § 4.3(b).

¹⁰ Settlement Agreement § 4.3(c).

V. CONCLUSION

The Parties respectfully request that the Commission grant this motion to establish a separate phase of the proceeding to make the GWR Decision pursuant to the Settlement Agreement, establish a procedural schedule as set forth herein and make any necessary conforming changes in the scope of this proceeding.

Dated: August 21, 2013

[s] Russell McGlothlin

Russell M. McGlothlin
Ryan C. Drake
BROWNSTEIN HYATT FARBER SCHRECK, LLP
Attorneys for
MONTEREY PENINSULA REGIONAL WATER
AUTHORITY

Dated: August 21, 2013

[s] David C. Laredo

David C. Laredo
DE LAY & LAREDO
Attorneys for
MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT and the CITY OF PACIFIC GROVE

Dated: August 21, 2013

[s] John H. Farrow

John H. Farrow, Attorney
M.R. Wolfe & Associates, P.C.
1 Sutter Street, Suite 300
San Francisco, CA 94104
For: LandWatch Monterey County

Dated: August 21, 2013

[s] Bob McKenzie

Bob McKenzie
Water Issues Consultant
Coalition of Peninsula Businesses
P.O. Box 223542
Carmel, CA 93922
For: Coalition of Peninsula Businesses

Dated: August 21, 2013

[s] Robert Wellington

Robert Wellington
Wellington Law Offices
857 Cass Street, Ste. D
Monterey, CA 93940
For: Monterey Regional Water Pollution
Control Agency (MRWPCA)

Dated: August 21, 2013

[s] Gabriel M.B. Ross

Gabriel M.B. Ross
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
For: Surfrider Foundation Company

Dated: August 21, 2013

[s] George T. Riley

George T. Riley
1198 Castro Road
Monterey, CA 93940
For: Citizens for Public Water

Dated: August 21, 2013

[s] Jonathan P. Knapp

Jonathan P. Knapp
Calif. Public Utilities Commission
Legal Division
Room 5129
505 Van Ness Avenue
San Francisco, CA 94102-3214
For: DRA

Dated: August 21, 2013

[s] Sarah E. Leeper

Sarah E. Leeper, Attorney
California American Water
333 Hayes Street, Suite 202
San Francisco, CA 94102
For: California-American Water

Dated: August 21, 2013

[s] Laurens H. Silver

Laurens H. Silver, Attorney
California Environment Law Project
P.O. Box 667
Mill Valley, CA 94942
For: Sierra Club

Dated: August 21, 2013

[s] Barton Lounsbury

Barton Lounsbury
Rossmann and Moore, LLP
380 Hayes Street, Suite One
San Francisco, CA 94102
For: Planning and Conservation League Foundation

Dated: August 21, 2013

[s] Dan L. Carroll

Dan L. Carroll
Attorney at Law
Downey Brand, LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
For: County of Monterey and
Monterey County Water Resources Agency

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