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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'S CONSOLIDATED COMMENTS  
ON THE PROPOSED PARTIAL SETTLEMENTS AND  
ASSOCIATED MOTIONS SUBMITTED IN A. 12-04-019**

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## **I. THE COMMISSION SHOULD NOT ADOPT THESE AGREEMENTS**

Pursuant to Rule 12.2, Public Trust Alliance timely files these Comments on the Proposed Partial Settlements of A.12-04-019 and associated motions. Rule 12.1(d) of CPUC Rules of Practice and Procedure reads:

"(d) The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest."

Public Trust Alliance, a non-profit public interest intervenor in A. 12-04-019, argues that this basic standard is not met by the Proposed Settlement Agreements, and contentions to the contrary could be misleading. The determination of how, or whether, water desalinization technology will be operated and regulated in the State of California is an issue of overriding public concern. Just where and when may it be reasonable to approve the vastly increased consumption of energy for producing the essential public good of an urban water supply in the changed hydrologic and atmospheric circumstances of rapid climate change? Are the environmental impacts, including brine discharge, acceptable in the Marine Sanctuary, which is a primary tourist draw for the Monterey regional economy? Should essential water supply infrastructure be sited in a vulnerable coastal zone that, with almost absolute certainty, will be facing increasing impacts from sea level rise and increasingly forceful weather events? Are utility ratepayers only passive entities in public resource governance debates? Which agencies might legally surrender public rights of beneficiaries of the California public trust doctrine? Can domestic public water supplies really be owned and controlled by private corporations which are expected to act in pursuit of private benefits even in cases where public and private interests are shown to be in conflict? What are the growth impacts of a privately owned and controlled "drought proof" public water supply? Will a private entity, given the rights encompassed by this agreement, really be "regulatable" in the public interest by existing California Authorities?

The laws of this State require actual and explicit consideration of these and other questions, and all Californians are entitled to expect their reasonable resolution in light of a comprehensive public record. The question of how, or whether, any resolution is "in the public interest" is particularly important. This question was explicitly asked by the

Administrative Law Judge before this issue was referred to settlement negotiations and several parties have expressed concern that insufficient opportunity was presented for any deliberate consideration in these discussions. As will be partially explained below, these agreements are neither reasonable in light of the whole record, consistent with law, or in the public interest. Therefore they should not be approved by the Commission, especially at this time in the proceeding, so long, and at such an attenuated distance from the completion of required environmental analyses.

**II. IN A CASE CHARACTERIZED BY NUMEROUS INFEASIBLE  
PROJECT PROPOSALS, IT IS NOT REASONABLE, NOR IN THE  
PUBLIC INTEREST TO APPROVE STILL ANOTHER LIKELY  
INFEASIBLE PROJECT DESIGN**

Commission approval of these settlements are likely to reinforce public belief that a viable public water supply alternative is being planned for the Monterey District. Whether this is accurate or not could be a concern in this case because ratepayers have experienced repeated proposals of "Water Supply" projects over the course of years, each of which has been serially determined "infeasible" for a range of well known reasons. While any party is within its rights to assert that a given project is "reasonable," "feasible," "legal" or "viable," these conditions cannot be established by mere assumption or recital. Fortunately, the California Public Utilities Commission is subject to a much higher standard for such public determinations. The reasonable consideration of actual evidence, and the fair application of reasonable procedures have always been required. That is precisely why this agency was entrusted with solving the contentious issues of providing a public water supply for the Monterey Peninsula. Yet, on the eve of Public Participation Hearings for this project, the public was unaware of where the project might be sited, what technology was being proposed, or even that the applicant was intending to drill production wells below the mean high tide line in a National Marine Sanctuary. How could they credibly participate in any sense other than to voice generalized concerns?

Although there have been all manner of workshops and hearings, the opportunity to ask basic questions and elicit clear answers has sometimes been more obscured by adherence to "legal" procedures than clarified by them. This very proceeding has recently been extended

because basic information on the hydrologic condition and function of the resources at the heart of the plan is not yet available. How could this possibly be true after so many years of contentious public debate? Part of the answer, as well as responsibility, lies with advice from good lawyers (and we are confident they are "good" if only by looking at how well they have been compensated by ratepayers even after multiple years without any facilities completed on drawing boards, much less actually constructed). Is it really all so complex and mystifying as it seems? To a large degree, the public hasn't been able to meaningfully participate in answering this question because so much of the discussion has taken place in small groups closeted behind closed doors and what information that has been publicized is often reported in inflammatory terms by local news media. These are serious challenges.

Formal approval of yet another version of a water supply project carries with it the appearance of public endorsement of a "factually reasonable proposal." But nearly two decades after the State Water Resources Control Board issued Order 95-10 requiring Cal Am to diligently seek a new water supply to replace illegally diverted water from the Carmel River and its underflow, yet another option is on the table and it is just as likely as earlier versions to prove infeasible as well. The factual inquiry and analysis to determine fundamental parameters has simply not yet been done in this case. Does the chronic "water shortage" on the Monterey Peninsula have "real" or "administrative" roots? Are the various agencies and organizations even working on "actual" rather than "institutionally constructed" problems? One might think that after so many years, the basic contours of the "problem" might be commonly understood. But they are not, and mutually contradictory "statements of facts" continue to adorn reams of documents filed in ongoing administrative proceedings. Multiple shouts of "Time is of the essence!" are heard, yet it is often hard to determine what, if anything, is actually happening.

### **III. WHAT IS WRONG WITH THIS PICTURE AND WHERE MIGHT IT STOP BEING REASONABLE?**

We know that Agricultural activities in Monterey County use about 510,000 acre feet of fresh water every year in Monterey County while total urban use is about 90,000 acre feet per year leading to a grand total of about 600,000 acre feet per year. PTA Exhibit 19, A. 12-04-019 Evidentiary Hearing (Monterey County Water Use (Agriculture/Urban

Breakdown)). This use is distributed approximately as about 550,000 acre feet per year in the Salinas Valley, a little over 30,000 acre feet per year in North County and about 15,000 acre feet per year on the Monterey Peninsula. PTA Exhibit 18, A. 12-04-019 Evidentiary Hearing (Monterey County Water Use (Geographic Breakdown). Average surface water outflows of the three major streams in the County are about 410,000 acre feet per year, so at least 190,000 more acre feet of use is accounted for by water moving in underground channels that are the direct source for most Monterey County diversions. PTA Exhibit 17, A. 12-04-019 Evidentiary Hearing (Surface Water Supplies) and PTA Exhibit 20, A. 12-04-019 Evidentiary Hearing ("Groundwater is the Primary Source of Supply and Storage"). Because there is ongoing Saltwater intrusion in several areas, we also know that there is an imbalance between freshwater flowing downhill and hydrostatic pressure of ocean water. PTA Exhibit 21, A. 12-04-019 Evidentiary Hearing (Seawater Intrusion). We have long known that this situation is brought on by a combination of sea level rise and "over pumping" of fresh water supplies. Any community tends to watch its essential support systems and notice how "natural" supplies are used.

Very nearly two decades ago the State Water Resources Control Board determined that Cal Am was not entitled to draw so much water from the Carmel River because it was illegally damaging public trust resources so Cal Am would have to find an alternative water supply. State Water Resources Control Board WRO 95-10. The County of Monterey exercises public authority in supervising use of public water supplies in the interests of both its agricultural and urban inhabitants. The County has public duties which impact the regional economy for both farmers and urban dwellers. One of these duties is the regulation of groundwater pumping in the public interest, which has always been a contentious aspect of California law, and it becomes even more so in the presence of saltwater intrusion. This adds a new element of "harm" to people whose groundwater becomes "salty" instead of "fresh." Different Counties have pursued a range of strategies with a range of rationales in a range of circumstances, but an important reminder of the character of public responsibilities came earlier this summer when an California Appellate Court ruled that Siskiyou County was required to regulate groundwater pumping for the benefit of its inhabitants and the appropriate authority for judicial review was not necessarily located in Siskiyou County. County of Siskiyou v. Superior Court of

Sacramento, C067252 (June 13, 2013). Relative priority of property and regulatory interests in California Water were also recently further clarified when a Federal Judge decided on August 22 to release water to the Trinity River to protect salmon over the objections of the Westlands Water District and the San Luis and Mendota Water District. Against this background, the public is noticing that the water to be produced by desalination is only a tiny fraction of the public water supplies with which Monterey County is naturally endowed.

Could it be that that climate change might render arcane legal argumentation no longer a viable strategy for making large sectors of the public bear disproportionate ecological and financial costs so that public water resources can be privately consumed? Or similarly, with growing public understanding of regulatory authority, that public attention may no longer be diverted away from potentially reasonable solutions by private ambitions to make a lot of money? New viable water supply solutions will have to be demonstrated to "make sense" in increasingly broad public forums, not closed settlement negotiations.

#### **IV. THE ECONOMICS ARE UNCERTAIN: DESALINATION OF WATER IS AN OPTION AND NOT A NECESSITY**

It has not escaped public notice that the amount of water proposed to be "produced" by desalination is only a tiny fraction of naturally available public supply in Monterey County (approximately 6,000 of about 600,000 acre feet per year, or about 1%). But utility customers who will be paying bills on the order of **multiples of 100%** of their present bills might have a hard time understanding how their regulatory authorities consider this "reasonable." They may even ask, "What is going on here?"

Part of the confusion may arise in the discussion of economics (eg. the A. 12-04-019 Cost Workshops) where it is abundantly clear that different people pay a wide range of prices for water in Monterey County. Some observers might have gleaned that there are indeed at least several distinct "markets" with different sets of participants. But then, project proponents began to talk about "the market" and observations of "the price elasticity" and what regulators "have" to do. This brand of thinking is frequently given the label of "non sequitur" but there was very little time allotted for questions or discussion in the workshop sessions.

The reality remains that economic conclusions are often based on assumptions and that different conclusions are possible with different assumptions. Some might glean that a lot of measures might "make sense" before the enormous capital expense and heavy energy

commitments required by desalination technology are even considered.

## **V. WHAT ABOUT CONTINGENCIES? DO THEY HAVE TO BE HARDWIRED TO THE PROPOSED PROJECT?**

The settling parties have agreed among themselves that only a limited number of contingencies are open for consideration and, given certain events, only options previously listed by Cal Am in its various applications will be considered. The Public Trust Alliance argues that all reasonable contingencies that might arise in public discussion be open for consideration and debate and not be subject to arbitrary limitation.

## **VI. CONCLUSION**

The Settlement Agreements are not reasonable in light of a complete record, nor are they consistent with developing law in the State of California, nor can they be demonstrated to be "in the public interest." For the foregoing and additional unarticulated reasons, the Public Trust Alliance requests that the Commission not adopt the complex, partial settlement agreements submitted in A. 12-04-019 and not grant the motions sought by settling parties and instead leave the water supply issue open for reasonable public debate in appropriate forums without arbitrary prejudice.

Dated: August 30, 2013

Respectfully Submitted,

By \_\_\_\_\_/s/\_\_\_\_\_

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