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)

COMMENTS BY WATER PLUS ON SETTLEMENT AGREEMENT ATTACHED TO SETTLING PARTIES' MOTION TO APPROVE SETTLEMENT AGREEMENT

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I. INTRODUCTION

In accordance with Rule 12.2 of the Commission's Rules of Practice and Procedure, Water Plus provides these comments on the Settlement Agreement ("Agreement") by thirteen of the nineteen parties to A.12-04-019 in a motion filed on July 31, 2013. Water Plus is a Monterey Peninsula ratepayer advocacy group registered with the California Secretary of State and is a 501(c)4 non-profit public-benefit organization and a party to this proceeding. Water Plus is among the six parties that did not sign the Agreement. These comments indicate why.

II. THE AGREEMENT SHOWS NO SPECIFIC CONCERN FOR RATEPAYERS

In all the 13,089 words of the Agreement, the word "ratepayers" does not occur even once. Not even once. The only occurrence of the word "ratepayer" is in the name of the Division of Ratepayer Advocates. This glaring omission demonstrates as clearly as anything could that the parties filing the Agreement did not have ratepayers in mind when they negotiated it. What the signatories to the Agreement apparently did have in mind is solely the self-interests of the agencies or firms they represented. That, of course, includes California American Water ("Cal Am"). .

III. THE AGREEMENT FAILS TO COMPORT WITH THE ALJ'S CRITERIA

On April 1, 2013, ALJ Gary Weatherford modified the Scope of A.12-04-019 to be as follows: "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?" In addition to being legal, the water supply

must be adequate, reliable, and cost-effective. The Agreement puts none of its provisions regarding the supply of water to the test of these three criteria. In the 13,089 words of the Agreement, the word "adequate" appears only once, and that in reference to safety and not to water. The word "reliable" appears only once, and that in reference to power supply and not to water. The term "cost-effective" does not appear even once in all the 13,089 words of the Agreement. If the Agreement comports with any of these three criteria, it would appear to be by accident, without explicit intent by its negotiators. In fact, there is no way of knowing from the Agreement itself the extent to which it comports with these criteria.

IV. THE AGREED-UPON WATER SUPPLY MAY BE INADEQUATE

Although the Agreement specifies production capacities of the proposed alternative desalination plants and of the groundwater replenishment ("GWR") facilities, it does not support these specifications with data or modeling. Section 1.5 of the Agreement, in fact, states explicitly, "…The Settlement Agreement does not resolve the issue of the appropriate sizing of the desalination plant. California American Water has entered into a separate settlement agreement regarding the proposed size of the desalination plant." While this size varies depending on whether the total project includes GWR, the Agreement specifies the combined capacity of desalination and GWR without demonstrating that it will be adequate to meet the water-supply needs of the Monterey Peninsula. On the contrary, to determine production capacity, the separate sizing agreement uses recent customer usage that has been severely constrained by draconian conservation measures, including the imposition of a steeply tiered rate structure resulting in costly billing spikes to ratepayers. Normal usage elsewhere should determine the value of an adequate supply here, with the unit cost of water in each of the several tiers adjusted

to equalize supply and demand. To do otherwise may subject ratepayers on limited incomes to serious public-health hazards. Over half the jobs in Monterey County are minimum-wage, and many Monterey Peninsula residents live solely on Social Security. In the absence of competitive forces, the overall project has turned out to be so costly that, when costs of all failed and proposed projects appear on ratepayer bills, government subsidies may be required to assure that all customers receive the water they need.

V. THE AGREED-UPON WATER SUPPLY MAY BE UNRELIABLE

Ironically, the only use of the word "reliability" in the Agreement occurred in an attempt to show that GWR deserved a cost premium because it contributed to the reliability of the overall water supply. According to Section 4.2(b) of the Agreement (underline added), "Significant positive benefits that could support the Commission's approval of such a premium, include, but are not limited to, the following: (i) a material schedule advantage in that the GWR Project is anticipated to be operable sooner than the desalination plant; (ii) water supply resilience and <u>reliability</u> (benefit of the portfolio approach); and (iii) other positive externalities of the GWR Project, including, but not limited to reduced atmospheric carbon emissions, reduced brine discharge, and the implementation and encouragement of State policies regarding water recycling through early adoption of a water reuse project." This is ironic because, though GWR was originally supposed to supply 3,500 acre-feet of the total project water, water-rights issues forced the Agreement negotiators earlier, in Section 4.2(a)(iii), to argue for a smaller and variable amount: "There is sufficient legal certainty as to agreements or other determinations in place to secure delivery of source water(s) necessary to produce 3000 to 3500 acre feet per year of GWR product water for the recommended project." As if this is not enough to compromise reliability,

"legal certainty" itself is immediately questioned in Section 4.2(a)(iii)(a): "MCWRA [Monterey County Water Resources Agency] and MRWPCA [Monterey Regional Water Pollution Control Agency, prospective GWR producer] disagree as to the amounts of "tertiary treated water," … to which each is entitled under the Tertiary Treatment Agreement." "Tertiary treated water" was initially planned to be the sole source of water for the GWR component of the overall project.

The objection by the Marina Coast Water District to the siting of the slant wells described in Section 6.5(a) of the Agreement further compromises the project's reliability, as does the Agency Act's prohibition of the exportation of any groundwater from the Salinas River Groundwater Basin ["SRGB"). In fact, according to Section 3.1(b) of the Agreement, "SVWC [Salinas Valley Water Coalition], MCFB [Monterey County Farm Bureau], MCWRA, LandWatch, and CPW [Citizens for Public Water] reserve all rights to challenge production of water from the SRGB and/or the Sand Dunes Aquifer by California American Water in any appropriate forum."

Reliability is not a strong suit of the project, either as originally proposed or as subsequently agreed-upon by some of the parities to the proceeding.

VI. THE AGREED-UPON WATER SUPPLY MAY NOT BE COST-EFFECTIVE

Section 6.6 describes the parties' agreement on the costs of the large and small desalination plants without specified comparisons with comparable projects. Such comparisons are available. In fact, an SPI study commissioned by the Monterey Peninsula Regional Water Authority, a signatory to the Agreement, showed the agreed-upon cost for the large plant, $253.4 million, is much larger than costs for comparable plants in other projects investigated in the study: $190 million for the People's Project and $151 million for the DeepWater Project. Although costs of

the smaller plants in all three projects are lower, as expected, the differences in ratepayer costs are in the opposite direction. The SPI study shows this difference can be substantial, in the case of Cal Am's project equal to $1,010 per acre-foot lower for the large than for the small desalination plant.

Because of this difference, the parties to the Agreement in Section 4.3(b) have defended the addition of a premium to the unit cost of water produced by the large desalination plant when compared with water produced by the combination of GWR and the small desalination plant: "The parties agree that a revenue requirement premium for the combination of the GWR Project and a smaller MPWSP desalination project may be determined just and reasonable, for some but not necessarily all of the following reasons …: (i) a material schedule advantage in that the GWR Project is anticipated to be operable sooner than the desalination plant; (ii) water supply resilience and reliability (benefit of the portfolio approach); and (iii) other positive externalities of the GWR Project, including, but not limited to reduced atmospheric carbon emissions, reduced brine discharge, and the implementation and encouragement of State policies regarding water recycling through early adoption of a water reuse project." Notably absent here is a corresponding listing of negative externalities. Examples: dependence on the use of treated sewer water when the rights to its use are subject to dispute, as indicated earlier, unreliability of supply due to reduction in water use (and therefore in sewer water) resulting from a progression of steep rises in monthly bills, and likely litigation and public-health issues deriving from untreatable impurities in source water obtained from drainage ditches and storm drains.. The Commission not only needs to weigh the positive and negative externalities against each other but also to consider alternatives having the positive but lacking the negative externalities of the GWR-desalination portfolio. These might include, but not be limited to, the use of solar energy to power the large desalination plant or a storage facility to hold excess tertiary-treated sewer water in the winter for agricultural use in the summer. Over a 30-year amortization

period, the cost of the alternatives is likely to be considerably lower than any possible net positive premium.

To be evaluated as effective, costs must not only apply to units of water purchased by ratepayers, rather than to overall projects, but also fare well in comparison with corresponding costs in comparable projects. Means used to save costs must also be legal. In these terms, the Agreement has utterly failed to concern itself with cost-effectiveness for either form of the proposed project. In fact, with respect to the portfolio form, it has argued to the contrary. The securitization proposed in Section 11 is illegal.

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VII. THE AGREEMENT BALKANIZES ALTERNAIVE PROJECTS

The proponent of one of the two alternative desalination projects has applied to the Commission for certification of public convenience and necessity ("CPCN"), but, instead of treating this as a stand-alone project alongside Cal Am's, the Commission has permitted Cal Am to fold in components of the two alternative projects as contingencies to corresponding components of its own proposed project. In this process, Cal Am has Balkanized each of the two alternative projects contrary to CEQA, which requires projects to be considered as a whole. The treatment of these two projects in this way by the Commission also inhibits the competition that the Commission, according to its mission statement, is supposed to promote. In their support of this process, described in Section 10 of the Agreement, the Commission gives an unfair advantage to Cal Am, at potential great expense to ratepayers. This is because the proponents of the two alternative projects plan to sell them to a public agency upon their completion.

That being the case, Water Plus urges the Commission, as a condition of its CPCN for Cal Am's project, as proposed or altered by contingencies, to require the company to offer the privately-owned component of its project for sale to a public agency at cost plus ten percent (or other percent determined by the Commission) plus any actual shareholder equity invested in the

project at the time of sale. This requirement could compensate for the competitive forces the Commission has chosen to keep out of the process of developing the needed new water supply by saving ratepayers the hundreds of millions of dollars they would otherwise have to pay over the amortization years of the project in profits, taxes, and increased management and interest costs to Cal Am as a private state-regulated company..

VIII. CONCLUSION

The signatories to the Agreement have acted in the self-interest of the parties they represented but not explicitly in the interest of ratepayers. In their negotiations, they have paid little or no attention to the project criteria of adequacy, reliability, and cost-effectiveness put forward by ALJ Weatherford. To remedy these shortcomings, Water Plus, as an advocate for local ratepayers, urges the Commission to address these criteria in its evaluation of the Agreement and, compensating for the absence of competitive forces, to require Cal Am to offer the privately-owned component of its project for sale to a public agency immediately upon its completion at cost plus ten percent plus actual invested equity at the time of sale.

DATED: August 1, 2013

Respectfully submitted,

WATER PLUS

By

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PRESIDENT