

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



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In the Matter of 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)

**MONTEREY PENINSULA REGIONAL WATER AUTHORITY'S, MONTEREY
PENINSULA WATER MANAGEMENT DISTRICT'S, AND CITY OF PACIFIC
GROVE'S REPLY COMMENTS IN SUPPORT OF MOTIONS TO APPROVE THE
GENERAL SETTLEMENT AGREEMENT AND THE SETTLEMENT AGREEMENT
CONCERNING PLANT SIZE AND OPERATION**

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Dated: September 16, 2013

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Pursuant to Rule 12.2 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the Monterey Peninsula Regional Water Authority (“Authority”), the Monterey Peninsula Water Management District (“District”), and the City of Pacific Grove (“Pacific Grove”) submit this reply to join in the reply comments submitted by California American Water Company (“Cal-Am”) in support of the two settlement agreements entered into in this proceeding, and to specifically reply to Surfrider Foundation’s (“Surfrider”) opposition to the Settlement Agreement Concerning Plant Size and Operation (“Sizing Agreement”).¹ The Authority, District, and Pacific Grove respectfully request that the California Public Utilities Commission adopt both settlement agreements submitted in this proceeding, including the plant sizing set forth in the Sizing Agreement.

Surfrider argues that the plant size agreed to in the Sizing Agreement is inappropriate because it includes alleged excessive water for lots of record and economic/tourism recovery on the Monterey Peninsula, and allegedly ignores possible reduced demand as rates increase.

¹ The Authority’s members include each of the six Monterey Peninsula cities in which Cal-Am serves water. The District is a special act water district created to manage water resources on the Monterey Peninsula. (See Wat. Code App. §1181, *et seq.*) Pacific Gove is a general law city, which is served by Cal-Am, is a member of the Authority, and is an individual party to this proceeding.

Surfrider's arguments should be examined in light of:

- the future demand elements that should be included for project planning purposes;
- the demand anticipated from those included demand elements;
- uncertainties concerning forecasted future demand;
- the project's environmental impacts; and
- the interface of water supply planning and land use planning authority

1. The Settlement Agreement Includes Supply to Satisfy the Demands That Cal-Am is Legally Required to Serve.

The plant size set forth in the Sizing Agreement properly includes adequate capacity for Carmel River replacement, Seaside Basin replenishment, economic/tourism recovery, Pebble Beach's lawful water entitlement, and lots of record. These elements are proper for inclusion in the plant size because each is a component of the demands that Cal-Am is legally required to serve as they develop.² As part of the proceeding's scope, the Commission specified that this proceeding shall determine whether the project will provide "a water supply that meets Cal-Am's legal requirements for the Monterey District."³ The aforementioned demand elements are all components of Cal-Am's legally required service obligation. They are therefore appropriate for inclusion in the estimation of the amount of demand that the project must satisfy.

2. The Sizing Agreement Reflects a Proper Forecast of Future Demands.

Cal-Am relied on projections from its engineers and commissioned expert studies to forecast future demand.⁴ The Authority, District, and Pacific Grove have reviewed Cal-Am's demand projections and believe them to be reasonable. Further, Cal-Am intends to operate the

² Pub. Util. Code § 451 ("Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service. . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public").

³ Administrative Law Judge's Ruling After Evidentiary Hearings, May 30, 2013 (memorializing and confirming previous email rulings), Attachment A, pp 2-3.

⁴ CA-10, Supplemental Direct Testimony of Patrick Pilz dated January 11, 2013o.

desalination plant at near full capacity when projected demands increase.⁵ As Cal-Am's Vice President of Engineering explains, the project is already designed "on a razor's edge."⁶ The local public entities submitting this reply, which represent the public to be served by the project, respectfully urge the Commission to deny Surfrider's request to further constrain the project's capacity.

Surfrider alleges that the forecasted demand for lots of record is speculative and should not be included in the planned demand.⁷ Rather, it argues that demand should only be estimated for new lots likely to be developed during the life of the project. Surfrider presented no evidence, however, for its proposed quantification or how such a proposed quantification should be performed. In fact, the pace of development will be influenced by many variables (e.g., economic conditions and population demographics) that are difficult to predict. Constraining the planned demand for lots of record, as Surfrider urges, when the pace of that demand is subject to unpredictable variables, is not appropriate. To do so risks unnecessary future water shortages together with the resulting adverse community impacts.

Surfrider further criticizes the demand projections, alleging that demand will decrease as rates increase. However, again, Surfrider has not provided evidence to support its speculation; rather, it simply cites isolated comments of Cal-Am's witness out of context.⁸ As Cal-Am explains in its reply comments, it commissioned independent studies that found that the water demand on the Monterey Peninsula is "conservation-hardened" and comparatively inelastic.⁹ Thus, while some modest decrease in demand *may* result as rates increase, any decrease is likely to be negligible. Again, such speculation should not factor into the project sizing.

⁵ RT 996:13-15 (Svindland/CAW).

⁶ RT 994:21-996:20 (Svindland/CAW).

⁷ Surfrider Comments, p. 9.

⁸ Id. at p. 14.

⁹ Cal-Am Reply Comments, pp. 6-8.

Finally, Surfrider takes issue with the 500 acre-feet of demand planned to accommodate economic recovery of the Monterey Peninsula’s substantial tourist industry and other commercial enterprises.¹⁰ Again, the amount and pace of demand resulting from economic recovery are difficult to predict. However, a planning “buffer” of 500 acre-feet — less than five percent of recent average annual water use — is most certainly reasonable for planning purposes.

3. The Project Should Be Sized to Accommodate Uncertainties Concerning Future Demand.

Efforts to forecast demands are plagued by uncertainties stemming from the variables that are difficult to predict. In light of such uncertainty, the proper approach when engineering and designing a project is to hedge the sizing in favor of a modestly oversized rather than an undersigned project. Several reasons warrant such an approach. First, Cal-Am may require the capacity to satisfy peak-day demand requirements even if average yearly demand does not materialize as forecasted. Second, significant ratepayer impacts may result if the project is unable to meet future demands, causing Cal-Am and the community to pursue yet another project, which would likely not enjoy the economies of scale associated with a larger, single project. A future second project would likely produce other environmental impacts as well. Third, an undersized project could result in future water shortages and/or another water supply moratorium, harming the social and economic welfare for Monterey Peninsula residents. The Commission should not risk such unnecessary community harm by constraining the project’s capacity below its already tight anticipated operating levels.

4. The Settlement Agreements Properly Address the Environmental Impacts Associated With the Project.

In characterizing the plant’s environmental impact (e.g., GHG emissions and brine

¹⁰ Surfrider Comments, pp. 15-16.

discharge), Surfrider conflates project sizing with project operation. Contrary to Surfrider's argument, the project's environmental impacts principally correlate with project operation, not capacity. Demand will be what it is. If the demand is not as robust as projected, the project will operate at a lower (arguably normal) level of operation and the environmental impacts will proportionately decrease.

While there are inherent environmental impacts associated with seawater desalination, there are also definite environmental impacts associated with the current status quo. Competing policy interests must be balanced. The public agencies submitting this reply respectfully urge the Commission to sanction the project capacity set forth in the Sizing Agreement while requiring reasonable project design and planning to reduce and mitigate environmental impacts. The settlement agreements do that. The desalination plant is sized to satisfy reasonable projections of future demand while incorporating opportunities to lessen environmental impacts. Environmental measures within the settlement agreements include subsurface intake wells to avoid impacts associated with open water intake, siting of intake wells to avoid coastal erosion, the potential acquisition of low-carbon power from landfill gas or other lower carbon sources, and potential addition of brine diffusers, if necessary, to avoid adverse impacts to the marine environment.

5. The Capacity of the Project Should Not Be So Limited to Impose Unjustifiable Constraint on the Land Use Authority of the Cities and County.

In arguing for a reduced plant size, Surfrider urges micromanagement of the project's water allocation.¹¹ Surfrider essentially urges the Commission to charter a course into land use planning—a role reserved to local land use jurisdictions as a component of their police powers.¹²

¹¹ Surfrider Comments, p. 12

¹² Cal. Const. art. XI, § 7.

The Commission should decline such imposition. Where and how future demand materializes should be properly deferred to the land use jurisdictions as elected representatives of their local constituencies. Under California's land use planning laws, cities and counties must address water supply constraints within their adopted general plans.¹³ Land use planning is fundamentally the prerogative of the local land use jurisdictions.¹⁴ The role of municipal water purveyors, by contrast, is to plan for and develop water supplies necessary to satisfy anticipated future water demands.¹⁵ The Commission, as the regulator of Cal Am's planned future operations, should respect these institutional roles and responsibilities. It should thus deny Surfrider's urging to so constrain local water supply as to intrude into the land use planning spheres of Peninsula cities and the county.

For the reasons stated in the settlement agreements, Cal-Am's reply comments, and as explained above, the settlement agreements strike the appropriate balance among competing public interests and hence deserve the Commission's support.

Dated: September 16, 2013

Respectfully submitted,

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¹³ See Gov't. Code § 65302.

¹⁴ *Id.*

¹⁵ See Wat. Code §§ 10631(a), 10635(a).

Dated: September 16, 2013

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