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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  
REGARDING MOTIONS FOR OFFICIAL NOTICE**

Following the prehearing conference held on September 16, 2013, this Ruling addresses the Motions for Official Notice filed by Marina Coast Water District (MCWD) and by Surfrider Foundation (Surfrider).

On August 30, 2013, Surfrider moved for official notice of the following documents: 1) State Water Resources Control Board (SWRCB) Order WR 2009-0060, Cease and Desist Order (October 20, 2009); 2) Policy Statement on Greenhouse Gas Performance Standards (October 6, 2005); and 3) SWRCB Notice of Application 30215A and Draft Permit for Diversion and Use of Water (September 6, 2012). Surfrider has referred to each of these documents in its comments on the Proposed Settlement on Plant Size and Operation.

Also on August 30, 2013, MCWD moved for official notice of the California Court of Appeal, Sixth Appellate District Opinion in Case No. H038550, *Ag Land Trust v. Marina Coast Water District*. This opinion, not certified for publication, determined that the matter was moot, reversed the judgment of the trial court, and directed the trial court to dismiss the petition for a writ of mandate as moot.

No party filed an objection to either Motion. I grant Surfrider's motion for official notice of the SWRCB Cease and Desist Order WR 2009-0060. While not strictly required, since this matter has been cited to several times, it is reasonable to include it in the record and may be more convenient for decision-makers.

I deny Surfrider's request for official notice of the Commission's 2005 policy statement on greenhouse gas emissions. Again, it is not required that the Commission take notice of its own pronouncements, and in this matter, the Commission opened Rulemaking 06-04-009 and issued several decisions regarding greenhouse gas performance emission standards. Parties may cite to the Commission's decisions without taking official notice of earlier policy statements.

I also deny the motion for official notice of the SWRCB Notice of Application 30215A and Draft Permit for Diversion and Use of Water, dated September 6, 2012, because the date does not comport with the date of the document referred to in the Proposed Settlement Agreement on Plant Size and Operation. In the Proposed Settlement, settling parties state: "*On January 29, 2013, the SWRCB released for public comment a draft permit that would authorize California-American Water to divert from the Carmel River up to 1488 acre-feet per year between December 1 and May 31 of the subsequent year at the rate of 4.1 cubic feet per second, subject to certain conditions.*"<sup>1</sup> Therefore, I deny Surfrider's motion to take official notice of the draft permit referred to in their motion, but direct California-American Water Company (Cal-Am) to file

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<sup>1</sup> Settling Parties' Motion to Approve Settlement Agreement on Plant Size and Operation at 5, emphasis added.

and serve the document referred to in the Proposed Sizing Settlement Agreement that describes the so-called Table 13 water rights. Cal-Am shall file and serve the appropriate draft permit as a compliance filing, no later than October 31, 2013.

I grant MCWD's motion for official notice of the Court of Appeal's opinion. Indeed, in Decision (D.) 12-07-008, the Commission determined that because Cal-Am withdrew its support for the Regional Desalination Project, Application (A.) 04-09-019 should be closed:

We are persuaded that Cal-Am must pursue a reasonable and feasible course of action to obtain a potable water supply in a timeframe that will allow Cal-Am to comply with the Cease and Desist Order. Cal-Am is obligated under various statutory frameworks to provide water to its customers. Pursuant to Pub. Util. Code § 8201, "Any water company having a franchise to use the streets of a city, shall properly and adequately serve with water the inhabitants of the territory for the service of which it has such franchise. As used in this section, to 'properly and adequately serve with water' includes furnishing water of a quality meeting or exceeding standards established by the State Department of Health pursuant to Section 4026 of the Health and Safety Code." In pertinent part, Pub. Util. Code § 451 requires "Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities. . . as are necessary to promote the safety, health, comfort, and convenience of its patrons employees , and the public."

It is unfortunate that Cal-Am withdrew its support for the Regional Desalination Project, but given the various events that have overtaken the decisions we reached in December 2010, we see no alternative but to move forward with the new application, A.12-04-019, seeking the Monterey Peninsula Water Supply Project. At this point, there is simply too much uncertainty associated with the Regional Desalination Project to force Cal-Am to pursue that project further. It is not

reasonable to allow time to continue to elapse and costs to continue to accrue for the Regional Desalination Project, a project that, due to a significant change in circumstances since 2010, has no reasonable prospect of achieving its goals. . .

\* \* \*

This proceeding has been open since 2004. . . Because Cal-Am has put forth a new proposal in A.12-04-019, we need not address cost allocation and rate design here. Therefore, we close this proceeding.<sup>2</sup>

The Commission closed A.04-09-019 on July 12, 2012 in D.12-07-008.<sup>3</sup>

While it is reasonable to grant MCWD's motion, I clarify that the environmental impact report (EIR) that will be issued in this proceeding will not rely on the Final EIR certified in D.09-12-017 in A.04-09-019. Instead, Commission Staff is issuing a subsequent EIR that may use some of the information contained in previous environmental documents but does not tier from or rely on those previous environmental documents. This is an entirely new EIR.

**IT IS RULED** that:

1. Surfrider Foundation's (Surfrider) Motion for Official Notice of State Water Resource Control Board's Cease and Desist Order WR 2009-0060 is granted.
2. Surfrider's Motion for Official Notice of the Commission's Policy Statement regarding Greenhouse Gas Performance Standards Emissions (October 6, 2005) is denied.

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<sup>2</sup> D.12-07-008 at 18-19; Conclusions of Law 2, 3, and 4 at 24.

<sup>3</sup> D.12-07-008, Ordering Paragraph 8 at 26.

3. Surfrider's Motion for Official Notice of State Water Resource Control Board's Notice of Application 30215A and Draft Permit for Diversion and Use of Water (September 16, 2012) is denied.

4. No later than October 31, 2013, California-American Water Company shall file a compliance filing with the correct State Water Resource Control Board Draft Permit cited in the Proposed Settlement for Plant Size and Operation, filed on July 31, 2013.

5. Marina Coast Water District's Motion for Official Notice of the Court of Appeal, Sixth Appellate District Opinion in Case No. H038550, *Ag Land Trust v. Marina Coast Water District* is granted, but I clarify that the environmental documents in this proceeding do not tier from or rely on the environmental impact report certified in Decision 09-12-017 issued in Application 04-09-019.

Dated October 2, 2013, at San Francisco, California.

/s/ ANGELA K. MINKIN

Angela K. Minkin  
Administrative Law Judge