



FILED
1-21-14
04:59 PM

**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)

**PLANNING AND CONSERVATION LEAGUE FOUNDATION'S
OPENING BRIEF ON SETTLEMENT PROPOSALS**

ANTONIO ROSSMANN
ROGER B. MOORE
BARTON LOUNSBURY

Rossmann and Moore, LLP
2014 Shattuck Avenue
Berkeley, CA 94704
Tel: (510) 548-1401
Fax: (510) 548-1402
Email: bl@landwater.com

Attorneys for
PLANNING AND CONSERVATION
LEAGUE FOUNDATION

Dated: January 21, 2014

**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)

**PLANNING AND CONSERVATION LEAGUE FOUNDATION'S
OPENING BRIEF ON SETTLEMENT PROPOSALS**

Pursuant to Commissioner Peevey's Amended Scoping Memo and Assigned Commissioner Ruling, filed on September 25, 2013, the Planning and Conservation League Foundation ("PCLF") submits this opening brief on the settlement proposals in the matter of California-American Water Company's ("Cal-Am") application 12-04-019 for approval of the Monterey Peninsula Water Supply Project ("Project"). PCLF joined each of the two settlement proposals filed by Cal-Am because PCLF believes that these settlement proposals meet the requirements of Commission Rule 12.1(d) insofar as they are consistent with law and reasonable in light of the record in this proceeding, and they will advance the interests of the environment and the ratepayers in Cal-Am's Monterey County district.¹

¹ The two settlement proposals are as follows: (1) Settlement Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, Landwatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation ("Comprehensive Agreement"); and (2) Settlement Agreement on Plant Size and Level of Operation, Entered by the Following Parties: California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, Division of Ratepayer Advocates, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, and Planning and Conservation League Foundation ("Sizing Agreement").

PCLF intervened in this proceeding because of its concern with the detrimental impacts of Cal-Am's continuing illegal diversions from the Carmel River. Before Cal-Am submitted the instant application, PCLF initiated the State Water Resources Control Board ("State Board") proceeding that resulted in the State Board's cease and desist order (Order WR 2009-0060), which established requirements for Cal-Am to replace its unlawful Carmel River diversions. Throughout this proceeding at the California Public Utilities Commission ("Commission"), PCLF has consistently advanced its interest in a timely cessation of those diversions, which significantly and adversely affect the ecosystems dependent on the Carmel River's flows. PCLF has long been involved in matters related to preserving the environmental assets of the Monterey Peninsula, and PCLF's concern led to its decision to intervene in this proceeding.

While Order WR 2009-0060 mandates that Cal-Am halt its illegal diversions by December 31, 2016, Cal-Am now estimates that due to delays in this proceeding the Project will not begin operating until months or even years after the State Board's deadline. PCLF remains very concerned that environmental damage will continue beyond the deadline established in the State Board's cease and desist order, a deadline that is already more than two decades after the State Board initially determined the illegality of Cal-Am's diversions (see Order WR 95-10).

Recognizing that a settlement might enable a faster and less contentious resolution of this proceeding, PCLF collaborated with certain members of the Monterey Peninsula Water Supply Project Governance Committee ("Governance Committee") to develop a process for bringing Cal-Am and the intervening parties together in settlement negotiations. This ultimately led to discussions that culminated in the two agreements now under consideration at the Commission. PCLF also worked with the Governance Committee to ensure (to the extent permitted by Commission rules) public involvement and publicly accessible updates on the settlement process.

The settlement proposals that have resulted from months of negotiation are intended to allow Cal-Am to advance the Project quickly and effectually, and PCLF supports the proposals as being both targeted toward that goal and consistent with the public interest in

restoring the Carmel River's flows and securing a replacement water supply for the Monterey Peninsula. PCLF believes that the settlement proposals represent the best opportunity to ensure the completion of a timely and effective project that will allow Cal-Am to cease its unlawful Carmel River diversions. Ultimately, the number and diversity of the parties that have signed each proposal attests to the proposals' meaningful consideration of many concerns, from those of ratepayers to the environment to tourism-oriented businesses to agriculture.

Beyond the settlement proposals' likelihood of ensuring the most rapid resolution of the water supply problems currently facing the Monterey Peninsula, the proposals also address PCLF's objective that Cal-Am adopt the most environmentally preferable alternative. Specifically, PCLF has argued that Cal-Am should build a larger desalination plant only if the concurrently proposed groundwater replenishment ("GWR") project does not materialize within the applicable time frame. To that end, PCLF filed a motion on December 12, 2012 ("Motion to Establish Criteria for Decision on Desalination Plant Sizing") to request the establishment of criteria that will guide the Commission's decision on whether to allow a smaller or larger desalination plant based on progress toward implementation of the GWR project. That motion sparked extensive discussion among the parties and eventually led to a multi-party workshop on the subject in June 2013. Following that workshop, the Governance Committee has taken the lead in developing appropriate criteria to determine whether the GWR project is sufficiently close to implementation to allow the downsizing of Cal-Am's desalination plant. Section 4 of the Comprehensive Agreement incorporates those criteria, and PCLF believes that the Comprehensive Agreement fully addresses PCLF's concern and, if the Commission adopts the settlement proposal, eliminates the need for the Commission to rule on PCLF's original motion, which initiated the development of the sizing-decision criteria.

For the reasons discussed in this brief, PCLF respectfully submits that the two settlement proposals meet the requirements of Commission Rule 12.1(d); they are reasonable in light of the whole record, consistent with law, and in the public interest of securing an alternative water supply that will allow Cal-Am to halt its illegal and environmentally

detrimental diversions of Carmel River water. PCLF therefore urges the Commission to approve both settlements.

Dated: January 21, 2014

By: /s/ Barton Lounsbury

Barton Lounsbury

Attorney for Intervenor
PLANNING AND CONSERVATION
LEAGUE FOUNDATION