



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

FILED
2-18-14
04:59 PM

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)

**JOINT CLOSING BRIEF IN SUPPORT OF APPROVAL AND IMPLEMENTATION
OF SETTLEMENT AGREEMENT**

Sarah E. Leeper
Nicholas A. Subias
California American Water
333 Hayes Street, Suite 202
San Francisco, CA 94102
For: California-American Water Company
sarah.leeper@amwater.com
(415) 863-2960

Bob McKenzie
Water Issues Consultant
Coalition of Peninsula Businesses
P.O. Box 223542
Carmel, CA 93922
For: Coalition of Peninsula Businesses
jrbobmck@gmail.com
(831) 595-4204

Dan L. Carroll
Attorney at Law
Downey Brand, LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
For: Both the County of Monterey and
the Monterey County Water Resources
Agency
dcarroll@downeybrand.com
(916) 444-1000

Norman C. Groot
Monterey County Farm Bureau
P.O. Box 1449
931 Blanco Circle
Salinas, CA 93902-1449
For: Monterey County Farm Bureau
norm@montereycfb.com
(831) 751-3100

Russell M. McGlothlin
Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo street
Santa Barbara, CA 93101
For: Monterey Peninsula Regional Water
Authority
rmcglathlin@bhfs.com
(805) 963-7000

David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950-4221
For: Both the Monterey Peninsula Water
Management District and the City of Pacific
Grove
dave@laredolaw.net
(831) 646-1502

[ADDITIONAL COUNSEL LISTED INSIDE FRONT COVER]

February 14, 2014

Robert Wellington
Wellington Law Offices
857 Cass Street, Ste. D
Monterey, CA 93940
For: Monterey Regional Water Pollution
Control Agency
attys@wellingtonlaw.com
(831) 373-8733

Barton Lounsbury
Rossmann and Moore, LLP
2014 Shattuck Avenue
Berkeley, CA 94704
For: Planning and Conservation League
Foundation
bl@landwater.com
(510) 548-1401

Nancy Isakson
President
Salinas Valley Water Coalition
3203 Playa Court
Marina, CA 93933
For: Salinas Valley Water Coalition
(SVWC)
nisakson@mbay.net
(831) 224-2879

Laurens H. Silver
Attorney
California Environment Law Project
P.O. Box 667
Mill Valley, CA 94942
For: Sierra Club
larrysilver@earthlink.net
(415) 515-5688

Gabriel M.B. Ross
Attorney
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
For: Surfrider Foundation
ross@smwlaw.com
(415) 552-7272

TABLE OF CONTENTS

| | Page |
|--|-------------|
| I. INTRODUCTION | 1 |
| II. MCWD’S OPENING BRIEF RE-RAISES ISSUES THAT THE COMMISSION HAS ALREADY DECIDED | 2 |
| III. MCWD FOCUSES ON ISSUES THAT WILL BE ADDRESSED AS PART OF THE ENVIRONMENTAL REVIEW PROCESS | 4 |
| IV. MCWD’S CLAIMS ABOUT WATER RIGHTS FAIL TO CONSIDER THE EFFORTS OF THE TECHNICAL WORKING GROUP TO DEVELOP A SOLID TECHNICAL RECORD | 5 |
| V. THE COMMISSION PROCESS HAS BEEN OPEN AND TRANSPARENT..... | 6 |
| VI. CONCLUSION..... | 7 |

TABLE OF AUTHORITIES

STATE STATUTES

Pub. Util. Code §§ 240, 241, 701, 761, and 10013

CALIFORNIA PUBLIC UTILITIES COMMISSION DECISIONS

D.12-10-030, dated October 24, 20123

D.13-07-048, dated July 25, 2013.....3, 4

OTHER AUTHORITIES

General Order 103-A4

Monterey County Desalination Ordinance, Title 10, Chapter 10.723, 4

**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)

**JOINT CLOSING BRIEF IN SUPPORT OF APPROVAL AND IMPLEMENTATION
OF SETTLEMENT AGREEMENT**

I. INTRODUCTION

Pursuant to the September 25, 2013 Amended Scoping Memo and Assigned Commissioner Ruling in the above-captioned matter, California-American Water Company (“California American Water”), City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, 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 (referred together as the “Settling Parties” for purposes of this brief) respectfully submit this closing brief in support of the Settlement Agreement¹ for the Monterey Peninsula Water Supply Project (“MPWSP”).

¹ *Settling Parties’ Motion to Approve Settlement [Settlement Agreement Attached]*, Attachment A, *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*, filed July 31, 2013 (“Settlement Agreement”). Certain parties will file separate joint closing briefs regarding the Settlement Agreement on Plant Size and Level of Operation.

In this closing brief, the Settling Parties will focus on the arguments raised by the Marina Coast Water District (“MCWD”) in its opening brief.² MCWD consumes scarce Commission resources by raising issues that will be considered as part of the environmental review process and by repeating arguments that have been previously rejected—multiple times in many cases. As discussed in more detail below, MCWD’s arguments should be disregarded by the Commission.

The following brief also briefly addresses claims and criticism of the Commission’s settlement process.³ This Commission process has provided substantial opportunities for public input and involvement. Moreover, as described below in more detail, the settlement negotiations were conducted with a high degree of openness and transparency.

The motions, filings, exhibits, and testimony provided in this matter establish that the Settlement Agreement is reasonable, consistent with the law, and in the public interest. The Settling Parties respectfully request, therefore, that the Commission adopt the Settlement Agreement.

II. MCWD’S OPENING BRIEF RE-RAISES ISSUES THAT THE COMMISSION HAS ALREADY DECIDED

A significant portion of MCWD’s opening brief consists of recycled arguments that have been previously rejected. For example, MCWD repeats in its opening brief its argument that the Commission must hold hearings as part of the environmental review process.⁴ MCWD’s faulty legal claims have been refuted in multiple pleadings.⁵ Even MCWD admits that this claim has

² *Marina Coast Water District’s Opening Brief on the Settling Parties’ Motions to Approve Settlement Agreement and Settlement Agreement on Plant Size and Operation*, January 21, 2014 (“MCWD Opening Brief”).

³ While the Settling Parties do not address the specific claims asserted by the Public Trust Alliance and Water Plus, the Settling Parties generally dispute their contentions that the Commission should reject the Settlement Agreement or otherwise modify the scope of the proceeding, as recommended in their opening briefs.

⁴ MCWD Opening Brief, pp. 19-20.

⁵ *California-American Water Company’s Reply Comments in Support of Motions to Approve Both The General Settlement Agreement as Well as The Settlement Agreement on Plant Size and Operation*, filed September 16, 2013, pp. 12-26; see *California-American Water Company Response To Motion Of Marina Coast Water District To Modify Procedural Schedule*, filed May 17, 2013; see *California-American Water Company Motion to Strike the Testimony of Lloyd W. Lowrey, JR. Submitted on Behalf of the Marina Coast Water District and Request for Expedited Treatment*, filed February 26, 2013; see *Response of California-American Water to Application of Marina Coast Water District for Rehearing of Decision 12-10-030*, filed December 17, 2012.

been repeatedly rejected,⁶ but that does not stop it from repeating the same arguments in its opening brief. As Administrative Law Judge Weatherford previously found:

...no evidentiary hearing is required or, given the outstanding cease and desist order (CDO), appropriate for the environmental reporting track. Consistent with CEQA, parties will have the opportunity to comment on the DEIR before the FEIR is certified. Those comments, as reflected in the FEIR, will be considered in the Proposed Decision, and parties will also have the opportunity to comment on that PD before the Commission acts.⁷

The Commission should disregard MCWD's latest attempt to re-argue this already settled issue.

The January 27, 2014 Administrative Law Judge ruling provides for collection and analysis of hydrogeologic information from bore holes.⁸ After the bore holes have been drilled, the hydrogeological technical group will prepare a technical memo that will be served on all parties, including MCWD.⁹ This analysis will be incorporated into the models for the Draft Environmental Impact Report ("DEIR"). MCWD and other parties will have the opportunity to raise concerns about the hydrogeologic information or adequacy of the analysis as part of the EIR process.

Finally, MCWD questions the Commission's authority to preempt the Monterey County ordinance, which requires public ownership of desalination facilities.¹⁰ This issue has already been briefed extensively and was the subject of *two* Commission decisions (the second denying MCWD's application for rehearing). Contrary to MCWD's repeated claims, the Commission's ability to preempt the ordinance is not at issue.¹¹ In any event, Commission preemption of the Monterey County ordinance does not have to wait until a project is approved. The Commission already has jurisdiction over water utilities and their facilities¹² and regulates water utility plants

⁶ MCWD Opening Brief, pp. 19-20, fn. 6.

⁷ *Administrative Law Judge's Ruling After Evidentiary Hearings*, filed May 30, 2012 ("Ruling After Evidentiary Hearings"), p. 4.

⁸ *Ruling Setting Forth Updated Schedule and Addressing Other Matters*, dated January 27, 2014 ("Updated Schedule Ruling"), pp. 1-2.

⁹ Settlement Agreement, § 5.

¹⁰ MCWD Opening Brief, pp. 9-10; referring to Monterey County Code of Ordinances, Title 10, Chapter 10.72.

¹¹ See D.12-10-030, dated October 24, 2012 ("D.12-10-030"), Ordering ¶ 1; D.13-07-048, dated July 25, 2013 ("D.13-07-048"), Ordering ¶¶ 4 & 6 (denied rehearing of D.12-10-030). MCWD did not seek appellate review after rehearing was denied.

¹² Pub. Util. Code §§ 240, 241, 701, 761, and 1001.

through General Order 103-A.

The language in the Commission's most recent decision on this issue is very clear:

The Commission's authority, exercised through General Order 103-A in Application 12-04-019, preempts the Monterey County Desalination Ordinance, Title 10, Chapter 10.72 to the extent the Ordinance purports to apply to public utility facilities or operations.¹³

MCWD attempts to repackage its preemption claims by trying to link them to allegations regarding improper delegation of Commission authority.¹⁴ As demonstrated in the *Joint Brief on Governance Committee and Non-Impairment of Commission Jurisdiction*, however, the Governance Committee's decisions involve subject matters that would not be directly decided by the Commission. The Government Agreement itself is subordinate to the Commission's jurisdiction and to any specific order issued by the Commission.¹⁵ For example, MCWD misstates the Settlement Agreement by claiming that the Governance Committee will determine whether or not the GWR component will be included in the project. Under the Settlement Agreement, the GWR Decision will be made by the Commission in Phase 2. The Commission should disregard MCWD's most recent attempt to resurrect its failed arguments.

III. MCWD FOCUSES ON ISSUES THAT WILL BE ADDRESSED AS PART OF THE ENVIRONMENTAL REVIEW PROCESS

MCWD raises several environmental impact issues, including questions regarding snowy plover habitat, coastal erosion, and the hydrogeologic impacts of wells.¹⁶ These are not related to the Settlement Agreement that is the subject of the current briefs. On January 27, 2014, assigned Administrative Law Judge Angela Minkin's Updated Schedule Ruling further reiterated that the schedule allows time for comments on the DEIR, as required under the California Environmental Quality Act ("CEQA"). MCWD argues that the Settling Parties have asked the

¹³ D.13-07-048, Ordering ¶ 4, p. 11.

¹⁴ MCWD Opening Brief, pp. 9, 15.

¹⁵ *Joint Brief on Governance Committee and Non-Impairment of Commission Jurisdiction*, filed January 21, 2013, pp. 2-4.

¹⁶ MCWD Opening Brief, pp. 2-9.

Commission to issue a Certificate of Public Convenience and Necessity (“CPCN”) prior to the Commission’s completion of the environmental review.¹⁷ This is incorrect. Pursuant to the schedule of this proceeding, the parties will file briefs on legal and policy issues after the comment period on the DEIR. The Commission will consider those briefs and, as CEQA requires, the Final EIR (which includes any comments submitted on the DEIR), before it makes its decision on the Settlement and on California American Water’s request for a CPCN for the MPWSP. The CEQA process, as set forth in the schedule in the proceeding, will provide MCWD the opportunity to address environmental impacts.

IV. MCWD’S CLAIMS ABOUT WATER RIGHTS FAIL TO CONSIDER THE EFFORTS OF THE TECHNICAL WORKING GROUP TO DEVELOP A SOLID TECHNICAL RECORD

Since the filing of the Settlement Agreement, the Settling Parties have made progress gathering and developing information to assess the potential effects of the MPWSP. As set forth in the Settlement Agreement, certain Settling Parties (including the Salinas Valley Water Coalition, the Monterey County Farm Bureau, and California American Water) agreed to work with CPUC consulting staff and the Settling Parties’ respective experts (“Technical Working Group” or “Working Group”) to develop a joint work plan—to better assess the effects of the water supply project’s proposed source water intake sites. Since then, the Hydrogeologic Investigation Work Plan (“Work Plan”) has been finalized. As discussed in the Settlement Agreement, California American Water, the Monterey County Farm Bureau, and the Salinas Valley Water Coalition agreed that the Work Plan, attached hereto as Attachment 1, would be the main working document for all exploratory, testing and modeling work including: 1) exploratory bore holes; 2) a test slant well and two monitoring wells; 3) a long-term test slant well monitoring well system; and 4) a full scale slant well feedwater supply to the desalination

¹⁷ MCWD Opening Brief, pp. 17-23.

plant groundwater modeling.

MCWD argues that the Settlement Agreement is inconsistent with law because water rights issues have not been finally resolved. That position ignores the efforts of the Technical Working Group to develop a better technical record for the MPWSP. The technical work will help the Settling Parties assess the feasibility of source intake design, determine how to best construct and operate the Project to minimize and avoid effects of the Project, and provide mitigation as necessary to ensure that there are no adverse impacts to the Basin or groundwater users in the Basin. This technical work will be incorporated into the CPUC's DEIR for the MPWSP, and will provide a scientifically based assessment of the potential effects of the MPWSP source water wells.

V. THE COMMISSION PROCESS HAS BEEN OPEN AND TRANSPARENT

Contrary to claims that there has been a rush to judgment, the Commission process, both the CPCN and environmental review, as well as the extensive work by local cities, agencies and public interest organizations, have (and will) serve the public interest well. There are numerous parties involved in this proceeding, representing a wide variety of interests. The parties have had multiple opportunities to express their views and advance their positions through pleadings, testimony, briefs and participation in evidentiary hearings. All parties had the opportunity to participate meaningfully in the settlement discussions. The settlement process involved multiple large all-party meetings and numerous lengthy conference calls with many participants.¹⁸ The Commission held several meetings for the public, which were supplemented by additional meetings hosted by California American Water and local and state entities.¹⁹ The CEQA process

¹⁸ From the start, the settlement process that resulted in the July 31, 2013 settlement agreements was open to all the parties participating in the proceeding. On April 18, 2013, MPRWA served notice of the initial settlement conference, which was held on April 30, 2013, to all the parties to the proceeding.

¹⁹ Following the initial settlement conference, settlement discussions continued throughout the months of May, June, and July of 2013. At least one of these settlement discussions was held in Monterey for the benefit of local participants. Several of these discussions included parties who provided input but, in the end, decided not to continue discussions and sign on to any of the settlement agreements. Additionally, all the parties had the opportunity to participate in the June 12, 2013 groundwater replenishment ("GWR") workshop that played a part in

which is currently underway will offer additional opportunities for participation. Contrary to claims by opponents of the Settlement Agreement, there has been no rush to judgment—this proceeding began in 2012 and will likely not conclude until sometime in 2015. Indeed, when it has deemed it necessary, the Commission has extended the proceeding’s schedule. Such claims denigrate the hard work of all of the parties involved, as well as the Commission itself.

VI. CONCLUSION

As discussed above, MCWD’s opening brief includes several arguments that the Commission has already rejected, issues that will be addressed as part of the environmental review process, and flawed claims unsupported by law or fact. The Commission’s settlement process has been open and transparent. The Settlement Agreement is reasonable, consistent with the law, and in the public interest, and should be adopted by the Commission.

/

/

/

February 14, 2014

[s] Sarah E. Leeper

Sarah E. Leeper, Attorney
Nicholas A. Subias, Attorney
333 Hayes Street, Suite 202
San Francisco, CA 94102
For: California-American Water Company

February 14, 2014

[s] Bob McKenzie

Bob McKenzie
Water Issues Consultant
Coalition of Peninsula Businesses
P.O. Box 223542
Carmel, CA 93922
For: Coalition of Peninsula Businesses

informing the settlement agreement on GWR issues.

February 14, 2014

[s] Dan L. Carroll

Dan L. Carroll
Attorney at Law
Downey Brand, LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
For: County of Monterey and
Monterey County Water Resources Agency

February 14, 2014

[s] Norman C. Groot

Norman C. Groot
Monterey County Farm Bureau
P.O. Box 1449
931 Blanco Circle
Salinas, CA 93902-1449
For: Monterey County Farm Bureau

February 14, 2014

[s] Russell McGlothlin

Russell M. McGlothlin, Attorney
Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo Street
Santa Barbara, CA 93101
For: Monterey Peninsula Regional Water Authority

February 14, 2014

[s] David C. Laredo

David C. Laredo, Attorney
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950
For: Both the Monterey Peninsula Water Management
District and the City of Pacific Grove

February 14, 2014

[s] Robert Wellington

Robert Wellington, Attorney
Wellington Law Offices
857 Cass Street, Ste. D
Monterey, CA 93940
For: Monterey Regional Water Pollution
Control Agency

February 14, 2014

[s] Barton Lounsbury

Barton Lounsbury, Attorney
Rossmann and Moore, LLP
2014 Shattuck Avenue
Berkeley, CA 94704
For: Planning and Conservation League Foundation

February 14, 2014

[s] Nancy Isakson

Nancy Isakson
President
Salinas Valley Water Coalition
3203 Playa Court
Marina, CA 93933
For: Salinas Valley Water Coalition (SVWC)

February 14, 2014

[s] Laurens H. Silver

Laurens H. Silver, Attorney
California Environment Law Project
P.O. Box 667
Mill Valley, CA 94942
For: Sierra Club

February 14, 2014

[s] Gabriel M.B. Ross

Gabriel M.B. Ross
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
For: Surfrider Foundation Company

NOTICE OF AVAILABILITY

Attachment 1 to the Joint Closing Brief in Support of Approval and Implementation of Settlement Agreement exceeds 3.5 megabytes in size. Therefore, pursuant to Rules 1.9(d)(2), California American Water hereby provides this Notice of Availability of Attachment 1.

Attachment 1 is available at <http://www.watersupplyproject.org/downloads> as of February 14, 2014.

Should you have any questions, please feel to contact:

Sabrina K. Ikemire
Paralegal
California American Water
333 Hayes Street, Suite 202
San Francisco, CA 94102
(415) 293-3022
Sabrina.Ikemire@amwater.com

Dated: February 14, 2014

By 
Sabrina K. Ikemire