



FILED
4-18-16
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)

JOINT MOTION FOR A SEPARATE PHASE 2 DECISION

Sarah E. Leeper
Nicholas A. Subias
California American Water
555 Montgomery Street, Suite 816
San Francisco, CA 94111
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
jrbohmck@gmail.com
(831) 596-4206

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

John H. Farrow
M.R. Wolfe & Associates, P.C.
1 Sutter Street, Suite 300
San Francisco, CA 94104
For: LandWatch Monterey County
jfarrow@mrwolfeassociates.com
(415) 369-9405

[ADDITIONAL COUNSEL LISTED BELOW]

Dated: April 18, 2016

Mark Fogelman
Friedman & Springwater LLP
350 Sansome Street, Suite 210
San Francisco, CA 94104
For: Marina Coast Water District
mfogelman@friedmanspring.com
(415) 834-3800

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

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

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

George Riley
1198 Castro Road
Monterey, CA 93940
For: Public Water Now
georgetriley@gmail.com
(831) 645-9914

Norman C. Groot
Monterey County Farm Bureau
P.O. Box 1449
1140 Abbott Street, Suite C
Salinas, CA 93902-1449
For: Monterey County Farm Bureau
norm@montereycfb.com
(831) 751-3100

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

Marcelo Poirier
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
For: Office of Ratepayer Advocates
mpo@cpuc.ca.gov
(415) 703-2913

Michael Warburton
The Public Trust Alliance
187 East Blithedale Avenue
Mill Valley, CA 94941
For: Public Trust Alliance
warburton@sonic.net
michael@rri.org
(510) 610-0868

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

**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)

JOINT MOTION FOR A SEPARATE PHASE 2 DECISION

I. INTRODUCTION

Pursuant to Article 11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and the November 17, 2015, *Administrative Law Judge’s Ruling Setting Evidentiary Issues and Schedule to Complete the Record for Phases 1 and 2* (“ALJ Ruling”), California-American Water Company (“California American Water”), City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, LandWatch Monterey County, Marina Coast Water District, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District (“MPWMD”), Monterey Regional Water Pollution Control Agency (“MRWPCA”), Office of Ratepayer Advocates, Planning and Conservation League Foundation, Public Trust Alliance, Public Water Now, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation (collectively “Joint Parties”) hereby submit this motion for a separate Phase 2 decision.¹ Specifically, the Joint Parties request that the Commission address the following issues in a separate Phase 2 decision: (1) the Water Purchase Agreement between California American Water, MPWMD and MRWPCA, (2) California American

¹ Pursuant to Commission Rule 1.8(d), the Joint Parties have authorized California American Water to sign this motion on their behalf.

Water's construction of the Monterey pipeline and pump station in advance of a decision on the Certificate of Public Convenience and Necessity ("CPCN") for the Monterey Peninsula Water Supply Project ("MPWSP"), and (3) financing and ratemaking related to the Monterey pipeline and pump station facilities.

II. NEED FOR A SEPARATE PHASE 2 DECISION

It is undisputed that the Monterey Peninsula faces substantial water supply shortages in light of the impending deadline in the 2009 Cease and Desist Order ("CDO") issued by the State Water Resources Control Board that would greatly reduce California American Water's ability to withdraw water from the Carmel River. The Commission's recent announcement that the Final Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") for the MPWSP will not be available until late 2017 has caused further significant delay in the Commission's consideration of California American Water's request for a CPCN for the MPWSP.

In light of this delay and the need for alternative sources of water for California American Water customers, the Commission should issue a separate decision in Phase 2 on the issues identified above, which could allow California American Water to take full advantage of two alternative water sources: (1) the MPWMD/MRWPCA Pure Water Monterey Groundwater Replenishment Project ("GWR Project") and (2) Aquifer Storage and Recovery ("ASR").

The GWR Project could supply up to 3,500 acre feet to the community as early as 2018. MRWPCA certified the GWR Project's Environmental Impact Report ("EIR") on October 8, 2015 and no litigation was filed challenging the GWR Project's EIR within the statute of limitations. As MPWMD and MRWPCA have noted, however, the GWR Project cannot go forward without a Water Purchase Agreement with California American Water. Thus, prompt authorization for California American Water to enter into the Water Purchase Agreement is essential. Similarly, an expeditious decision on the GWR Project Water Purchase Agreement is critical to take advantage of the 1% interest rate available through the Clean Water State

Revolving Fund (“CWSRF”), which would result in savings for California American Water’s ratepayers.

Additionally, California American Water asserts that the Monterey pipeline is necessary for full deliverability of GWR Project water to California American Water’s customers from the GWR Project. California American Water also asserts that the Monterey pipeline would also be used to transport water for ASR and the Monterey pump station would allow California American Water to maximize its existing ASR facilities.² Assuming a normal-to-wet rainy season, California American Water asserts the Monterey pipeline and pump station facilities would allow it to get the most out of its current ASR operating permits and potentially enable it to inject an additional 1,000 acre feet of winter water from ASR in the winter of 2017-2018.

If the Commission issues a timely decision in Phase 2, California American Water would be able to complete construction of the Monterey pipeline and pump station by December 2017. Before California American may proceed with the Monterey pipeline and pump station, however, the Joint Parties request that the Commission address the associated financing and ratemaking.

Although Commissioner Sandoval pledged at the recent prehearing conference to introduce a resolution to address CDO milestones, that is no reason to delay a decision on these three issues identified by the Joint Parties. As discussed in more detail below, it is possible to treat the Phase 1 and Phase 2 issues reasonably and fairly in separate decisions. Moreover, the public interest is served by acting quickly and efficiently to reach a decision on these issues.

III. PHASE 1 AND PHASE 2 ISSUES CAN BE TREATED REASONABLY AND FAIRLY IN SEPARATE DECISIONS

The ALJ Ruling directs any party seeking a separate Phase 2 decision to explain how the Phase 1 and Phase 2 issues, which the Ruling characterizes as “substantially if not inextricably intertwined,” could be reasonably and fairly treated in separate decisions.³

² The Monterey pump station would not be used in connection with the GWR Project.

³ ALJ Ruling, p. 11.

Moving forward with a decision in Phase 2, however, would not pre-judge California American Water's request for a CPCN for the MPWSP.

The GWR Project is a stand-alone project with independent utility from the MPWSP. The GWR Project is pertinent to the MPWSP in this proceeding only because the availability of the GWR Project's product water means that California American Water could build smaller desalination facilities than would be needed if the GWR Project did not exist. Similarly, the ASR wells have already been constructed and are in use, and thus they already exist completely independent of the MPWSP.

Authorizing the construction and use of the Monterey pipeline for the GWR Project and ASR and the Monterey pump station for ASR does not commit the Commission to a position on the MPWSP. The Monterey pipeline and pump station can be used independently of the MPWSP. As new facilities within California American Water's existing service territory, the pipeline and pump station do not require a separate CPCN application.⁴ The Commission's approval can be limited to the construction of these facilities and their use for the GWR Project and ASR only.

Additionally, the potential environmental impact of the Monterey pipeline was analyzed in the GWR Project's EIR.⁵ Issuing a decision including the Monterey Pipeline and pump station as part of Phase 2 does not commit the CPUC to the MPWSP, and does not foreclose

⁴ "This article shall not be construed to require any such corporation to secure such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations." Pub. Util. Code §1001.

⁵ The potential environmental impacts of the Monterey pipeline were analyzed in the Consolidated Final Environmental Impact Report for the Pure Water Monterey Groundwater Replenishment Project ("GWR Project EIR"), available at <http://purewatermonterey.org/reports-docs/cfeir/>. See § 2.11 (discussion of CalAm Distribution System component of GWR Project including Monterey Pipeline); § 6.3.2.4 (discussion of alternative alignments for CalAm Distribution Pipeline, including Alternative Monterey Pipeline) and § 2.3.2.6 (comparison of GWR Project to MPWSP, noting that "The Proposed Project could provide this quantity of replacement water even if the CPUC denies CalAm's application to construct and operate a desalination plant." (*Id.* at p. 2-12.)). MPWMD and MRWPCA as necessary will prepare an EIR addendum to address the Monterey pump station.

analysis of the MPWSP project’s environmental impacts or of alternatives or mitigation measure that may reduce or avoid those impacts.

Finally, addressing limited cost recovery issues related to the Monterey pipeline and pump station in Phase 2 does not pre-approve the MPWSP or the cost recovery proposals associated with the MPWSP as a whole.

IV. THE COMMISSION SHOULD ACT QUICKLY AND EFFICIENTLY TO RESOLVE THE PHASE 2 ISSUES

While the ALJ Ruling did not commit to a separate Phase 2 decision, it did provide a target of July 2016 for a proposed decision and August 2016 for a final decision if separate decisions were issued.⁶ Considering that a separate Phase 2 decision is now necessary, the Joint Parties urge the assigned Commissioner and Administrative Law Judge to retain these target dates.

Although there is already information in the record regarding the Water Purchase Agreement, the Monterey pipeline and related cost recovery, the Joint Parties recognize that it may be necessary to provide supplemental testimony to ensure a full and complete record. Additionally, to the extent that there are disputed issues of fact, a one-day hearing on the supplemental testimony may be helpful. Thus, the Joint Parties propose the following schedule:

May 9, 2016	Supplemental Testimony
May 19, 2016	Rebuttal Testimony
Week of May 23, 2016	Limited Evidentiary Hearing (if needed) and/or Possible Settlement
June 1, 2016	Opening Briefs and/or Comments on Settlement
June 8, 2016	Reply Briefs and/or Reply Comments on Settlement
July 2016	Proposed Decision
August 18, 2016	Final Decision

⁶ ALJ Ruling, p. 12.

