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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American Water)
Company (U 210 W) for Approval of the) Application 12-04-019
Monterey Peninsula Water Supply Project) (Filed April 23, 2012)
and Authorization to Recover All Present)
and Future Costs in Rates.)
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)

PUBLIC TRUST ALLIANCE COMMENT ON PROPOSED DECISION

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2 I. INTRODUCTION

3 Pursuant to Rule of Procedure 14.3, the Public Trust Alliance (“PTA”) submits its
4 comment on the proposed decision approving the Groundwater Replenishment Project. PTA
5 supports the decision and simply points out some factual or legal developments that occurred
6 after Phase 2 briefing on this project and either after to the Proposed Decision was issued or so
7 close in time that it might not have been available for consideration before the issuance of the
8 Decision. We present these as a possible opportunity to clarify or refine the Proposed Decision.
9

10 II. COMMENT: RELEVANT DEVELOPMENTS

11 A. *Climate Change*

12 1. *Evidence in the Record*

13 Item 15, p. 44, in the Proposed Decision states: “The WPA also meets broader tests of
14 reasonableness based on numerous environmental, water policy, scheduling, reliability, public
15 trust, and other public benefits.”

16 This statement appears to incorporate various specific statements in party testimony
17 about climate change under the general category of “environmental benefits.” Relevant
18 statements in testimony include, Item 2, p. 10 of the Direct Testimony of David Stoldt,
19 addressing Question 15, “What other “significant and important social and environmental
20 outcomes” should be addressed, irrespective of cost?” Mr. Stoldt identifies “Air quality” as a
21 benefit of GWR vs. a standalone desalination project: “Implementation of GWR reduces
22 greenhouse gas emissions (“GHG”) and criteria air contaminants (“CAC”).” Mr. Stoldt also
23 specifies various statewide policies that the GWR project fulfills. Stoldt Direct Testimony, p. 7 et
24 seq. These include the policies expressed in AB 32:
25

1 In 2006, the Legislature passed and Governor Schwarzenegger signed AB 32, the
2 Global Warming Solutions Act of 2006, which set the 2020 greenhouse gas
3 emissions reduction goal into law. It directed the California Air Resources Board
4 to begin developing discrete early actions to reduce greenhouse gases while also
5 preparing a scoping plan to identify how best to reach the 2020 limit. GWR
6 requires 1/6th to 1/8th the electric energy that desalination requires for the same
7 throughput of processed product water. GWR is preferable to a larger desalination
8 plant in order to meet this statewide goal.

9 Stoldt Direct Testimony, pp. 8-9.

10 In p. 4 et seq. of his Direct Testimony, Dennis Bruce described his methodology for
11 monetizing the social and environmental effects of the GWR project. These effects included the
12 avoidance of greenhouse gas emissions.

13 Avoided Emissions of Green House Gas (“GHG”) and Criteria Air Contaminants
14 (“CAC”): GWR with the 6.4 MGD desal plant will result in reduced GHG and
15 CAC emissions. The 6.4 MGD desalination plant and GWR project: (i) requires
16 less energy than the 9.6 MGD desal plant and therefore results in less emissions;
17 (ii) will result in reduced pumping at the IWWTP also resulting in lower energy
18 demand and less emissions; and, (iii) will reduce the net losses from transmissions
19 lines also resulting in lower emissions.

20 Direct Testimony of Dennis Bruce, p. 7. Mr. Bruce monetized the Avoided Emissions of GHG
21 and CAC at \$4.3 million. Id. p. 9.

22 The Public Trust Alliance briefing included argument regarding the importance of the
23 Commission considering climate change in its decision on the GWR project. See PTA Opening
24 Brief, pp. 13-15. The Opening Brief of Surfrider, Landwatch, PCL, and Sierra Club emphasized
25 the reduction in climate impacts due to reduced energy usage vis-à-vis the stand-alone large
desalination project. Surfrider et al Opening Brief, pp. 6-7.

26 ***2. Subsequent Legal Developments***

27 In August 2016, after the testimony was submitted and close to the time that the Proposed
28 Decision was issued, there were two significant legal developments related to climate change.

1 First, a Federal Circuit Court validated the Obama Administration’s methodology for quantifying
2 the “social cost of carbon.” Second, the California Legislature passed SB 32, which extended and
3 tightened the requirements of AB 32. These developments underscore the correctness of the
4 Proposed Decision’s approval of the project and perhaps deserve to be mentioned in the decision.

5 *a. Climate Accounting Decision*

6 *Zero Zone, Inc. v. United States Department of Energy*, 2016 U.S. App. LEXIS 14541,
7 46 ELR 20137, was decided on August 8, 2016. In this decision, the Seventh Circuit denied
8 petitions challenging two DOE rules aimed at improving the energy efficiency of commercial
9 refrigeration equipment. The court held that the new standards rule was premised on an
10 analytical model that is supported by substantial evidence and is neither arbitrary nor capricious.
11 Specifically, the court upheld DOE's use of the administration’s determination of the “Social
12 Cost of Carbon” (“SCC”) in determining the environmental benefits of the rule.
13

14 First, the Court held that DOE had authority to consider the SCC in formulating its rule.
15 DOE’s statutory authority requires it to consider “the need for national energy ... conservation.”
16 Thus, the potential environmental benefits of a DOE rule are appropriately considered in
17 determining the need for energy conservation. "We conclude that DOE acted in a manner worthy
18 of our deference," Senior Judge Kenneth Ripple, who was appointed by President Reagan, wrote
19 in the opinion. The department was reasonable in considering global climate benefits when it
20 calculated national regulatory costs, according to Ripple.
21

22 Industry representatives has challenged DOE's use of the social cost of carbon, a metric
23 that represents the long-term economic damage to society, in U.S. dollars, from each incremental
24 ton of carbon dioxide released into the atmosphere. This metric was based on considerable
25 research and consultation. Federal agencies formed a working group in 2009 to create the social

1 cost of carbon. The group last revised the estimate in 2015 to \$36 per metric ton of CO₂. That
2 cost will rise to \$50 a metric ton in 2030 and \$69 a metric ton in 2050.

3 The decision highlighted a friend-of-the-court brief filed by New York University's
4 Institute for Policy Integrity, which defended the Obama administration's process for deriving the
5 social cost of carbon.

6 In 2008, the 9th U.S. Circuit Court of Appeals faulted the National Highway Traffic
7 Safety Administration for failing to explicitly monetize climate benefits. *Center for Biological*
8 *Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172 (9th Cir. 2008). But
9 prior to the *Zero Zone* decision, federal courts had yet to rule on the interagency working group's
10 official social cost of carbon estimates. See Amanda Reilly, *Court rules for DOE, upholding*
11 *Obama's social cost of carbon*, EE Publishing, LLC (August 9, 2016),
12 <http://www.eenews.net/stories/1060041382> (last accessed September 1, 2016). See also, the
13 Institute for Policy Integrity's Friend of the Court brief, available at
14 http://www.eenews.net/assets/2016/08/09/document_gw_05.pdf (last accessed August 31, 2016).

15 The Institute for Policy Integrity brief emphasized procedural integrity, among other
16 factors: "Indeed, ensuring that all regulatory agencies use consistent values derived by a
17 consensus-driven, interagency process is essential to harmonizing climate policy and cost-benefit
18 analysis across the federal executive branch. Institute for Policy Integrity's Friend of the Court
19 brief, p. 4.

20 The Institute also noted that in *Ctr. for Biological Diversity v. Nat'l Highway Traffic*
21 *Safety Admin.*, 538 F.3d 1172, 1197-98 (9th Cir. 2008), the court held that "DOT's failure to
22 monetize climate benefits explicitly in its economic assessment of vehicle efficiency standards
23 was arbitrary and capricious. *Id.* at 1203. Here, [in contrast], DOE rationally recognized climate
24
25

1 change as an important aspect of ‘the need for national energy conservation,’ and monetized the
2 economic, health, security, and environmental effects to the extent possible. 79 Fed. Reg. at
3 17,803-05.”

4 The Public Trust Alliance is encouraged by the greater degree of certainty regarding the
5 calculation of climate impacts and benefits that this decision affords. We ask whether the
6 Commission would be interested in addressing this in its decision on the GWR project and
7 whether the Commission would consider adopting the federal methodology to promote
8 consistency with other efforts.
9

10 *b. Passage of SB 32*

11 On August 24, 2016, the California Legislature passed SB 32, the California Global
12 Warming Solutions Act of 2006: emissions limit. On August 26, the Legislature presented the
13 bill to Governor Brown, who has stated that he will sign it. See
14 http://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201520160SB32; see also,
15 video statement at https://www.youtube.com/watch?v=_NZ4ugqWPkQ. This bill extended and
16 strengthened AB 32, known as the California Global Warming Solutions Act of 2006, which
17 required the state to reduce greenhouse-gas emissions to 1990 levels by 2020. See text of SB 32,
18 http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201520160SB32.

19 Authored by Sen. Fran Pavley, who wrote the original 2006 greenhouse gas targets, SB 32
20 requires that emissions be cut 40 percent below 1990 levels by 2030. SB 32 is linked to a second
21 bill, Assembly Bill 197, prioritizing disadvantaged communities in climate regulations and
22 increasing accountability at the California Air Resources Board. SB 32 codifies Governor
23 Brown’s Executive Order B-30-15, issued April 29, 2015, which proposed the 40% reduction by
24 2030.
25

1 In addition to its linkage with AB 32 and AB 197, SB 32 is embedded in a welter of other
2 actions by various governmental entities attempting to address climate change. Governor
3 Brown’s Executive Order “begat another wave of regulatory and planning efforts that are piling
4 up onto the continual legislative and judicial efforts that resulted from AB 32’s original
5 implementation. Throw in the actions of other jurisdictions and federal executive action (Clean
6 Power Plan), and it is that tsunami of things that are currently ‘happening’ right now.”

7
8 Major ongoing efforts include the Air Resources Board’s 2030 Scoping Plan: “ARB is
9 about to release the third version of their foundational policy document in eight years. The 2030
10 Scoping Plan must be completed before the other regulatory updates focused on 2030 as it is the
11 document that puts all the pieces together. It is tasked with the following:

- 12 • Provide a roadmap to achieve the 2030 statewide GHG target;
- 13 • Address the regional nature of the Clean Power Plan;
- 14 • Unite ARB’s other major transportation programs—ZEV’s and Diesel—under the GHG
15 banner;
- 16 • Incorporate a whole new set of policies aimed at Short Lived Climate Pollutants (SLCP),
17 aka ‘Super Pollutants’;
- 18 • Outline a more focused approach to Environmental Justice communities within the State;
19 and
- 20 • Achieve all of this in a short timeframe, in a cost-effective manner, while looking at its
21 impact on the state’s economy and potential for emissions to leak away.”

22
23 The Air Resources Board is “committed to presenting a final version to the public and
24 their board in the fall of this year.” Excerpts of report by Jon Costantino, Senior Advisor,
25 Energy, Environment and Natural Resources practice, Manatt, Phelps & Phillips,

1 <http://www.environmentalleader.com/2016/05/06/whats-the-latest-on-ab-32-at-the-california-air->
2 [resources-board/](http://www.environmentalleader.com/2016/05/06/whats-the-latest-on-ab-32-at-the-california-air-). Like many other interested parties, the Public Trust Alliance is interested in
3 learning how the PUC will fit into this scheme of aggressive state action to combat climate
4 change. We ask if the Commission might provide some indication in its decision on the GWR
5 project, especially vis-à-vis desalination.

6 ***B. Desal vis-à-vis Water Recycling: Subsequent Factual Developments***

7
8 Recent news stories indicate that desalination projects are losing favor among consumers,
9 and water recycling projects continue to gain favor. There is an ongoing and instructive regional
10 controversy regarding the construction of new desal plants in southern California when there are
11 alternative sources of water available.

12 ***1. Conflict/Public Protest Over Desal***

13 According to an August 31, 2016, report on Carlsbad’s high-profile new desalination
14 plant, “at least three other similar plants are in the works, and their fate depends in large part on
15 whether the Carlsbad project is a success.” Several factors weigh against declaring the project a
16 success. These factors include the fact that “the desalination process is energy-intensive and its
17 water is currently far more expensive than our other water supplies. . . . [and] [T]he San Diego
18 County Water Authority has committed to buying water from the plant’s private developer and
19 owner for three decades, whether the water is needed or not.” See Randy Dotingo, *Morning*
20 *Report: Desal Plant Is Done But Dispute Sure Isn’t*, Voice of San Diego,
21 <http://www.voiceofsandiego.org/topics/news/morning-report-desal-plant-is-finished-but-dispute->
22 [sure-isnt/](http://www.voiceofsandiego.org/topics/news/morning-report-desal-plant-is-finished-but-dispute-) (last accessed August 31, 2016).

24 The Voice of San Diego coverage indicates that alternative water sources would likely
25 have been a superior choice from the consumer and environmental point of view. Nevertheless,

1 water authorities failed to heed the public. “[T]he plant’s developers overcame years of
2 regulatory review and faced 14 legal challenges since 2006 from environmental groups.” Despite
3 public outcry, decisionmakers saddled consumers with expensive desal water for 30 years. See
4 Ry Rivland, *The Desalination Plant Is Finished But the Debate Over It Isn’t*, Voice of San Diego
5 (August 30, 2016), [http://www.voiceofsandiego.org/topics/science-environment/desalination-](http://www.voiceofsandiego.org/topics/science-environment/desalination-plant-finished-debate-isnt/)
6 [plant-finished-debate-isnt/](http://www.voiceofsandiego.org/topics/science-environment/desalination-plant-finished-debate-isnt/) (last accessed August 31, 2016).

7 **2. *Rising Interest in Recycling***

8
9 In contrast, new water supply projects employing water recycling technology appear not
10 to have the public’s enmity. For example, “California's prolonged drought is forcing Central
11 Valley farmers to scramble for water to irrigate crops. They have to be creative. One agency is
12 even turning to a sewage plant to meet demand. Just outside Modesto, farming communities like
13 Patterson are facing a crisis. There's barely enough water to irrigate crops, so little, that about a
14 quarter of the local farms have stopped growing anything.

15 “The Del Puerto Water District is responsible for supplying water to a swath of land 50
16 miles long from Tracy to Santa Nella. The district gets all its irrigation water from the Delta-
17 Mendota Canal. The contract allows them to take more than 140,000 feet. ‘This year, we're five
18 percent of that,’ [Anthea] Hansen [of the Del Puerto Water District]. But Del Puerto will soon
19 tap an unexpected source, used water from the nearby Modesto sewage plant. The city flushes
20 nearly 15 million gallons of water down the drain every day. That's roughly 15 percent of what
21 nearby Del Puerto's needs. Modesto's waste water plant recently underwent an \$150 million
22 upgrade, making the sewage recyclable.

23
24 “William Wong is with the City of Modesto Utility District. He said, ‘Right now,
25 recycled water is what we call in the industry, new water.’ Senior Wastewater Treatment Plant

1 Operator, Ben Koehler said, "What we are accomplishing here is taking raw wastewater and
2 removing all the pollutants in order to produce clean effluence on the other end."

3

4 "Hansen pointed out that it [water recycling] is used in other parts of the state. 'If people
5 have been eating strawberries, or artichokes over the last decade plus, from the Salinas Valley,
6 that's what's been used on it,' he said. But the project will take the idea to a much bigger scale.
7 'This will be one of the largest beneficial water reuse projects in the country,' said Wong. Other
8 Central Valley communities are watching closely to see what happens. 'I get a lot of calls, people
9 wanting to know how do you do it? Where do we start?' Hansen said." See *California farmers*
10 *turn to sewers for water* (August 25, 2016), [http://abc7news.com/news/california-farmers-turn-](http://abc7news.com/news/california-farmers-turn-to-sewers-for-water/1484923/)
11 [to-sewers-for-water/1484923/](http://abc7news.com/news/california-farmers-turn-to-sewers-for-water/1484923/) (last accessed September 1, 2016).

13 A look at the funding decisions of the U.S. Department of Interior indicates that DOI has
14 caught on to the fact that water recycling is the wave of the future. DOI reports that "Deputy
15 Secretary of the Interior Michael L. Connor recently announced more than \$30 million in
16 funding through the Bureau of Reclamation's Title XVI program for seven projects that will
17 provide clean water to California communities and promote water and energy efficiency. The
18 announcement came ahead of the Deputy Secretary's trip to California where he participated in
19 meetings regarding Bay-Delta water issues.

21 "With California in its fifth year of drought, these investments will build resilience for
22 local communities struggling with limited water supplies – an effort that is more important than
23 ever as the dangers of drought escalate in the face of climate change," Deputy Secretary Connor
24 said. "Using the best available science and technology to improve the growing disparity between
25 water supplies and demand, this funding will help local water managers stretch dwindling

1 resources.” Interior Department Announces \$30 Million for Water Reuse and Reclamation
2 Projects in California (DOI Press release, June 11, 2016),
3 [https://www.doi.gov/pressreleases/interior-announces-30-million-water-reuse-and-reclamation-](https://www.doi.gov/pressreleases/interior-announces-30-million-water-reuse-and-reclamation-projects-california)
4 [projects-california](https://www.doi.gov/pressreleases/interior-announces-30-million-water-reuse-and-reclamation-projects-california) (last accessed September 1, 2016).

5 PTA notes that these new developments reinforce arguments made in its own briefing
6 and that of Marina Coast Water District. We also note the statement in the Proposed Decision
7 that “The desalination plant may or may not ever be built (particularly if MCWD is correct that
8 the GWR, ASR and conservation may be enough to satisfy the terms of the CDO).” Proposed
9 Decision, p. 25. These news stories provide some further indication that as experience with each
10 technology grows, public opinion and enlightened government support are shifting away from
11 desal in favor of water recycling. We provide these to the Commission as support of any
12 inclination that the Commission may have to heed these trends in this decision or future
13 decisions.
14

15 **3. *Preserving coastal agriculture and restraining urban development in a rational***
16 ***“market driven” and “Reasonable Use” regulatory framework.***

17 In pressing for a desalination solution, it appears Monterey County authorities want to
18 “go back” to a new future where the entire state debate about “reasonable use” (i.e., Article X,
19 Sec. 2 of Cal. Constitution) never happened and as if the State formally ceded “ownership” of
20 California Water to Agricultural Water Right holders on the absolute basis they have been
21 hoping for centuries. The whole idea of a public water system intercepting freshwater in coastal
22 aquifers before it reaches the sea is NOT REASONABLE when rising sea level is creating ever
23 greater hydrostatic pressure from the salty side. It actually induces intrusion and encourages
24 mixing salt in freshwater zones.
25

1
2 The return-water agreement is no favor to the “disadvantaged community” in
3 Castroville. It makes them totally dependent on a private company that is “solving” its own
4 problem and not the one that Castroville is living with. It actually takes away the leverage
5 Castroville gets in perceiving salt intrusion and working with upstream users to preserve the
6 public aquifer and a mixture of agricultural and urban development favored by the local
7 community. It makes much more sense, as a public investment, to build the interlake tunnel at
8 the top of the Salinas watershed and add new water to all basin users and only ask for a small
9 fraction from down lower.
10

11 III. CONCLUSION

12 PTA provides this information in support of the Proposed Decision approving the GWR
13 project and requests that the Commission incorporate information that it deems helpful in
14 promoting and protecting the environment and the interests of the public.
15

16 Signed: September 1, 2016

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