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)

CALIFORNIA AMERICAN WATER’S COMMENTS
ON JOINT STATEMENT OF ISSUES

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TABLE OF CONTENTS

I. INTRODUCTION ............................................................................................. 1

II. BACKGROUND ............................................................................................... 2

III. GENERAL OBJECTIONS TO ISSUES PROPOSED ..................................... 3
   B. The Commission Should Exclude Issues Already Considered and Addressed in this Proceeding. ................................................................. 5
   C. The Commission Should Reject Attempts to Expand the Scope of this Proceeding by Excluding Issues Outside the Scope of this Proceeding. ................................................................. 6
   D. The Commission Should Exclude Legal Issues That Do Not Require Evidentiary Hearings ....................................................................................... 8

IV. GENERAL COMMENTS TO ISSUES PROPOSED .................................... 8
   A. Several Issues Appropriate for Further Evidentiary Hearings are Already Encompassed by Those Identified in the Ruling. ................................................................. 9
   B. California American Water Supports the Supply from the Pure Water Monterey Project to be Included in the Issues for Further Evidentiary Hearings. ................................................................. 9
   C. California American Water Supports Intake Technology to be Included in the Issues for Further Evidentiary Hearings ................................................................. 9
   D. California American Water Supports Settlement in this Proceeding to Resolve Disputed Issues ....................................................................................... 10

V. SPECIFIC OBJECTIONS AND COMMENTS TO ISSUES ......................... 10

VI. CONCLUSION ............................................................................................... 10
CALIFORNIA AMERICAN WATER’S COMMENTS ON JOINT STATEMENT OF ISSUES

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s Ruling Requesting Parties to Identify Issues for Further Evidentiary Hearings, issued on June 9, 2017 (the “Ruling”), 1 California-American Water Company (“California American Water” or the “Company”) submits these comments in response to the issues identified by other parties in the Joint Statement of Issues Exhibit A (“Joint Statement”), filed on June 30, 2017. California American Water first submitted its Application in this proceeding in April 2012 in response to the outstanding Cease and Desist Order (“CDO”) issued by the State Water Resources Control Board (“SWRCB”) for the Company to cease its diversions from the Carmel River. 2 While that deadline has been extended to 2021, 3 there remains a pressing need to have the Monterey Peninsula Water Supply Project (“MPWSP”) online in time to avoid shortfalls in available water supply. 4 It is in the best


2 See SWRCB Order WR 2009-0060.

3 SWRCB Order WR 2009-0060 originally set a December 31, 2016 deadline for the CDO. That deadline was extended to December 31, 2021 by SWRCB Order WR 2016-0040. However, if California American Water does not meet the SWRCB’s milestones, which include the Commission’s issuance of a Certificate of Public Convenience and Necessity to construct the desalination plant by September 30, 2018, the Monterey District will face reductions in the Carmel River legal diversion limit.

4 See D.12-10-030, Finding of Fact 1 (“Failure to be on line with a replenishment water supply by that
interests of California American Water customers and the Monterey community to achieve a solution in a timely fashion. To accomplish that, the Commission should limit further evidentiary hearings to only the relevant issues necessary to resolve this proceeding. California American Water therefore respectfully urges the Commission to confine further evidentiary hearings to only those issues already identified in the Ruling, as described in these Comments.

II. BACKGROUND

The Ruling identified five specific issues that may require further evidentiary hearings in this proceeding. Pursuant to the Ruling, California American Water provided its statement of issues as part of the Joint Statement listing those five specific issues from the Ruling:

Issue No. 1. Updated cost estimates for the project.

Issue No. 2. Updated financing details for the project.

Issue No. 3. Assessment of the forecast demand that bears upon the justification for and the sizing of the Monterey Peninsula Water Supply Project.

Issue No. 4. A project alternative that includes the desalination plant energized by a combination of purchased electricity and on site solar panels.

Issue No. 5. The feasibility and costs of the desalination plant being constructed in modular increments, with the potential for the Commission to authorize a smaller plant now (even smaller than 6.4 million gallons per day, if feasible) but with the option for applicant to later request authority to add increments if and as demand increases.

In addition to California American Water’s, the Joint Statement also included issues proposed by: 5

- Citizens for Just Water

5 In addition to the parties proposing issues, the Joint Statement was joined by Coalition of Peninsula Businesses, City of Pacific Grove, County of Monterey, Latino Water-Use Coalition-Monterey Peninsula / Latino Seaside Merchants Association / Communidad en Accion, Monterey County Farm Bureau, Monterey County Water Resources Agency, Planning and Conservation League, Salinas Valley Water Coalition, and Sierra Club.
California American Water provides its objections and comments below on the issues proposed by the parties.

III. GENERAL OBJECTIONS TO ISSUES PROPOSED

California American Water raises several general objections applicable to multiple issues, as identified below. For some issues, the Company may have multiple general objections that are applicable.


Throughout this proceeding, the Commission has repeatedly stated that certain issues are to be separately addressed through the parallel environmental process under the California Environmental Quality Act (“CEQA”) and the National Environmental Policy Act (“NEPA”). The Commission has clearly explained that, “no evidentiary hearing is required or […] 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.“6 In fact, the Ruling itself instructs parties to “identify any remaining disputed issues of material fact, other than those addressed in the separate but parallel California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) process, that need to be updated or heard before a proposed decision related to the applied-for certificate of public convenience and necessity (CPCN) is prepared and published.”7

Consistent with those directions, environmental impacts of the MPWSP are to be considered in that parallel CEQA/NEPA track.8 “[E]videntiary hearings on the EIR are not appropriate. As has been reiterated several times, the environmental track provides ample opportunity for comments on environmental issues…“9 In the Joint Statement, Citizens for Just Water proposed as Issue No. 6, “New Airborne Electro-Magnetic (AEM) subsurface imaging data is available to evaluate groundwater resources, including fresh water reserves and salt water intrusion.”10 In support of that proposed issue, Citizens for Just Water explains, “Groundwater modeling in the DEIR is inadequate to prove ‘no harm’ and AEM provides significant new baseline information to test the accuracy of the current model.”11 However, the Commission stated as recently as January of this year, “Just Water, and all Parties, are reminded that the appropriate place to critique the draft [EIR/EIS] is in comments on the [draft EIR/EIS].”12 That and other proposed issues relating to environmental impacts of the MPWSP should be excluded from the evidentiary hearing.

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7 Ruling, p. 1 (emphasis added).
8 See E-Mail Ruling Granting Motion Of Cure For Party Status With Guidance On DEIR Comments And Issues For Briefs, p. 3 (June 29, 2015).
9 Amended Scoping Memo And Assigned Commissioner Ruling, p. 5 (September 25, 2013); see also Reporter’s Transcript, April 15, 2016, 2964:6-9 (“We are not going to entertain testimony here about the Environmental Impact Report and the EIR process.”).
11 Id.
Additionally, feasible alternatives to the MPWSP are to be considered in the
CEQA/NEPA process, outside of the evidentiary hearings.\textsuperscript{13} In the initial scoping memo, the
Commission explained, “Feasible alternatives to the Monterey Peninsula Water Supply Project
will be considered in the California Environmental Quality Act (CEQA) track of the proceeding
and by the Commission.”\textsuperscript{14} Nonetheless, several parties proposed using evidentiary hearings to
explore alternatives to the MPWSP. In particular, Marina Coast Water District proposed \textit{five}
separate issues for evidentiary hearings specifically on the consideration of alternatives to the
MPWSP (Issues No. 31, 32, 33, 34, and 35). Those proposed issues relating to consideration of
feasible alternatives should be excluded from the evidentiary hearings.

As demonstrated above, the Commission has repeatedly admonished parties for attempts
to commandeer the evidentiary hearings in this proceeding to raise issues more appropriately
addressed in the CEQA/NEPA process.\textsuperscript{15} To the extent that parties again propose CEQA/NEPA
issues for further evidentiary hearings, the Commission should exclude those topics from further
evidentiary hearings.

B. \textbf{The Commission Should Exclude Issues Already Considered and Addressed
in this Proceeding.}

There are several issues proposed in the Joint Statement that have already been
considered and addressed by the Commission in this proceeding. The existing evidentiary record
in this proceeding is extensive and robust, covering a vast number of issues. To the extent that
these issues have already been considered and addressed in this proceeding, they should be
excluded from further evidentiary hearings.

\textsuperscript{13} Administrative Law Judge’s Directives To Applicant And Ruling On Motions Concerning Scope,
Schedule And Official Notice, p. 7 (August 29, 2012) (“The CEQA process, where the consideration of
alternatives occurs, involves public scoping meetings and opportunities for public comment. CEQA does
not require evidentiary hearings.”).

\textsuperscript{14} Assigned Commissioner’s Scoping Memo and Ruling, p. 2 (June 28, 2012).

\textsuperscript{15} See also E-Mail Ruling Granting Motion Of City Of Marina For Party Status, p. 3 (March 29, 2017)
(“Marina, and all parties, are reminded that the appropriate place to critique and comment on the draft
Environmental Impact Report (EIR) is in comments on the draft EIR. While parties may use information
in the draft EIR to support their briefs, the briefs are not to be used for critiquing the draft EIR.”).
First, the parties have failed to carry their burden of explaining why “the issue is disputed or requires further evidence” and why “the issues is material or requires further evidence” as directed by the Ruling. In several instances, the party proposing an issue for evidentiary hearings has failed to adequately explain why opportunities to present evidence were insufficient or what new factual or legal circumstances warrant further exploration of those issues.

Second, some of the issues proposed include those that have been repeatedly rejected by the Commission in this proceeding. For example, Water Plus proposes to include water quality relating to the recycling components of the Pure Water Monterey project as an issue requiring further evidentiary hearings. Not only is this the improper phase of the proceeding to be raising their arguments, but those specific arguments were previously rejected by the Commission in D.16-09-021. The assigned Administrative Law Judge has already made clear that “[m]erely rearguing the same position absent new facts or law wastes the limited time and resources of the Commission and parties.”

Therefore, the Commission should reject belated attempts to re-introduce issues previously considered and addressed by the Commission in this proceeding.

C. The Commission Should Reject Attempts to Expand the Scope of this Proceeding by Excluding Issues Outside the Scope of this Proceeding.

The Ruling directs parties to identify remaining disputed issues of material fact “that need to be updated or heard before a proposed decision related to the applied-for certificate of

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16 Ruling, p. 3.
17 Joint Statement, p. 23, Issue No. 82.
18 See D.12-09-021, p. 5 (“Phase 1 addresses whether or not a Certificate of Public Convenience and Necessity (CPCN) should be granted for a desalination plant and related facilities. Phase 2 deals with the [Ground Water Replenishment Project (“GWR”)]) and, in particular, whether applicant should be authorized by the Commission to enter into a WPA for GWR water.”).
19 D.16-09-021, p. 8 (“The assertions by Water Plus are unsupported by any credible evidence, and are contradicted by not only the testimony of applicant, District, and Agency, but also by the plain terms of the proposed WPA.”).
20 Administrative Law Judge’s Ruling Denying Joint Motion To Strike Marina Coast Water District Consolidated Comments And Request For Deferred Hearing, p. 7 (February 28, 2017).
public convenience and necessity (CPCN) is prepared and published.”\textsuperscript{21} Therefore, any further evidentiary hearings should only cover those issues \textit{necessary} to assist the Commission in accomplishing that goal. For example, Public Water Now proposed Issue No. 76, “Cost: Recent Cal Am rate increases” in its portion of the Joint Statement. However, any recent rate increases have been duly approved by the Commission and Public Water Now has had opportunities outside of this proceeding to present its issues with respect to those rate increases. Similarly, in Issue No. 59, Public Trust Alliance proposed using further evidentiary hearings to explore new alternatives that could “serve as a public water supply basis without any new desalination plant.” These yet-to-be-identified alternatives were never part of California American Water’s Application and do not belong in evidentiary hearings. Given the time constraints under the SWRCB’s CDO, there is scarcely enough time for evidentiary hearings on the issues \textit{within} the scope of this proceeding, let alone these going off on these tangents.

Furthermore, certain parties, including the City of Marina and Water Plus, joined this proceeding years after it first began. The Commission granted party status to the City of Marina with the understanding that “Marina does not seek to broaden the issues or delay the schedule.”\textsuperscript{22} In its reply brief on its motion for party status, Citizens for Just Water asserted in joining the proceeding, “it will not prejudice any party and will not delay the schedule or broaden the scope of the issues in the proceeding.”\textsuperscript{23} In light of the proposals those parties have set forth in the Joint Statement, those previous assertions now ring hollow. For example, the City of Marina proposes as Issue No. 21, “What are the track record, performance, feasibility and costs of the new and unproven slant well technology, and in what coastal locations within the CalAm customer service area could they be installed?”\textsuperscript{24} The slant well technology and operation of a

\textsuperscript{21} Ruling, p. 1 (emphasis added).
\textsuperscript{22} \textit{E-Mail Ruling Granting Motion of City of Marina for Party Status}, p. 3 (March 29, 2017).
\textsuperscript{23} \textit{Reply of Citizens for Just Water (“Just Water”) to Joint Response to Motion for Party Status of Citizens for Just Water}, p. 10 (December 9, 2016).
\textsuperscript{24} Joint Statement, p. 5, Issue No. 21.
desalination plant using slant well technology were both previously addressed in this proceeding. The City of Marina had the opportunity to timely join the proceeding and present testimony, but failed to. Allowing parties to now re-litigate previously resolved issues unnecessarily delays the proceeding and unfairly penalizes California American Water.

Expending evidentiary hearing time on issues irrelevant to the outcome of this proceeding would be a waste of valuable Commission time and resources. The Commission should therefore limit further evidentiary hearings to issues necessary to allow it to issue a proposed decision related to the CPCN.

D. The Commission Should Exclude Legal Issues That Do Not Require Evidentiary Hearings

Several parties proposed legal issues that do not require evidentiary hearings and therefore are not proper issues to be addressed therein. These include, but are not limited to, issues relating to water rights, whether certain conduct violates certain statutes, and the applicability of the Sustainable Groundwater Management Act (“SGMA”). All of these issues pertain to legal questions more appropriately addressed in legal briefing. Some of these issues, such as water rights, were already fully briefed and resolved in this proceeding. For the remaining issues, parties will have ample opportunities to address such issues fully at a later point in this proceeding. Therefore, the Commission should exclude those issues from the list of issues for further evidentiary hearings.

IV. GENERAL COMMENTS TO ISSUES PROPOSED

California American Water also provides the following general comments on issues

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25 See Direct Testimony of Richard Svindland, pp. 9-10; Rebuttal Testimony of Richard Svindland, pp. 2-6; Rebuttal Testimony of Peter Leffler, pp. 3-12; Reporter’s Transcript, April 8, 2013, 700:3-753:5 (Extensive cross-examination of California American Water witness Peter Leffler on slant well technology relevant to the MPWSP).

26 See Administrative Law Judge’s Ruling, Ordering Paragraph 3 (June 1, 2012) (seeking briefing on water rights); see generally D.12-10-030 (October 25, 2012) (Addressing and resolving water rights issues in this proceeding).

27 Reporter’s Transcript, December 13, 2012, 171:1-4 (“I want you to all remain mindful that the hearings really pertain to facts and factual issue, not law and policy, which you will have the opportunity to brief later.”).
presented by parties:

A. Several Issues Appropriate for Further Evidentiary Hearings are Already Encompassed by Those Identified in the Ruling.

California American Water agrees that certain issues should be addressed in further evidentiary hearings, but believes that the issues identified in the Ruling already cover or address the issues proposed by parties. To the extent that they are already addressed by the issues in the Ruling, California American Water welcomes testimony on those issues, but believes that a separate listing of the issue by the Commission is not necessary.

B. California American Water Supports the Supply from the Pure Water Monterey Project to be Included in the Issues for Further Evidentiary Hearings.

In the Joint Statement, a few parties proposed issues relating to the amount of supply available to California American Water from the Pure Water Monterey project for the MPWSP. For example, LandWatch Monterey County and Planning and Conservation League proposed as Issue No. 23, “The timing and sizing of the proposed desalination facility should be adjusted to accommodate potential expansion of the Pure Water Monterey water recycling project to provide CAW greater than 3,500 acre feet annually.” The Ruling already anticipates further evidentiary hearings on updating information about the potential water demand necessitating the MPWSP and prior evidentiary hearings in this proceeding addressed water demand and supply in tandem. To the extent that the Commission believes that an update on information about supply from the Pure Water Monterey is warranted, it could solicit testimony from the parties.

C. California American Water Supports Intake Technology to be Included in the Issues for Further Evidentiary Hearings.

In the Joint Statement, a few parties proposed intake technology as a potential issue. To the extent that the Commission believes that this is an issue that could be appropriate to

29 See, e.g., Administrative Law Judge’s Ruling Setting Evidentiary Issues And Schedule To Complete The Record For Phases 1 And 2, p. 5 (November 17, 2015).
30 See, e.g., Joint Statement, Issue No. 55 (proposed by Monterey Peninsula Regional Water Authority) & Issue No. 56(b) (proposed by Monterey Peninsula Water Management District).
consider separate from the environmental review process, it could solicit testimony from the
parties.

D. **California American Water Supports Settlement in this Proceeding to Resolve Disputed Issues.**

Several proposed issues relate to both existing settlements and the possibility of further
settlements.31 In response to those proposed issues, California American Water appreciates that
does not require further hearings.31

V. **SPECIFIC OBJECTIONS AND COMMENTS TO ISSUES**

California American Water’s specific comments and responses to each of the issues
raised by parties in the Joint Statement are summarized in Attachment A.

VI. **CONCLUSION**

For the foregoing reasons, California American Water respectfully requests that the
Commission limit the scope of further evidentiary hearings in this proceeding to only those
issues described in these Comments.

Dated: July 11, 2017

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31 See, e.g., Joint Statement, p. 16, Issue No. 53 (proposed by Monterey Peninsula Regional Water
Authority).