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**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)
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**OPENING BRIEF ON VARIOUS LEGAL ISSUES  
BY CITIZENS FOR PUBLIC WATER**

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**JULY 11, 2012**

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This Opening Brief is submitted in accordance with Commissioner Peavey’s Scoping Memo dated June 28, 2012.

Citizens for Public Water addresses these critical legal, financial, and land use concerns that have potentially significant and inappropriate cost impacts on ratepayers. We offer these comments so as to avoid litigation, delay, unnecessary expense and public controversy in the need to agree on a water supply solution for the Monterey Peninsula residents, businesses and the general economy and future of all.

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The Commission needs to consider either lower cost alternatives or create substantive ratepayer protections to assure that Cal Am's Monterey District ratepayers do not end up paying excessively or unnecessarily for avoidable costs or another abandoned water supply project.

## **A. LACK OF PERCOLATED GROUNDWATER RIGHTS IN THE OVERDRAFTED SALINAS VALLEY GROUNDWATER BASIN**

It is our firm and unwavering belief that the California American Water Company cannot under any circumstances, except through the wrongful and prescriptive taking of privately held overlying groundwater rights, acquire any groundwater rights in, from, or proximate to the overdrafted Salinas Valley groundwater aquifers. Even with the proposed slant wells, Cal-Am's proposed project will wrongfully take percolated fresh groundwater to which it has no legal entitlement and intentionally contaminate a potable freshwater aquifer in violation of multiple state laws and regulations. And there is no legal authority for the CPUC to grant Cal-Am's illegal requests to pursue this course of action.

Further, Cal-Am's proposal to export water out of the Salinas Valley potable groundwater aquifers will violate California laws, multiple policies of state certified Local Coastal Plans, and regulations of both the State Water Resources Control Board and the Central Coast RWQCB. The current Cal-Am proposal, and its absence of water rights to support it, require the preparation of a fully new EIR because of the changed project and circumstances since the Monterey Superior Court overturned the previous EIR for its obvious defects (most importantly the failure to address the issues of water rights), failure to address takings of private property rights, failure to evaluate the legislatively mandated 2002 CPUC's "Plan B" in the mandatory alternatives analysis, and the failure to provide actual notification, as required by CEQA, to property owners within 300 feet of the CONES OF DEPRESSION to be created by Cal-Am's proposed slant wells and takings of groundwater from beneath those overlying land owners lands.

The Salinas Valley percolated groundwater basin is and has been in overdraft for over six decades, and it is not an adjudicated groundwater basin. The Salinas basin continues to experience regional and localized over-drafting of percolated groundwater in excess of annual recharge. The sole sources of recharge to the aquifer are rainfall and releases from the publicly owned Lake San Antonio and Lake Nacimiento, paid for by the landowners from whom Cal-Am proposes to wrongfully take the percolated groundwater resultant 4

from those projects. The overdraft was initially identified in Monterey County studies in the 1950's, the 1960's, and the 1970's and the basin has been repeatedly identified as being in overdraft by more recent Monterey County Water Resource Agency (MCWRA) hydrologic and hydro-geologic studies (U.S. ARCORPS, 1980; Anderson-Nichols 1980-81; Fugro, 1995; Montgomery-Watson 1998). Further, the overdraft in the North Salinas Valley aquifers has been publicly acknowledged for decades by both the Monterey County Board of Supervisors and the California Coastal Commission in the adopted "North County Local Coastal Plan" (1982), the "Monterey County General Plan" (1984) and the "North County Area Plan" (1984). Cal-Am has known of this overdraft for decades, has commented on the above reports, publicly appeared before the Board of Supervisors when these findings have been discussed, and yet Cal-Am continues its efforts to exacerbate the overdraft through its current proposal, to the detriment of hundreds of private, overlying land owners.

In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies, (*Katz v. Walkinshaw* 141 Cal. 116). This has been the law of this state for over a century. In an over-drafted basin, there is no surplus water available for new "junior groundwater appropriators" (like Cal-Am), except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. This is the situation in the over-drafted Salinas percolated groundwater basin, there is no "new" groundwater underlying the over-drafted aquifers to which Cal-Am may secure or purchase a lawful entitlement. Moreover, no legal claim or relationship, asserting that water from a distant water project (over 8 miles from Cal-Am's proposed wells to the rubber dam) may be credited for the over-drafted Salinas percolated groundwater basin, can be justified or sustained. California groundwater law refutes such "voo doo hydrology" by holding that "Waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are part of any definite underground stream, are percolating waters" (*Vineland I.R. v. Azusa I.C.* 126 Cal. 486). Cal-Am cannot take credit for the projects paid for by the overlying land owners in the Salinas Valley.

The 1998 MCWRA Montgomery-Watson report (prepared for Monterey County Water Resources Agency) determined that there is no hydrologic connection between the Salinas River and the over-drafted Salinas percolated groundwater aquifers in the areas of Cal-Am's proposed slant wells. Generally, this is explained because water, even groundwater, does not run uphill from a water course. Moreover, after extensive research, we are not aware of any continuous control maintained by MCWRA over water used or percolated into Salinas Valley confined aquifers at the Salinas River.

Loss of continuous management and control of appropriated water results in an abandonment and forfeiture of the right to use such water by the initial appropriator. In fact, MCWRA has admitted that it has no percolated groundwater rights, in spite of Cal-Am's previous false assurances and promises to the CPUC (through its previous manifestly flawed EIR comments) that Cal-Am had access to the County's water rights.

We are aware of no percolated groundwater rights to which Cal-Am may secure or purchase rights of use in the overdrafted basin. Such a purchase has been illegal under the California Water Code since at least 1914. Under the California Constitution, the CPUC has no legal authority or rights to either determine percolated groundwater rights, grant such rights, or to conclude the existence and/or allocation of such groundwater rights. Absent a prior determination by the Superior Court of the existence of surplus water rights to which Cal-Am may pursue appropriative rights, the CPUC cannot rely on the currently fatally flawed EIR, or Cal-Am's baseless claims. Nor does the CPUC have a basis to make its requisite economic and financial findings to protect the ratepayers of Cal-Am from another wasteful and unnecessary exercise by Cal Am of further expense and potential for another failed project and its resultant stranded cost.

The sole authority to determine these issues is the Superior Court. And this must proceed to final judgment before a new EIR/EIS is initiated. The rest of the water rights that may be legally exercised in the Salinas groundwater basin are "correlative overlying groundwater rights" that belong, as property rights, solely to the individual land owners whose lands overly the over-drafted percolated groundwater basin.

We are not aware of any percolated groundwater rights, appropriative or prescriptive, that are held or previously claimed by MCWRA, or MCWD, or Cal-Am in the over-drafted Salinas groundwater basin or aquifer. We are not aware of Cal-Am ever owning wells or pumping water, beyond a few acre feet per year, that it has put to beneficial uses in the Valley. And those few acre feet give Cal-Am no additional rights to further exploit the already overdrafted aquifers.

As we have pointed out, California law holds that by definition, no surplus water is legally available to “new appropriators” like Cal-Am in an over-drafted Salinas Valley groundwater basin. The clear and often re-stated law regarding groundwater rights in an over-drafted basin has been reiterated by California courts for over a century (Katz v. Walkinshaw, 141 Cal. 116; Burr v. Maclay 160 Cal. 268; Pasadena v. Alhambra 33 Cal. 2nd 908; City of Barstow v. Mojave 23 Cal. 4th 1224.

Cal-Am seems to think that it can “muscle” its way into the overdrafted Salinas Valley groundwater basin by enlisting the aid of the CPUC staff. Cal-Am would have the ALJ and the CPUC commissioners believe that simply because Cal-Am can drill wells, even slant wells, on the CEMEX property, it has a right to pump water from the overdrafted basin. The fact that excessive amounts of water can be pumped from a well is akin to the ability of a driver of a car to exceed 100 mph. Without legal authority or rights, neither is legal conduct. And Cal-Am has offered no evidence of any kind that it has any such rights.

## **B. INADEQUATE CONSIDERATION OF CONES OF DEPRESSION**

The cones of depression of the wells and the groundwater as proposed to be exploited by Cal-Am are located in the North County Coastal Zone and subject to the regulations embodied in the North County Local Coastal Plan (LCP) which is certified by the California Coastal Commission. The aquifer is an over-drafted coastal percolated groundwater aquifer (see: U.S. ARCORPS 1980; Anderson-Nichols, 1981; North County LCP 1982; Fugro 1994-96; Montgomery-Watson 1998). The use of water 7

from these formations outside of the North County coastal zone by Cal-Am (or any other party) is prohibited by the policies of the certified LCP.

The over-drafted aquifers that are proposed to be utilized by Cal-Am are required to be used by the North County LCP “to protect groundwater supplies for coastal priority agricultural uses”. These policies are incorporated into the North County LCP (a certified state plan) that have been in effect since 1982 and correspond with the requirements of state law, the California Coastal Act. Cal-Am’s proposal directly violates these state mandated requirements that prioritize water rights use and necessitates the preparation of a fully new EIR/EIS to comply with the requirements of CEQA.

### **C. CAL AM'S PROPOSAL IS A NEW PROJECT**

The project proposed by Cal-Am is a new “project” as defined by the North County Local Coastal Plan, the Monterey County General Plan, the California Public Resources Code, the California Coastal Act, the California Water Code, and the California Government Code. The Monterey County General Plan requires that any “project” applicant must have and shall demonstrate proof of a long-term, sustainable supply of water for their proposed “project”. It goes without saying that the applicant must own or control the rights to the water, or that long-standing State/County mandate and condition would be rendered meaningless. This mandate is to prevent a party like Cal Am from using its economic power to illegally take water rights from innocent land owners.

Cal-Am cannot meet these requirements that are beyond the authority of the CPUC to excuse, because it has not produced one shred of substantive evidence that it has any rights to groundwater from its proposed wells.

### **D. PROBLEMS WITH LOCAL COASTAL PLANS**

Further, the proposed project violates the existing North County LCP prohibition’s on the use of more than 50% of the safe yield level of groundwater within the affected overdrafted aquifer. Moreover, the certified North County LCP’s Land Use Plan 8

contains important state policies on water supply and water rights protection. The Cal-Am slant wells' pumping of groundwater would violate those water rights policies listed below.

Key Policy 2.5.1 The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies.

General Policy 2.5.2.3 New development shall be phased so that the existing water supplies are not committed beyond their safe long term yields. Development levels that generate water demand exceeding safe yield of local aquifers shall only be allowed once additional water supplies are secured.

Specific Policy 2.5.3.A.1 The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.

Specific Policy 2.5.3.A.2 The County's long-term policy shall be to limit groundwater use to the safe-yield level.

Specific Policy 2.5.3.A.3 The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources.

## **E. SLANT WELLS EXPAND AND COMPOUND CURRENT PROBLEMS**

Slant wells were not part of the Regional Desal Project approvals by the Public Utilities Commission, or the Monterey County Water Resources Agency, or the Marina Coast Water District. The Commission has no right or authority to approve test wells that would take or contaminate the groundwater rights and supplies under Ag Land Trust farmlands and the lands of other private land owners within the cone of depressions of the 9

proposed Cal-Am wells. Such an approval by the CPUC would intentionally violate multiple state laws and regulations and constitute an ultra vires act and taking of private

water rights and supplies by the CPUC for the benefit of a private, for profit company. The CPUC has no right to grant to Cal-Am the right to take other private land owners water, even for a test well. And the CPUC has no right, power, or authority to authorize (for the sole economic benefit of Cal-Am) the intentional, irreparable, and malicious contamination of a potable groundwater aquifer upon which private land owners rely as a source of both drinking water and for the coastal priority land uses, including agriculture, identified in statutes and adopted state regulations.

The Regional Desal Project EIR shows that the use of slant wells will initially draw at least 5% fresh water from the Salinas basin into the Cal-Am project. That percentage will dramatically increase over years of pumping, and cause increasing contamination of the aquifer by Cal-Am if the CPUC approves.

Cal-Am has offered no proof of evidence of any kind that it has any right or entitlement to drill slant wells or exercise the right to exploit groundwater that underlies the hydrogeologic formations below the Monterey Bay National Marine Sanctuary. Slant wells are relatively new technology with few known successful uses for desalination feed water." (FEIR, p. 7-28.) Slant wells would not meet the objectives of the Regional Project. (FEIR, p. 7-29.) A full and complete analysis with full and complete mitigations for taking of the fresh water that occupies the aquifers below the Monterey Bay National Marine Sanctuary is not included in the current defective EIR. Cal-Am's current proposal wrongfully assumes and asserts to the CPUC that the water to be drawn from the slant wells is "all seawater". This is factually unproven and very likely false. It is well known that the aquifers below the Monterey Bay hold substantial quantities of fresh water and this water resource is a "public trust" resource as defined by state law, the California Constitution and California case law, including both *Marks v. Whitney* (1972) and the 1981 "National Audubon decision" by the California Supreme Court.

## **F. UNADDRESSED SANCTUARY IMPACTS**

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Further, such pumping of those subsurface fresh water resources will significantly and irreparably impact the flow of fresh water that "feeds" and sustains freshwater seeps and

their rare and unique eco-systems on the walls of the Monterey Bay Submarine Canyon. This will constitute an express violation of the state public trust doctrine and a violation of the Constitution of California. Cal-Am's proposal will likely result in the illegal extraction and "mining" of Sanctuary fresh groundwater resources in violation of the 1992-1993 agreements and subsequent regulations between the federal and state agencies that share jurisdictional authority over the Sanctuary. These significant, if not illegal, impacts must now be addressed and mitigated in a new EIR/EIS since Cal Am has now substantially changed their proposed project. Each and all of these issues, and their sub-issues including the existing over-draft of potable groundwater aquifers in the Salinas Valley, the potential violation of the SWRCB Non-Degradation Policy (1967) and Cal Am's potential to cause intentional contamination of potable groundwater aquifers in violation of the CCRWQCB Basin Plan, must be fully discussed in the new EIR and the potential impacts of Cal Am's new proposal fully mitigated. Each of these issues materially and adversely impact the existing groundwater rights of overlying land owners. The costs and time involved of potential mitigations must be fully evaluated in the new EIR to fully quantify the costs to rate payers.

#### **G. FINANCING WOULD BE IN JEOPARDY, RATEPAYERS AT MORE RISK**

When a public agency or a regulated utility sells bonds or offers Certificates of Participation (C.O.P.'s) for sale to fund capital facilities projects, the Purchasers of the bonds or C.O.P.'s rely on the truthful representations made by the public agency or the CPUC related to facts and the factual circumstances surrounding the proposed project. In other words, proof and specific documentation, as specified by California groundwater law, of the the groundwater rights and the water supplies needed to fill the pipes and deliver water from the proposed project are required to be factually and specifically documented. We are not aware of any groundwater water rights or water supplies that are owned by or have been purchased by Cal-Am to "fill the pipes" of the proposed desal project. Moreover, we believe that the CPUC has an obligation and an express duty to require full and complete documentation and public disclosure and representations of 11

the source and legality of appropriation of the groundwater, or the lack thereof, by Cal-Am BEFORE the CPUC takes any action on Cal-Am's proposed project. Specific and factual proof of Cal-Am's water rights must be disclosed to the public and potential buyers of bonds or C.O.P.'s so as to avoid potential allegations of fraud. It is important to point out those challenges to illegal appropriations of groundwater by overlying land owners may lawfully be filed against Cal-Am for up to five (5) years after the initiation of the pumping of the water. Loss by Cal-Am of a suit in the Superior Court (beyond the control of the CPUC) against Cal-Am for illegal takings or wrongful prescriptive appropriations of groundwater rights from private landowners four or five years after the project is built would expose Cal-Am's ratepayers to the position of owing tens of millions of dollars to Cal-Am's bond holders, and Cal-Am would, once again, if recent history is repeated, not be held accountable. The ratepayers would pay!

Given these significant legal impediments, the CPUC approval of such a project and its attendant illegal takings of private property rights would be an "ultra vires act" whereby the CPUC would be conspiratorially complicit in the wrongful enrichment of privately owned Cal-Am at the expense of land owners and farmers in the Salinas Valley, Cal-Am rate payers, and bond holders.

## **H. OTHER CONCERNS NOT ADDRESSED BY CAL AM**

a. Cal Am seeks to avoid other regulatory requirements. Specifically, Cal Am's proposal would constitute an illegal taking of "public trust" resources that must be allocated through an adopted regulatory process by the State Lands Commission prior to any consideration by the CPUC of the desal project (no State Lands regulatory process currently exists to grant subsurface water rights from submerged state lands in a federal sanctuary to a private, for profit company without any public bidding process or CEQA and NEPA compliance.). Since the requirements of the State Lands Commission, and the attendant costs, expenses, and fees that Cal Am would be charged, will directly bear on the costs to be borne by the ratepayers, it is premature for the CPUC to take any action until and new EIR/EIS has been fully prepared and certified and only after Cal Am has secured water rights from the State Lands Commission in a competitive bidding 12

process that insures the maximum return to the taxpayers of California for the use of their water resources by a private, for profit company. Moreover, unlike Cal-Am's previous efforts to take groundwater from private land owners, Cal-Am may not rely on the doctrine of prescription to take public trust resources from the State of California. This is a violation of over 100 years of California law. Each and all of these issues must be fully evaluated and mitigated by a new EIR/EIS before any action by the CPUC may take place.

b. California law prohibits groundwater exportation from the Salinas Valley Groundwater Basin due to concern about the "balance between extraction and recharge" within the basin. (Water Code App., § 52-21 [MCWRA Act].) The environmental documents relied upon by the applicants do not dispute that the Salinas Valley Groundwater Basin is in overdraft and has been increasingly in overdraft for six decades, as shown by the steady inland progression of seawater intrusion. (FEIR, p. 14.5-24.)

c. In addition, the Monterey County Board of Supervisors adopted, in the late 1990's, a "no groundwater credit or transfer" ordinance for North County. This ordinance is to protect the water rights of overlying land owners. Cal-Am's proposal directly violates the County's existing ordinance against the transfer of water supply credits.

d. The project proposed by Cal-Am will allow the new development of lots and residential units (non-coastal priority uses) outside of the Coastal Zone that do not otherwise have water supplies. The proposed project does, however, propose to permanently increase the consumptive use of groundwater from an already over-drafted, coastal percolated groundwater basin. Cal-Am has not explained how their proposed project does not violate the mandate to prevent adverse cumulative impacts upon coastal zone groundwater resources and water rights (North County LCP Sec. 2.5.3 (A) (3)). This is an express violation of a state certified coastal policy which Cal-Am proposes and that the CPUC is prohibited from ignoring, and which necessitates the preparation of a fully new and complete EIR/EIS with mitigations, if such mitigations for the violations of these policies to protect water rights are even possible.

e. We believe Cal Am “cost representations” to the CPUC may be deceptive. The desalination costs as presented may be far higher than they really are because Cal Am intends to exploit freshwater resources from sub-surface aquifers that is far less expensive to process for potable purposes.

f. Furthermore there are criminal allegations and conflicts of interest of local officials, staff and consultants that are the subject of current FPPC investigations.

## **I. CAL AM INVESTORS SHOULD SHARE IN STRANDED COSTS**

Monterey Peninsula ratepayers have paid excessively for the following Cal Am efforts that were ultimately abandoned in the past 10 years:

1. “New” Carmel River Dam proposed by Cal Am in the 1990's incurred a cost of \$3.6 million before being abandoned in 2004. All these costs were passed on to ratepayers.
2. Pilot desal project for Moss Landing project initially proposed by Cal Am as Coastal Water Project (A04-09-019). This was replaced by the Regional Desal Project, so this abandoned Moss Landing project cost of about \$12 million was passed completely onto ratepayers.
3. Regional Desal Project (A04-09-019) costs abandoned by Cal Am in January 2012, still being litigated, and might reach \$40 million (A04-09-019). So far all costs up to January 2012 (estimated at \$30 million) are approved to be ratepayer responsibility.

In this Monterey Peninsula Water Supply Project (A12-04-019), Cal Am is embarking on another set of project components that have the risk of being abandoned. Slant well technology is the perfect example. Cal Am proposes a ratepayer surcharge be imposed for early costs, including slant wells, so that again Cal Am investors escape all risk.

This recent history of Cal Am investors avoiding all risk is abominable to ratepayers, and must not continue. The justification of an investor owned utility is to be rewarded with profit if its risk capital pays off. But the recent CPUC history rewards the corporate 14

utility even if the risk of its capital fails. This pattern is unfair to ratepayers, and cannot continue if the CPUC intends to have any credibility with Monterey Peninsula agencies, residents, businesses and ratepayers.

**J. CAL AM SHAREHOLDERS SHOULD BEAR SOME OF THE COSTS FOR IMPLEMENTING A DIFFERENT WATER SUPPLY SOLUTION**

This new application can be interpreted as a cost overrun from the Regional Desal Project (A04-09-019). This comment is a paraphrase of DRA's Opening Brief filed on July 2, 2010, Item XIII. B. in A04-09-019. In D.06-07-027, the Commission adopted a stipulation between DRA and PG&E that created a 90/10 split between ratepayers and shareholders for up to \$100 million in costs above the stipulated cost cap. Although the CPUC decision in A04-09-019 did not establish a hard cost cap, the principle still applies.

Imposing such a defined 90/10 split in this application (A12-04-019) would provide ratepayers additional protection and give Cal Am an incentive to minimize the additional costs necessary to complete a project.

**K. CAL AM SHAREHOLDERS SHOULD BEAR THE COST OF LEGAL CHALLENGES RELATED TO MONTEREY COUNTY HEALTH AND SAFETY CODE CHAPTER 10.72.**

Monterey County Code Chapter 10.72.030(B), which states the need for desalination facilities to be publicly owned, was passed in 1989. Cal Am's Coastal Water Project (A04-09-019) was developed and submitted to the Commission in 2004 with full knowledge of the code prohibiting private entities from owning desalination facilities. Cal Am made a management decision then that its project could be feasible despite the code. As Cal Am stated during Phase I of the Coastal Water Project proceeding in 2006, "we believe the county will not stand in the way of this project. That's what we believe."

Again in 2012, in this current application, Cal Am is assuming it can proceed without complying with the county ordinance. This action by Cal Am has no relevance to a new water supply. Cal Am in partnership with a public agency could avoid delay and 15

costs. This is a management decision by Cal Am and is not required. Thus, Cal Am investors, and not ratepayers, should bear costs associated with challenges to its ownership of any project that seeks to avoid compliance upon Section 10.72. Faith-based beliefs do not provide a justification for imprudent assumptions or inappropriate cost recovery. Even the letter from a CPUC staff attorney does not change this issue.

Furthermore, the attempt by Cal Am to bypass the ordinance is a violation of community values, which CPUC regulations state that the CPUC will uphold. The two competing desal proposals have relied on this ordinance to create a level playing field. By bypassing the ordinance, Cal Am is creating litigation exposure, if not for itself, then for the County for selective enforcement and misleading guidance to other desal sponsors. Any litigation will delay succeeding actions. All Cal Am needs to do to avoid more delay and additional costs is to seek a public partner. Two exist locally, and can fulfill the requirements – Monterey Peninsula Water Management District and Monterey Peninsula Regional Water Authority. A third option is a city or a partnership of cities.

Cal Am should bear all costs for this divergence from community values and this totally unnecessary litigation.

## **CONCLUSION**

The project as currently proposed has been substantially and materially changed from the original "regional desal project" that has been abandoned. The California Superior Court (Monterey County) has overturned the previous EIR as inadequate, flawed, and incomplete. Cal-Am has no percolated groundwater rights in the Salinas Valley. Slant wells are experimental. There are far too many unanswered questions to allow Cal Am to continue as it has proposed.

Finally and specifically, we request, pursuant to the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), that the California Public Utilities Commission order and direct the immediate

preparation and certification of a full new environmental impact report (NEW EIR/ EIS) prior to any consideration of the currently proposed California American Water Company (Cal Am) desalination project near Marina, CA.

Respectfully submitted,

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**JULY 11, 2012**