



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

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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)

**REPLY BRIEF OF
THE COUNTY OF MONTEREY AND
MONTEREY COUNTY WATER RESOURCES AGENCY
ON LEGAL ISSUES IN ACCORDANCE WITH
ADMINISTRATIVE LAW JUDGE'S RULING
DATED JUNE 1, 2012**

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INTRODUCTION

Monterey County (“County”) and Monterey County Water Resources Agency (“Agency”) submit this Reply Brief regarding the Monterey County desalination ordinance and water rights questions in order to call attention to one critical issue in the various parties’ discussion of water rights: the supply available to the Groundwater Replenishment Project (“GRP”) on which CalAm’s proposed project may partly rely is an interruptible supply. Converting the supply available to the Monterey Regional Water Pollution Control Agency (“MRWPCA”) and thence to CalAm will require negotiation and further agreement with the Agency; the long-term availability of this supply is therefore a matter, much like the applicability of the subject ordinance,¹ whose resolution largely lies outside the present proceeding.

DISCUSSION

In its opening brief, CalAm defers to the MRWPCA’s discussion of the GRP. The MRWPCA’s opening brief, in turn, provides a very detailed presentation of the various entitlements to supplies of treated wastewater under a number of agreements between the MCPCA, the Agency, and Marina Coast Water District (“MCWD”). The principal agreement for purposes of determining how firm a water supply would be available to the Project from the GRP is entitled *Agreement Between the Monterey County Water Resources Agency and the Monterey Regional Water Pollution Control Agency for Construction and Operation of a Tertiary Treatment System*, dated June 16, 1992, and *Amendment No. 3* to that Agreement, dated May 28, 2002. (MRWPCA opening brief, exhibits 3 and 4.) Under that Agreement, the Agency is contractually entitled to SVRP water up to 19,500 acre-feet per year.

Although the MRWPCA’s opening brief suggests that its right to recycled water is limited, the point is not made explicit either conceptually or numerically. For example, the brief points to the 1992 Agreement to show that flows not needed to meet the Agency’s “authorized demand” are excepted from what the MRWPCA must commit to the Salinas Valley Reclamation Project (“SVRP”), the primary regional water recycling effort. (MRWPCA Opening Brief, p. 6.) Though ostensibly describing a constraint on its available supply, this characterization seems to suggest that a significant amount of water would be available to the MRPCA for the GRP. As

¹ As the County and the Agency pointed out in their opening brief, the County has sued CalAm in San Francisco superior court for a declaratory judgment regarding the ordinance’s applicability to CalAm.

noted, however, the Agency's "authorized demand" entitles it by contract to call upon SVRP water up to 19,500 acre-feet per year, only 2,900 afy less than the current inflow to the SVRP recycling plant. The Agency's maximum demand to date is 14,200 afy. After subtracting the supplies committed to MCWD and to the Regional Urban Water Augmentation Project ("RUWAP"), the remaining contingent supply available to MRWPCA totals 5,194 afy, and this entire supply is interruptible because it remains subject to the Agency's "authorized demand." A table setting forth the entitlements to recycled water based on the agreements discussed in the MRWPCA brief is attached hereto as Exhibit "A."

In other words, virtually all of MRWPCA's entitlement can be interrupted by the Agency's further demand for supplies for any number of uses. These include, without limitation, (1) an expanded irrigation season, (2) development of recharge ponds to further counteract sea water intrusion, (3) expansion of the irrigated zone, and (4) release to the Salinas River for additional groundwater recharge. It will be necessary for the Commission to take into account the Agency's contractual right to this supply and its current and potential uses by irrigators in evaluating CalAm's suggested use of GRP water as part of its Project. If the MRWPCA cannot identify an uninterruptible recycled water supply adequate to the Project's need, the desalination facility must be large enough to make up for any shortfall resulting from that inadequacy.

Finally, the Project's potential use and return of groundwater must be carefully monitored by the Agency, which has statutory responsibility for the health of the Salinas Groundwater Basin pursuant to the Monterey County Water Resources Agency Act ("Agency Act," Water Code App. Chap. 52). Any project the Commission finally approves must accord with that authority, and must include financing adequate to ensure the Agency's ability to carry out that monitoring consistently with the Agency Act.

CONCLUSION

The Agency and the MRWPCA have enjoyed a long history of collaboration. The County and the Agency have every reason to believe that the GRP will benefit from the same kind of cooperation, but the process must start with a common and explicitly stated understanding among all concerned, including the Commission, of rights to and limitations on recycled water supplies.

Dated: July 25, 2012

Respectfully submitted,
DOWNEY BRAND LLP

By: /s/ Steven P. Saxton
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**Attorneys for the County of Monterey and the
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EXHIBIT A

ANALYSIS OF RECYCLED WATER COMMITMENTS AND AVAILABILITY

FIRM SUPPLY FOR GROUNDWATER REPLENISHMENT PROJECT ("GRP")

Plant Inflow ¹	22,400	acre-ft/year
WRA Allotment ²	<u>(19,500)</u>	acre-ft/year
MRWPCA Available Amount	<u>2,900</u>	acre-ft/year
MRWPCA Available Amount	2,900	acre-ft/year
MCWD Allocation ³	(2,240)	acre-ft/year
MRWPCA-RUWAP	<u>(766)</u>	acre-ft/year
Firm Supply Available for GRP	<u>-106</u>	acre-ft/year

INTERRUPTIBLE SUPPLY FOR GRP

Plant Inflow	22,400	acre-ft/year
Maximum WRA Take to Date	<u>(14,200)</u>	acre-ft/year
Net Available	<u>8,200</u>	acre-ft/year
Net Available	8,200	acre-ft/year
MCWD allocation	(2,240)	acre-ft/year
MRWPCA-RUWAP	<u>(766)</u>	acre-ft/year
Interruptible Supply Available for GRP	<u>5,194</u>	acre-ft/year

¹ Secondary treatment facility is sized for 33,154 acre-ft/year

² Recycled treatment facility is sized for 29,250 acre-ft/year

³ Does not include 300 acre-ft/year conditionally allocated by MRWPCA to MCWD pursuant to the 2009 Regional Urban Water Augmentation Project MOU