

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



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Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates.

A.04-09-019  
(Filed September 20, 2004;  
Amended July 14, 2005)

**STATUS REPORT OF CALIFORNIA-AMERICAN WATER COMPANY**

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**STATUS REPORT OF CALIFORNIA-AMERICAN WATER COMPANY**

As directed by Administrative Law Judge (“ALJ”) Angela Minkin at the January 24, 2012 prehearing conference,<sup>1</sup> California-American Water Company (“California American Water”) hereby files its Status Report on the Regional Desalination Project. ALJ Minkin requested California American Water, Marina Coast Water District (“MCWD”), and Monterey County Water Resources Agency (“MCWRA”) (collectively, “the Parties”) try to file a joint status report. The three parties met and conferred and worked in good faith in an effort to arrive at a joint status report. This included several lengthy conference calls to discuss the content of the status report, an outline prepared by California American Water, an initial draft joint status report prepared by California American Water, subsequent revisions from MCWD and MCWRA, as well as extensive email correspondence and numerous telephone calls. Unfortunately, the Parties were unable to reach agreement. California American Water reserves the right to reply to any status report filed by either or both of the other two parties.

At the prehearing conference, ALJ Minkin directed the Parties to address in the status report (1) the Regional Desalination Project, (2) California Environmental Quality Act (“CEQA”) issues related to the Project, and (3) how California American Water intends to move forward. California American Water addresses these issues below. California American Water

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<sup>1</sup> Reporter’s Transcript (“RT”) 142:12-14, 143:21-22, 145:2-13 (Minkin/ALJ).

is also concurrently submitting its Compliance Filing, as directed by ALJ Minkin.<sup>2</sup> In the Compliance Filing, California American Water will provide additional detail on the issues discussed below, as well as the other issues raised by ALJ Minkin at the Prehearing Conference.

## **I. STATUS REGIONAL DESALINATION PROJECT**

California American Water, MCWD and MCWRA entered into the Water Purchase Agreement and related agreements in April 2010. The Water Purchase Agreement states that the Parties determined that the Regional Desalination Project was in the best interest of the customers served by each of MCWD and California American Water and served the public interest.<sup>3</sup> The California Public Utilities Commission (“Commission”) approved the Regional Desalination Project, the Water Purchase Agreement, and certain related agreements in D.10-12-016.<sup>4</sup> The Water Purchase Agreement became effective January 11, 2011.

On August 12, 2011, CAW sent MCWRA and MCWD a notice of default for failure to obtain all or partial financing by May 2011, as required by the Water Purchase Agreement.<sup>5</sup> Additionally, in or about April 2011 allegations emerged that MCWRA Director Steve Collins had a conflict of interest under Government Code Section 1090 and possibly other California statutes with respect to the Water Purchase Agreement and other project agreements. MCWRA board member Steve Collins resigned as a board member of MCWRA on April 11, 2011. In late August 2011, the Parties proceeded to confidential mediation with a Commission-sponsored mediator to address issues related to the Regional Desalination Project.

In letters dated July 7, 2011, July 20, 2011, and August 22, 2011, MCWRA stated that the Water Purchase Agreement and related agreements were void based on the conflict of interest violation. On September 28, 2011, California American Water hand-delivered letters to MCWD and MCWRA terminating the Water Purchase Agreement and related

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<sup>2</sup> RT 136-145 (Minkin/ALJ).

<sup>3</sup> Water Purchase Agreement, Recital K, p. 2.

<sup>4</sup> D.10-12-016, *Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates*, 2010 Cal. PUC LEXIS 548.

<sup>5</sup> Water Purchase Agreement, § 7.1(a), p. 39.

agreements, based on MCWRA's statements that the Collins conflict rendered the Water Purchase Agreement and related agreements void.

After five months of mediation, the Parties were unable to reach agreement on how to settle disputed issues and the mediation ended on January 16, 2012. At the conclusion of mediation, and in light of the 2016 deadline from the State Water Resources Control Board, California American Water determined that it is no longer reasonable to move forward with the Regional Desalination Project. On January 17, 2012, California American Water publicly announced that it would be withdrawing its support from the Regional Desalination Project and would consider alternative desalination projects.

## **II. CEQA**

Ag Land Trust has challenged certain actions taken by MCWD to implement the Regional Desalination Project and argued that MCWD, not the Commission,<sup>6</sup> should have been the lead agency under CEQA for the Regional Desalination Project and that the Environmental Impact Report ("EIR") was inadequate. Ag Land Trust also alleged that the project would interfere with their right, as an overlying property owner, to use Salinas Basin groundwater. It could take up to a year or longer to resolve this matter. Ag Land Trust also sued MCWRA under CEQA. MCWRA requested, and the Superior Court refused, to consolidate these two cases. The matter has not been active pending the outcome of the MCWD litigation.

## **III. NEXT STEPS**

Since the conclusion of the mediation on January 16, 2012, MCWRA and California American Water have met to discuss whether there are items that can be settled in the best interest of their respective customers and taxpayers. Just recently, the three parties,

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<sup>6</sup> The Commission determined that it should be the lead agency in D.03-09-022 and confirmed its lead agency status in D.09-12-017 and D.10-12-016. (D.03-09-022, *Application of California American Water Company (U 210 W) for a Certificate that the Present and Future Public Convenience and Necessity Requires Applicant to Construct and Operate the 24,000 acre foot Carmel River Dam and Reservoir in its Monterey Division and to Recover All Present and Future Costs in Connection Therewith in Rates*, 1997 Cal. PUC LEXIS 1279, \*15-16; D.09-12-017, *Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates*, 2009 Cal. PUC LEXIS 764, \*32; D.10-12-016, 2010 Cal. PUC LEXIS 548, \*19.

MCWRA, MCWD, and California American Water, have selected a date for another meeting to continue discussions over resolving remaining project issues and finding a water supply solution. These meetings constitute confidential settlement communications. California American Water still plans to file for approval of an alternate project by April 23, 2012.

March 1, 2012

Respectfully submitted,

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