



**FILED**

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

In the Matter of the Application of California-American Water Company 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.

Application 04-09-019  
(Filed September 20, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING IN PART AND DENYING IN PART MONTEREY COUNTY WATER  
RESOURCES AGENCY MOTION TO STRIKE COMMENTS OF THE DIVISION  
OF RATEPAYER ADVOCATES**

As set forth in the Amended Scoping Memo Ruling for Phase 2 of this proceeding,<sup>1</sup> on April 7, 2010, California-American Water Company (Cal-Am), Marina Coast Water District, Monterey County Water Resources Agency (MCWRA), Monterey Regional Water Pollution Control Agency, Surfrider Foundation, and Public Trust Advocates (Settling Parties) jointly filed a Motion to Approve Settlement Agreement. The proposed Settlement Agreement includes two implementing agreements, a proposed Water Purchase Agreement and an Outfall Agreement. On April 30, the Division of Ratepayer Advocates (DRA) and Monterey Peninsula Water Management District (MPWMD) filed and

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<sup>1</sup> Phase 2 Joint Amended Scoping Memo Ruling of Assigned Commissioner and Administrative Law Judge issued April 13, 2010.

served comments opposing the Settlement. Both DRA and MPWMD also served testimony addressing various provisions of the proposed settlement and implementing agreements.

On May 7, 2010, MCWRA filed and served a motion to strike Section V.F of DRA's comment. As set forth in the transcript of the preliminary evidentiary hearing held prior to workshops on May 10, 2010,<sup>2</sup> I granted MCWRA's request for an expedited response and DRA timely filed and served its response on May 17, 2010.

MCWRA contends that DRA's comments in this section are properly comments on the environmental documents, which the Commission certified in Decision (D.) 09-12-017.<sup>3</sup> Thus, MCWRA maintains that DRA's comments are excluded from the issues addressed in this portion of the formal record. Furthermore, MCWRA argues that comments must be based on facts and the law, that DRA's comments in this section are not based on facts in the record, and states that DRA's testimony does not address the groundwater issues.

DRA explains that the comments at issue go directly to the cost implications of the proposed Regional Project, as well as the feasibility of ensuring that Cal-Am receives its proper allocation of water. DRA concedes that its comments discuss the uncertainty of groundwater modeling addressed in both the Draft Environmental Impact Report (DEIR) and the Final Environmental Impact Report (FEIR) and the concomitant risks to ratepayers, but contends that

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<sup>2</sup> See Reporter's Transcript at 1039.

<sup>3</sup> I note that MCWRA's language is unnecessarily argumentative.

issues related to cost and feasibility are directly relevant to this portion of the proceeding.

In this ruling, I partially grant MCWRA's motion to strike Section V.F of DRA's comments. In previous rulings, I have carefully delineated the approach to consideration of environmental issues and issues associated with need, economics, and costs.<sup>4</sup> Groundwater modeling was thoroughly covered in the environmental documents, and factors related to the percentage of total dissolved solids, or salinity, in the source water for the desalination plant, maintaining the balance of groundwater in the Salinas Valley Groundwater Basin, consistent with the MCWRA Agency Act, and the effect of seawater intrusion were addressed in both the DEIR and the FEIR, certified by the Commission in D.09-12-017. Indeed, Appendix E of both the DEIR and the FEIR explicitly assesses groundwater issues. Chapters 4, 5, and 6 address groundwater issues and the proposed Regional Project, as does Master Response 13.6. Groundwater is also addressed in Appendix P (DEIR and FEIR) and Appendix Q (FEIR). I am satisfied that these issues have been comprehensively addressed in the environmental documents. Therefore, I will strike the comments directly associated with groundwater modeling.

However, DRA is correct that its comments in this section also address its legitimate concerns regarding costs and feasibility of slant wells and vertical wells as feedwater sources for the Regional Project. These comments go directly to its concerns regarding costs of the proposed Regional Project and the Water Purchase Agreement and should not be stricken.

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<sup>4</sup> See Ruling of February 11, 2009, March 26, 2009 Scoping Memo Ruling, Rulings of June 22, 2009, and July 21, 2009.

Therefore, I strike portions of Section V.F of DRA's comments, as follows:

Page 41, Section V.F. in the middle of the page through page 42;

Table 1, page 45 (and the lead-in sentence on page 44);

Page 46, Section V.F.2 through the first two lines of page 49;

Page 51 through the first three lines on page 52; and

Page 54, beginning with Section V.F.3 through the first paragraph on page 56.

The remaining comments in Section V.F. are comments on the Settlement Agreement and the Water Purchase Agreement *per se* and address DRA's policy and legal concerns associated with minimizing costs to Cal-Am ratepayers and ensuring that Cal-Am receives its full water allocation. These comments should not be stricken. I grant MCWRA's motion to the extent set forth herein; in all other respects, it is denied.

**IT IS SO RULED.**

Dated May 24, 2010, at San Francisco, California.

/s/ ANGELA K. MINKIN

Angela K. Minkin

Administrative Law Judge

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Dated May 24, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ  
Cristine Fernandez

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