FILED
06-01-12
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U 210 W) 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)

PRE-HEARING CONFERENCE STATEMENT OF LANDWATCH MONTEREY COUNTY

Mark R. Wolfe, CSB No. 176753
John H. Farrow, CSB No. 209221
M. R. WOLFE & ASSOCIATES, P.C.
1 Sutter Street, Suite 300
San Francisco, CA 94108
Tel: (415) 369-9400
Fax: (415) 369-9405
Email: jfarrow@mrwolfeassociates.com

Attorneys for LANDWATCH MONTEREY COUNTY

June 1, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U 210 W) 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)

PRE-HEARING CONFERENCE STATEMENT OF LANDWATCH MONTEREY COUNTY

Pursuant to Rule 7.2 of the California Public Utility Commission's ("Commission") Rules of Practice and Procedure and Administrative Law Judge, Weatherford's May 11, 2012 Ruling Setting a Prehearing Conference on the scope and schedule of this proceeding, LandWatch Monterey County ("LandWatch") files this Pre-hearing Conference Statement.

I. Issues

LandWatch identified issues that should be addressed in this proceeding in its Protest, filed May 24, 2012. LandWatch reiterates these issues here as follows.

ENVIRONMENTAL REVIEW PROCESS: As it did in A.04-09-019, the Commission should plan to certify a new environmental document under CEQA before it deliberates on the choice of alternative. A final environmental document should be available to inform discussion of the Project's environmental constraints before testimony is taken.

Even if CEQA mandated only a Subsequent Environmental Impact Report ("SEIR") to the Coastal Water Project ("CWP") EIR, the Commission must also comply with its independent obligation to consider environmental effects under Public Utility Code

section 1002(a)(4). Thus, the scope of the environmental review cannot and should not be limited to the few issues identified in the Application, especially if the basis of that limitation is a narrow reading of CEQA's requirements for an SEIR.

SCOPE OF ENVIRONMENTAL REVIEW: The following issues should be addressed in the Commission's environmental review:

- Alternatives to Cal-Am's proposal: Newly available information indicates that the CWP EIR overstated demand. The new demand information indicates that a smaller project is feasible, which would reduce impacts and minimize rate impacts. To ensure that the smallest possible project is evaluated, Project objectives should be reformulated to ensure that the Project is intended only to address existing demand, based on current information, and net of other likely water supply projects. Furthermore, additional supply projects are now under review, including the "People's Desalination Project." Feasible alternative supply projects should be evaluated.
- Growth inducement: Newly available information on existing demand and water supply projects suggests that the Project as proposed may actually contribute to an oversupply of water. For example, multiple desalination projects in the region may be constructed. Furthermore, as the Project is proposed, Cal-Am may proceed with a 9 MGD desalination project even though the GWR project is actually implemented. This requires a new analysis of induced growth, particularly since the CWP EIR concluded that there would be no induced growth from the North Marina desalination alternative.
- Brine disposal: The feasibility of, and impacts from, the proposed brine disposal facility must be evaluated in light of current information, including changes to the proposed Project and the availability of dilution wastewater in the face of new demands for that wastewater. The discussion must address the State Water Resources Control Board non-degradation policy and the public health impacts of the potential conflicts with sewage disposal. The discussion must explain how the MRWPCA outfall could be made available in light of its agreement with MCWD regarding use of the outfall.

- Impacts to groundwater: Groundwater pumping may result in impacts to overlier water rights, agriculture, North County groundwater users, and urban users. Impacts may occur through locally depressed water levels, increased salt water intrusion, and depletion of up-gradient North County groundwater sources. The discussion should evaluate consistency with adopted plans dedicating local groundwater to agriculture.
- Threats to special status species: New terrestrial species will be affected at the proposed site and at new linear facilities. Ocean species may be affected by brine disposal and loss of freshwater seeping.
- Impacts related to contingent water supply: Whether dictated by Monterey County Ordinances section 10.72.020 or merely by prudence, the Project will require some contingent water supply or demand reduction scheme in the event of likely failures. Impacts such as shortages or impacts to the Carmel River from unplanned diversions needed to avoid a public health emergency must be discussed.

MINIMIZATION OF RATE IMPACTS: Potentially enormous rate increases may be imposed on a small number of Cal-Am customers due to this Project and to several other applications, including the Carmel River Reroute and San Clemente Dam Removal Project (A.10-09-018) and the Cal-Am's general rate case (A.10-07-007). The following issues must be carefully considered in order to minimize rate impacts:

- The Project should be sized to meet current demand, net of other likely water supply projects.
- The Project should select the lowest cost components, consistent with environmental constraints.
- The Project should use the lowest cost financing, which is likely to be available only through a public-private partnership. Availability of State Revolving Fund financing to a private project appears to be uncertain and must be verified. Tax-exempt bond financing through a public agency partner may be less expensive and more certain. An equivalent mechanism to the proposed Surcharge 2 to fund a large portion of construction costs on a pay-as-you-go basis (e.g., a pass-through

of that surcharge to a public agency partner) could make this interest-free construction financing available to a public agency partner and still provide the graduated rate increase to address rate shock.

- The Project should be publicly financed or entirely financed with debt, to avoid the cost of an equity return.

PUBLIC PARTNER: The lack of any role for local ratepayers in governance is problematic. The same policies animating the County's ordinance banning private desalination projects should guide the Commission to ensure that there is a public agency partner. For example, a public partner may insulate the risk of operational disruptions and public health impacts in the event of Cal-Am bankruptcy. As noted, a public partner may be required to ensure the lowest cost financing and to minimize rate impacts. Furthermore, private desalination projects may be inconsistent with California Coastal Commission policies that concern community control, growth inducement, water conservation incentives, use of public trust resources, and recourse in the event of financial failure. The California Public Utility Commission has the authority to mandate public ownership of the Project under Public Utility Code section 1005(a). If a public partner is appropriate, the Commission should resolve the CEQA lead agency issues before certification of an environmental document under CEQA.

COMMITMENT TO GWR: The application includes provisions for Cal-Am to participate in the planned Monterey Peninsula Groundwater Replenishment Project, but it allows Cal-Am to decline to participate at its sole discretion – which might be exercised solely in consideration of investor return. The GWR component is likely to be environmentally less adverse and even beneficial compared to the desalination component, and data in the application suggests that rate impacts would be less if GWR is implemented. Since GWR is proposed as implementation of the AB 1132 plan, and since the Commission has ratesetting authority over Cal-Am's use of this water source, the Commission should not permit Cal-Am to refuse to participate in the GWR project without a compelling reason. The Commission, not Cal-Am should retain the discretion to make this determination. And the Commission should ensure that Cal-Am is provided

with all appropriate incentives to ensure the success of the GWR project, including financial participation and consequences for avoidable failure of the GWR project.

LEGAL AND TECHNICAL IMPEDIMENTS AND TIMING: The Project faces a number of actual and potential legal hurdles that create risk of litigation and delay. Even if the legal positions taken by Project proponents are ultimately vindicated in the courts, delay may compromise the Project financially and result in non-compliance with SWRCB Order 95-10. Project proponents and the Commission should acknowledge and address the following legal impediments early in the process, seeking compromise between potential litigants where appropriate to minimize litigation risk:

- Public ownership requirement: Although CPUC General Counsel has opined that Monterey County Ordinance section 10.72.030(B) is subject to preemption, it is not clear that all parties will agree with this analysis. The existence of this ordinance and the likelihood of litigation may suggest that the prudent course would be to seek a public partner.
- Export ban: Section 52-21 of the organic act for the Monterey County Water Resources Agency bans groundwater export. The proposed desalination Project's intake wells will draw at least some freshwater from the Salinas Valley Groundwater basin.
- Water rights: It is not clear how the Project would obtain necessary rights to appropriate any freshwater from the overdrafted Salinas Valley Groundwater basin.
- CEQA Lead Agency: If a public agency partner is appropriate, the Commission should ensure that the correct lead agency certifies a CEQA document. There is no reason that the Commission cannot retain jurisdiction over the Project through its jurisdiction over Cal-Am, even if a public agency partner acts as lead agency under CEQA.

In addition, slant wells are in limited use and may encounter technological problems. Their use may significantly delay realization of Project objectives. Alternatives to this approach must be considered.

II. Workshop

LandWatch supports holding a workshop in view of the complexities of the issues and need for timely resolution.

III. Settlement

LandWatch cannot predict the prospects for settlement in view of the number of parties and the diversity of their interests. However, LandWatch is willing to participate in settlement discussions, with or without mediation, as long as they are productive.

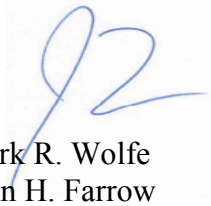
IV. Schedule

The proposed schedule does not identify the timing of environmental review. A completed environmental review, including public comments and responses, is critical to formulation of mitigation and alternatives, which may constrain the selection and costs of the options available for evaluation in the formal proceedings. In order to ensure that environmental considerations are incorporated into the formal proceedings, a final environmental document should be published before testimony and evidentiary hearings.

To accommodate the need to prepare an environmental review and to provide parties with sufficient time to prepare testimony, we concur with the proposal by the Division of Ratepayer Advocates in its Protest that Intervenor testimony not be required until September 21, 2012, with the balance of the schedule adjusted as DRA proposes.

Dated: June 1, 2012

M. R. WOLFE & ASSOCIATES, P.C.



Mark R. Wolfe
John H. Farrow
Attorneys for LandWatch Monterey County