

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



FILED

11-30-11
04:59 PM

Application of California-American Water Company (U210W) for Authorization to Implement the Carmel River Reroute and San Clemente Dam Removal Project and to Recover the Costs Associated with the Project in Rates.

Application No. 10-09-018

**COMMENTS ON PROPOSED DECISION AUTHORIZING CALIFORNIA-AMERICAN
WATER COMPANY TO IMPLEMENT THE CARMEL RIVER REROUTE AND SAN
CLEMENTE DAM REMOVAL PROJECT**

Steven Kasower
Strategic Economic Applications Company
1720 Q Street
Sacramento, CA 95811-6717
Telephone: 916-442-1477
Facsimile: 916-442-3109
Email: steve@seacompany.org

Representing:

Planning Conservation League Foundation
1107 9th Street, Suite 901
Sacramento, CA 95814
Telephone: 916-882-5632
Facsimile: 916-822-5650
Email: bresznik@pcl.org

Bruce Reznik
Executive Director for the Planning
Conservation League and the Planning
Conservation League Foundation

November 30, 2011

1 **1. Public Safety Remediation**

2 The Planning Conservation League Foundation is pleased that the Proposed Decision
3 recognizes that the project is the best way to remove the very real threat to lives and
4 property that would occur should the San Clemente Dam fail, “All parties to this
5 proceeding agree that Cal-Am must address the seismic and flood safety issues of the
6 current Dam and that the Project is the best alternative to do so. Based on the discussion
7 above, we should authorize Cal-Am to implement the Project, in partnership with the
8 Conservancy and NMFS.” (Proposed Decision starting at page 10.)

9 **2. Adoption of Recommendation Made Solely by PCLF**

10 We are also pleased that the Proposed Decision incorporates the specific
11 recommendation made solely by PCLF relating to the problem of accumulating sediment
12 behind Los Padres Dam, the other dam owned by California American Water Company
13 on the Carmel River.

14 “We also address here PCLF’s recommendation that Cal-Am study the physical
15 options for managing continued sediment accumulation in its Los Padres Dam. We direct
16 that in its next general rate case proceeding, expected to be filed in July 2013, Cal-Am
17 sponsor a study that measures the level and rate of accumulated sediment and that
18 includes potential remediation or management alternatives for addressing the
19 accumulated sediment and includes financial options such as depreciation, net negative
20 salvage value, and cost of removal.” (Proposed Decision at page 34.)

21 Implementation of PCLF’s recommendation will prevent unmanaged siltation of Los
22 Padres Dam from becoming an accumulating contingent liability that would have to be
23 apportioned between ratepayers and shareholders in the future. This is likely to be in the
24 same order of financial impact (i.e. tens of millions of dollars) as remediation of the
25 problems with San Clemente Dam.

26 **3. Rate Recovery for Costs Between 2000 and 2004.**

27 Based on testimony concerning its personal knowledge of events that transpired
28 between 2000 and 2004 PCLF disagrees with the Proposed Decision’s Conclusion of
29 Law 10, “Cal-Am did not pursue its Dam buttressing proposal in a period of great
30 uncertainty for utility planners nor did it exercise reasonable managerial skill in
31 identifying and assessing the risks of its proposal or properly analyze and assess
32 alternative options.”

33 As his testimony indicates, PCLF witness Jonas Minton was the Deputy Director of
34 the California Department of Water Resources responsible for overseeing the Division of
35 Safety of Dams (DSOD) from 2000 to 2004. In his uncontested rebuttal testimony Mr.
36 Minton noted that DSOD was the lead agency for CEQA compliance, not California
37 American Water Company. This is acknowledged in the Proposed Decision at Page 8,
38 “A draft EIR was first issued by DSOD for review on December 23, 1998.” and “Due to
39 extensive public and agency comments, the DSOD issued a second EIR, referred to as the
40 Recirculated Draft EIR (RDEIR) in 2000. After receiving further critical comments,
41 DSOD withdrew the RDEIR in 2002.” (emphasis added) **In essence DSOD dictated**

42 **what studies needed to be completed and California American was required to pay**
43 **for them.**

44 Again based on his direct knowledge Mr. Minton testified that, "... Cal Am complied
45 with every direction of DSOD to fund and participate in studies required to analyze
46 traditional and nontraditional approaches. This finally led to the truly unique engineering
47 solution for sequestering the sediment by rerouting a portion of the river channel and
48 removing the dam. " (Minton Rebuttal testimony, lines 132-136). It is these
49 expenditures, as directed by DSOD, that the Proposed Decision would deny for recovery
50 from ratepayers.

51 The Proposed Decision includes as its tenth Conclusion of Law that, "10. Cal-Am did
52 not pursue its Dam buttressing proposal in a period of great uncertainty for utility
53 planners nor did it exercise reasonable managerial skill in identifying and assessing the
54 risks of its proposal or properly analyze and assess alternative options." (Proposed
55 Decision at Page 41.)

56 That is directly contradicted by Mr. Minton's rebuttal testimony that, "... the
57 irresolvable conundrum was that if the dam was buttressed and left in place there was a
58 possibility that the National Marine Fisheries Service (sometimes referred to as NOAA)
59 would not issue a permit under the Federal Endangered Species Act (ESA). On the other
60 hand there was no feasible way identified to deal with the sediment if the dam was to be
61 removed." (Minton Rebuttal testimony at lines 111 to 115.) This senior safety official's
62 testimony continued, "The reason that resolution of this safety deficiency has taken so

63 long was the unprecedented complexity of the problem.” (Minton Rebuttal testimony at
64 lines 131 and 132.)

65 This demonstrates that there was in fact great uncertainty as to whether any physical
66 project was feasible. It was only through the work mandated by DSOD and paid for by
67 California American Water Company that such an unprecedented solution was
68 developed.

69 **4. Intervenor Compensation**

70 Although we fully recognize Judge Walwyn’s denial of PCLF’s Notice of Intent
71 (NOI) to Seek Intervenor Compensation, (Proposed Decision at page 5), we note that
72 under Rule 11.6 of the Commission’s Rules of Practice and Procedure an extension of
73 time to file may be granted.

74 In consideration of the fact that PCLF was the only party to identify and recommend
75 a prudent means for dealing with the parallel, multi -million dollar problem developing at
76 Los Padres Dam and for the reasons set forth in our original Notice of Intent to Seek
77 Intervenor Compensation we request that the Commission reverse that denial.

Respectfully submitted, November 30, 2011



Steven Kasower, Representing the Planning and Conservation League Foundation

1107 9th Street, Suite 900

Sacramento, CA 95814

Phone (916) 442-1477

steve@seacompany.org