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.

RESPONSE OF CITY OF MARINA IN OPPOSITION TO CALIFORNIA-AMERICAN WATER COMPANY’S REQUEST FOR OFFICIAL NOTICE

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ATTORNEYS FOR THE CITY OF MARINA

Dated: January 19, 2018
RESPONSE OF CITY OF MARINA IN OPPOSITION TO CALIFORNIA-AMERICAN WATER COMPANY’S REQUEST FOR OFFICIAL NOTICE

The City of Marina (“City” or “Marina”) respectfully submits this Response in opposition to California-American Water Company’s (“CalAm’s”) Request for Official Notice filed in this Application on January 9, 2018. This Response is timely filed pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure.¹

I. THE “CORRESPONDENCE” FOR WHICH CAL-AM REQUESTS “OFFICIAL NOTICE” DOES NOT COMPLY WITH RULE 13.9, AND CAL-AM’S REQUEST SHOULD BE DENIED.

By its “Request,” CalAm seeks “official notice” of correspondence signed by the Mayor of Salinas Joe Gunter and addressed to Bill Kampe. While Mr. Kampe is a Mayor (Pacific Grove), the letter is sent to him in his position as President of the Monterey Peninsula Regional Water Authority (MPRWA) and is sent from Mr. Gunter, not in his capacity as Mayor of the City of Salinas, but rather “based on the City’s membership on both the GSA [Salinas Valley Groundwater Sustainability Agency] and the Water Pollution Control Agency Boards.”²

Nowhere does the letter state that it serves as “official notice” of any action taken by the City of

¹ CalAm filed its Request pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure. That rule does not address a “response” to such a request or a timeline for doing so. However, Rule 11.1, governing “motions,” defines a motion as a “request” for “a specific action” to be taken by the Commission. Since CalAm’s filing is a “request” for a “specific action” (“official notice”) by the Commission, the City has timely submitted this response pursuant to Rule 11.1(e), which governs responses to such requests.
² CalAm Request, Attachment A.
Salinas or that it represents “an official act of the City of Salinas,” as claimed by CalAm in its Request.\(^3\) Rather, the letter on its face merely constitutes a series of non-expert opinions on technical issues by the Mayor of this City.

Rule 13.9 of the Commission’s Rules of Practice and Procedure provides:

“Official notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq.”

The Evidence Code sections that govern such “official notice” make clear that, in the first instance, “[j]udicial notice may not be taken of any matter unless authorized or required by law.” (Evidence Code §450; emphasis added.) Among the “matters” of which judicial notice may be taken that have been “authorized or required by law,” none include the kind of “correspondence” that CalAm seeks to be officially noticed in this Application. In this regard, the only statutory citation offered by CalAm in support of the Mr. Gunter’s letter being judicially noticed is to Section 452(c) of the Evidence Code, which permits judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” However, neither the appended letter nor CalAm in its Request demonstrates that this letter is in fact an “official act” or “official notice” of any official action by the City of Salinas.

CalAm bears the burden, under Evidence Code Section 452, to supply the Commission with sufficient, reliable and trustworthy sources of information to justify official notice.\(^4\) Section 452(c), by its terms, is limited to “official acts” of the legislative, executive and judicial departments of the State. Although these acts can encompass “official acts” of a city, this letter does not on its face qualify as such an official act, and CalAm has failed to meet its burden to

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\(^3\) CalAm Request, at p. 2.

demonstrate that it does. Indeed, courts have routinely declined to provide judicial notice under Section 452(c) for exactly these kinds of letters or declarations from agencies or individuals employed by such agencies. The cases cited by CalAm are all distinguishable because they involve official acts, approved reports, city attorney opinions, and other official acts by local government agencies.

CalAm’s request also should be denied because the letter constitutes and contains hearsay. In this case, the Gunter letter is actually double hearsay because it constitutes non-expert hearsay opinions about a subject under consideration by the Commission, and it is expressly based on unspecified reports and information supplied by others. Moreover, CalAm improperly attempts to rely on it for the truth of the matters asserted therein.

In short, the Commission should deny CalAm’s request for official notice of this letter. It does not constitute an “official act” of an agency within the meaning of Section 452(c). Instead, it merely constitutes a non-expert set of views of the author on technical issues, it represents several layers of hearsay opinion based on unidentified outside information, and it would be used improperly by CalAm for the truth of the matters stated therein.

These same points have been raised in the Response filed by Monterey Peninsula Water Management District (MPWMD) in opposition to CalAm’s Request on January 17, 2018. For the reasons stated above and in MPWMD’s Response, the Commission should act immediately to deny CalAm’s Request for official notice of this letter.


6 North Beverly Park Homeowners Ass’n v. Bisno, 147 Cal. App. 4th 762, 778 (2007)(the hearsay rule is applicable to statements in judicially noticed documents and precludes consideration of those statements for their truth absent an independent hearsay exception).
II.
CONCLUSION

For the reasons detailed above and in MPWMD’s January 17 Response, the Commission should immediately deny CalAm’s Request for Official Notice filed on January 9, 2018.

Respectfully submitted,

January 19, 2018

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