BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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.

Application 12-04-019 (Filed April 23, 2012)

RESPONSE OF MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY TO CALIFORNIA-AMERICAN WATER COMPANY’S REQUEST FOR OFFICIAL NOTICE

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Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure, the Monterey Regional Water Pollution Control Agency (MRWPCA)1 hereby submits its response opposing California-American Water Company’s (Cal-Am’s) Request for Official Notice, filed January 9, 2018.2 MRWPCA also supports the Responses previously filed by Monterey Peninsula Water Management District on January 17, 2018 and the City of Marina on January 19, 2018.

I. INTRODUCTION AND SUMMARY

Cal-Am’s request for official notice of a letter from Joe Gunter (Mayor of the City of Salinas) is improper. A letter from a city’s mayor expressing his unsupported opinion is not an “official act” under Section 452(c) of the California Evidence Code. Even if it were, official notice cannot be used for the truth of the matter asserted. At most, the Commission could

1 MRWPCA has recently changed its name to Monterey One Water, but for consistency in the record will continue to use the name MRWPCA in this proceeding.

2 Cal-Am filed its request pursuant to Rule 13.9 of the Commission’s Rules of Practice and Procedure. Such rule does not address a response. Typically, requests for Official Notice of documents are made using a Motion under Rule 11.1. Accordingly, MRWPCA submits this response pursuant to Rule 11(e) which permits responses to motions within 15 days of filing of the motion.
recognize only the existence of the letter, yet Cal-Am improperly attempts to use the letter as evidence of its contents. Mayor Gunter did not participate in the evidentiary hearings in this proceeding; the opinion expressed in his letter has not been subject to cross-examination and does not cite to any support. For all of these reasons, MRWPCA respectfully requests that the Commission deny Cal-Am’s request for official notice.

II. ARGUMENT

A. The Mayor’s Letter Is Not an “Official Act” Under Section 452(c)

Under Rule 13.9 of the Commission’s Rules of Practice and Procedure, “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.” Cal-Am claims Mayor Gunter’s letter falls under Section 452(c) of the Evidence Code, which states that a court may take judicial notice of “official acts” of legislative, executive and judicial departments of the federal or any state government.\(^3\)

However, an “official act” does not take place every time a public employee or elected official signs a document. For example, California courts have held that a declaration signed by a public official does not qualify as an “official act” and is therefore not subject to judicial notice.\(^4\) A letter is even less formal than a declaration, and one mayor’s letter to another mayor cannot qualify as an “official act.” In the absence of the approval and direction of the city council, at a public meeting, such a letter would carry no authority. Here, there is nothing in the Salinas City Council agendas or minutes to indicate that the topic of Mayor Gunter’s letter was ever discussed by the City Council or formalized in any way. As such, Mayor Gunter’s letter does not constitute

\(^3\) Cal. Evid. Code § 452(c).

an “official act” of the City of Salinas and is therefore not appropriate for judicial notice under Section 452(c).

B. Judicial Notice Cannot Be Used for the Truth of the Matter Asserted

Even if Mayor Gunter’s letter were the proper subject of judicial notice (which it is not), it cannot be used to show the truth of the matter asserted within it. California case law is clear that taking judicial notice of “official acts” does not permit the court to accept the truth of factual matters which might be deduced from them.5

Here, at most, official notice could recognize the existence of Mayor Gunter’s letter, but that would be of no use to Cal-Am. Rather, Cal-Am is improperly attempting to use the letter for the truth of the matter asserted—i.e., using the opinion contained in the letter as evidence regarding the Pure Water Monterey Project.6 Certainly, the City of Salinas could have taken appropriate steps to participate in the hearings if it wished to do so, but Cal-Am should not be able to introduce completely unsupported opinions. Similarly, Mayor Gunter could have participated in the evidentiary hearings in this proceeding and been subject to cross-examination regarding his opinion, but he did not and was not. The opinion contained in his letter is also entirely unsupported. He vaguely references “reports” from the MCWRA “over the last 60 days” but does not provide any identification of the reports or details contained within them. Therefore,


6 On the same day as Cal-Am filed its request for official notice of the Gunter letter, Cal-Am cited to the letter in its Closing Brief as part of its argument related to Pure Water Monterey and quoted the conclusion of the Gunter letter as the rationale for ignoring requests for additional review of the expansion. Cal-Am Closing Brief, pp. 27-28. Cal-Am made similar arguments in its January 16, 2018 Response to the recent motion in this proceeding requesting additional evidentiary hearings. In both instances, Cal-Am’s use of extra-record opinions is improper and should be disregarded.
it would be inappropriate for the Commission to officially notice the letter for its contents, as Cal-Am advocates.

III. CONCLUSION

For the reasons stated above, the Commission should deny Cal-Am’s request for official notice.

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