



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

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Colleen Badell and Harvey Chapman,

Complainants,

vs.

California American Water Company (U210W)

Defendant.

C.20-10-017  
(Filed October 7, 2020)

**CALIFORNIA-AMERICAN WATER COMPANY'S (U210W)  
ANSWER TO COMPLAINT**

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For: Defendant California-American Water  
Company

Dated: December 7, 2020

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ANSWER TO COMPLAINT**

Pursuant to California Public Utilities Commission Rule of Practice and Procedure 4.4, defendant California-American Water Company (“California American Water”) answers complainants Colleen Badell and Harvey Chapman’s (“Complainants”) complaint (“Complaint”).

**I. SUMMARY OF ANSWER AND BACKGROUND**

The Public Utilities Commission (“Commission”) has acknowledged that “[w]ater supply constraints have been extensively documented and have existed for decades on the Monterey Peninsula.”<sup>1</sup> The Complainants improperly demand California American Water step in to remedy the Complainants’ individual water supply issues – a remedy which exceeds the Expedited Complaint Procedure threshold – but Complainants fail to state any grounds for the Commission to grant the relief sought by their Complaint. The Complaint, therefore, should be dismissed.

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<sup>1</sup> Decision (“D.”) 18-09-017, p. 4.

First, Complainants are not currently entitled to water at their undeveloped properties because there is a moratorium on new service connections and increased uses. Specifically, unless Complainants had obtained all necessary written approvals for project construction and connection to California American Water's system prior to October 20, 2009, the State Water Resources Control Board's ("State Water Board") Cease and Desist Order 2009-0060 ("CDO") prohibits California American Water from diverting water from the Carmel River for new service connections or intensified water use at existing connections. Complainants do not allege they met this limited exception to the moratorium. Once the Monterey Peninsula Water Supply Project is operational, however, the moratorium will no longer proscribe California American Water from providing water to Complainants' parcels.

Second, Complainants incorrectly allege California American Water is at fault for Complainants' inability to enter into agreements to obtain water rights subscriptions from the Malpas Water Company ("Malpas"). Having access to the Malpas water would allow Complainants to avoid the moratorium. As alleged by the Complaint, however, the Complainants' real property is outside the place of use for the Malpas Water Company's ("Malpas") State Water Board water-right License 13868A. Any correction to the Malpas License to include Complainants' property required a request by Malpas – *not California American Water* – to the State Water Board.

Third, and contrary to the allegations of the Complaint, California American Water is aware of no error in its own maps. In October 2013, the State Water Board issued California American Water Permit 21330 to divert water within the California American Water service area and, more specifically, within the more limited area of the Carmel River watershed. California American Water submitted a map dated February 7, 2012 to the SWRCB that designated the

place of use for this diversion. The February 7, 2012 map was not a map of California American Water's service area; it was submitted specifically in connection with the application to obtain Permit 21330. Permit 21330 specifies that the place of use for water diverted under the permit "is shown on map dated February 7, 2012 and filed with the State Water Board."

Pursuant to a petition to change, filed with the State Water Board on July 21, 2013, the Board issued License 13868A to the Malpaso Water Company on July 3, 2015. Term 4 of License 13868A describes the authorized place of use for water diverted under this license. Per License 13868A, this authorized place of use includes "16,595 acres of the Carmel River watershed area within the California American Water Company Service Area boundary, as shown on map dated June 19, 2013." The June 19, 2013 map was prepared by Macaulay Water Resources for the Eastwood Trust. As shown by California American Water's official, Commission-approved service area map dated June 2012, available on California American Water's website, Complainants' parcels are within the California American Water service area boundary, but the Complaint alleges the place of use map for License 13868A (the June 19, 2013 map) does not include Complainants' parcels. If the June 19, 2013 map was incorrect, it was incumbent on Malpaso to request the State Water Board modify License 13686A.

Fourth, and directly contrary to the specious allegations in the complaint, California American Water did offer – in writing – to assist Malpaso in making changes to its License 13686A and sent a letter to the Rancho Del Sol Homeowners Association indicating California American Water's willingness to cooperate. See **Attachment A**.

Finally, California American Water cannot simply reactivate the wells referenced in the Complaint. Even putting aside normal construction and permit needs, a finding would likely need to be made by the State Water Board that the water produced by these wells was not subject

to the CDO or other State Water Board Orders limiting California American Water's diversions from the Carmel River. Reactivation of these wells does not guarantee Complainants a source of supply.

California American Water cannot grant Complainants the relief they seek, so the Complaint should be dismissed.

## **II. ANSWER TO THE COMPLAINT**

1. Unless specifically admitted below, California American Water denies each and every material allegation set forth in the Complaint.

2. Unless specifically admitted below, California American Water avers the exhibits attached to the Complaint speak for themselves and does not admit to the accuracy or authenticity of the exhibits attached to the Complaint.

3. California American Water admits it purchased the Rancho Fiesta Mutual Water Company. California American Water admits Exhibit A to the Complaint is an incomplete copy of the Contract of Sale of Assets of Mutual Water Company to Regulated Public Utility.

4. California American Water admits the Oak Meadow Lane parcels, APN 187-031-038 and APN 187-031-021 are within California American Water's service area.

5. California American Water admits there is a customer account associated with APN 187-031-038. California American Water further admits Harvey Chapman is the only name on the account. California American Water avers that the total amount billed to this account from November 2013 through December 2020 is \$6,420.12.

6. California American Water admits that it submitted a map dated February 7, 2012 to the State Water Board in connection with Table 13 of State Water Board Decision 1632, which resulted in Permit 21330. California American Water avers the February 7, 2012 map was

not a service area boundary map. California American Water further avers its Commission-approved service area boundary maps for the Monterey service area are available on California American Water's website.

7. California American Water denies that Exhibit J to the Complaint is the only response the Rancho Del Sol community received from California American Water. For example, California American Water avers that **Attachment A** to this Answer is a true and correct copy of a written response dated September 5, 2017 sent by Robert Donlan on behalf of California American Water to the Rancho Del Sol Homeowners Association.

8. California American Water denies that Complainants are entitled to any relief sought in the Complaint.

### **III. AFFIRMATIVE DEFENSES**

1. As a first and separate affirmative defense, California American Water avers that the Complaint seeks relief in excess of the limitations for Expedited Complaint Proceedings.

2. As a second and separate affirmative defense, California American Water avers that the Commission lacks jurisdiction to grant the relief requested by the Complaint.

3. As a third and separate affirmative defense, California American Water avers that the Complaint fails to state a cause of action for which relief may be granted because, *inter alia*, the Complaint does not allege an act or omission to act in violation of any provision of law, rule, or order of the Commission.

4. As a fourth and separate affirmative defense, California American Water avers that its actions were not negligent or careless or otherwise subject to liability because California American Water acted in accordance with its tariffs and applicable law.

5. As a fifth and separate affirmative defense, California American Water avers that each and every claim by Complainants is barred, in whole or in part, because the conduct and actions of California American Water were privileged, justified, authorized, and/or immunized by statute, regulation or order.

6. As a sixth and separate affirmative defense, California American Water avers that Complainants waived the claims asserted in the Complaint.

7. As an seventh and separate affirmative defense, California American Water avers that any purported harm to Complainants was legally caused, in whole or in part, by the conduct, fault and/or negligence of persons or entities other than California American Water, including, without limitation, Complainants, its agents, and/or predecessors.

8. As an eighth and separate affirmative defense, California American Water avers that each and every claim by Complainants is barred, in whole or in part, by the doctrine of unclean hands.

9. As a ninth and separate affirmative defense, California American Water avers that any purported claims set forth in the Complaint fail based on equity.

10. As a tenth and separate affirmative defense, California American Water avers that the Complaint is barred in whole or in part by the applicable statute of limitations, including the applicable three-year limitations period imposed by the Commission. *See, e.g., DCOR, LLC v. Southern California Edison* (“SCE”) (Feb. 28, 2013) 2013 WL 864603 (Cal. P.U.C.).

11. As an eleventh and separate affirmative defense, California American Water avers that the Complaint is barred in whole or in part by the doctrine of laches.

#### **IV. SCOPING MEMORANDUM**

A. Category: Adjudicatory.

B. Are Evidentiary Hearings Necessary? No. From the information provided in this Answer, it is clear the Complaint is without merit. If, however, there is any uncertainty as to that conclusion, then evidentiary hearings may be necessary.

C. There is one issue in this case: Whether California American Water can be ordered to undertake significant and costly actions as compensation for alleged errors made by a third-party not subject to the Commission's jurisdiction.

E. Schedule. Pursuant to Rule 4.4 of the Commission Rules of Practice and Procedure, California American Water submits the procedural schedule below for the Commission's consideration of the relief requested.

<b>Event</b>	<b>Date</b>
Complaint Filed	October 7, 2020
Answer Filed	December 7, 2020
Prehearing Conference	January 2020
Evidentiary Hearings (if required)	March 2020
Concurrent Opening Briefs (if required)	April 2020
Concurrent Reply Briefs (if required)	April 2020
Proposed Decision (if required)	June 2020
Commission Decision (if required)	July 2020

## **V. CORRESPONDENCE CONCERNING COMPLAINT**

Correspondence and communications in regard to this proceeding should be addressed to:



Cathy A. Hongola-Baptista, Director Corporate Counsel  
California-American Water Company  
555 Montgomery Street, Suite 816  
San Francisco, CA 94111  
Telephone: 415-293-3023  
Facsimile: 415-397-1586  
Email: cathy.hongola-baptista@amwater.com

## VI. CONCLUSION

Complainants' claims are without merit because it is Malpaso, not California American Water, that was required to fix its license with the State Water Board. California American Water offered – over three years ago – to assist Malpaso and the Ranch Del Sol property owners with this exact issue. If Complainants are entitled to any remedy, they must look to Malpaso, not California American Water. Accordingly, the Complaint should be dismissed.

WHEREFORE, California American Water respectfully prays for the following relief:

1. That Complainants' request for relief be denied;
2. That the Complaint be dismissed with prejudice; and
3. That the Commission provide such other relief as it deems appropriate.

Respectfully Submitted,

Respectfully submitted,

Dated: December 7, 2020

By:           /s/ Cathy Hongola-Baptista          

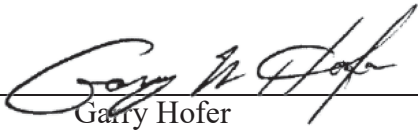
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San Francisco, CA 94111  
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Email: cathy.hongola-baptista@amwater.com

## VERIFICATION

I, the undersigned, declare:

I am a Vice President and officer of California-American Water Company and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the above documents and know its contents; I am informed and believe and, on that ground, allege that that the matters stated in it are true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 7, 2020

  
Garry Hofer

# ATTACHMENT A



Robert E. Donlan  
red@eslawfirm.com

September 5, 2017

Mr. Peter H. Loewy  
Rancho Del Sol Homeowners Association  
ploewy@peterloewy.com

Re: **Malpaso Water – Place of Use Issue**

Dear Mr. Loewy:

My firm works with the California-American Water Company (CAW) on water rights and water resources matters in the Carmel River watershed. CAW has asked me to look into and respond to your letter to Eric Sabolsice, dated August 13, 2017, regarding the Rancho Del Sol Homeowners Association's (HOA) desire for a supplemental water supply from the Malpaso Water Company. Your letter states that Rancho Del Sol is not within the place of use of Malpaso's State Water Board License No. 13868A, and as a result parcels within the HOA are unable to obtain subscriptions for Malpaso water.

Decisions and efforts to pursue water right changes to License No. 13868A must be pursued by Malpaso and its ownership group. CAW is committed to working with Malpaso and your HOA to obtain from the SWRCB modifications to License No. 13868A that you determine are appropriate for your organizations. Although CAW has agreements with Malpaso for access and delivery of the Malpaso water to Malpaso subscribers, which the SWRCB has approved, CAW was not involved in the water right proceedings before the SWRCB concerning the petition to modify License 13868, and CAW was not responsible for the description of the place of use identified in Malpaso's 2013 SWRCB petition. As such, CAW cannot absorb the costs of obtaining the additional water right changes to add the Rancho Del Sol HOA to the License 13868A place of use, as requested in your letter.

Again, CAW is committed to working with you and Malpaso to provide information to support additional modifications to License 13868A that your organizations deem appropriate. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Robert E. Donlan".

Robert E. Donlan

cc: Eric Sabolsice, CAW  
Kathy Horning, CAW