

**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.

A.12-04-019

(Filed April 23, 2012)

**REPLY BRIEF
BY WATER PLUS**

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Dated February 14, 2014

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I. Introduction

Pursuant to Rule 13.11 of the Rules of Practice and Procedure and the Assigned Commissioner's September 23, 2013, Amended Scoping Memorandum and Ruling, Water Plus files this reply brief in the proceeding for A.12-04-019. Water Plus supports some terms and opposes others in the settlement and sizing agreements reached by some of the parties to this proceeding on July 31, 2013. The person preparing this brief is not an attorney. Although Water Plus can claim intervenor compensation, it has not been able to secure a local attorney because none contacted was willing to wait until the end of the proceeding to receive compensation. That being the case, in its support and opposition arguments, this brief will consider only modifications of the proposed settlement and sizing agreements that will help ensure that the water-supply project to which they apply is consistent with all the facts and is in the public interest. Water Plus was not a signatory to the agreements.

II. The Whole Record Includes Climate Change and Competing Projects

In its opening brief, the Marina Coast Water District ("MCWD") based its arguments opposing the settlement and sizing agreements on their failure to take into account the entire record, the law, and the public interest. Water Plus

supports these arguments, particularly the failure of the agreements to take account of climate change, the initiative on this June's ballot promoting the sale of the Monterey operation of California-American Water ("Cal Am") to a local public agency, and, most importantly for local ratepayers, the existence of two other projects competing with Cal Am's to be the new source of supply for water customers on the Monterey Peninsula.

Since the proposal of the settlement agreements to the Commission, the Governor has declared a drought in California. With respect to plant size and water source, the agreements fail to take into account the prospect of years of local drought aggravated by global warming. With that in mind, Water Plus recommends that the Commission approve desalination without groundwater replenishment ("GWR") as the sole source of new water and a plant size that will meet the entire demand for water on the Monterey Peninsula. Doing otherwise would expose local residents to unmitigated drought when natural fresh-water sources dry up.

Public Water Now ("PWN") has secured more than enough valid signatures to put an initiative promoting the purchase of Cal Am by a local public agency on the June, 2014, ballot. The reason for this public movement is not only that the high cost of water forces ratepayers on the Monterey Peninsula to use only 60

percent of the amount of water used on average in the United States but also that this high cost is between six and seven times the national average while threatening to skyrocket with the advent of Cal Am's proposed \$400 million project. The PWN argument is that the Commission has been unable to stop Cal Am as a private monopoly from creating this disastrous situation that only threatens to get worse without public ownership. The Commission must take this local development into account in deciding whether to certify Cal Am's proposed project as a public convenience and necessity. In making this decision, the Commission must also recognize the existence of two competing local projects. The existence of these competing projects is important because their proponents plan to offer them for sale to a local public agency, a sale that could create a tremendous reduction in cost to ratepayers.

In all respects, Water Plus is in agreement with the arguments presented in the MCWD opening brief.

III. The Desal Plant Must Meet the Entire Local Demand for Water

Water Plus generally agrees with the estimation of local demand presented in the opening brief by six parties to the proceeding: Cal Am, the Monterey Peninsula Regional Water Authority ("regional water authority"), the Monterey

Peninsula Water Management District (“water management district”), the city of Pacific Grove, the Coalition of Peninsula Businesses, and the Monterey Regional Water Pollution Control Agency. Water Plus bases this agreement on a supply-demand analysis it presented in its opening brief. Departing from the sizing agreement, Water Plus believes, as argued in the preceding section, that desalination should provide all of the water the Monterey Peninsula needs. Specifically, Water Plus believes that the capacity of the proposed desalination plant should be in the order of 15,000 acre-feet per year, rather than just under 10,000, to accommodate all local water needs in the coming years of drought.

IV. The Governance Committee Wastefully Duplicates the Work of the ORA

Three parties joined Cal Am in arguing that the operating Governance Committee proposed in the settlement agreement does not impinge on Commission authority. The three are the water management district, the regional water authority, and Monterey County. Water Plus disagrees with this position because much of the work the Governance Committee is supposed to do duplicates work that the Commission has authorized the Office of Ratepayer Advocates to do. An example: The Governance Committee serves as a watchdog to see that Cal Am’s design and cost details meet high standards, something the Office of Ratepayer Advocates

already does. The Governance Committee is not only expensive window-dressing; it in fact impinges on the Commission's authority.

V. Water in the Salinas Valley Must Stay in the Salinas Valley

The Salinas Valley Water Coalition and the Monterey County Farm Bureau support the settlement agreement because it requires a hydrologic study by a select technical group to avoid possible litigation over water rights in the Salinas Valley River Basin. Litigation would occur according to the agreement only if the study should show infringement on farmer water rights and Cal Am decides to go forward with its project anyway. While agreeing that Cal Am's project should not go forward if it impinges on the water rights of Salinas Valley farmers, especially as California faces years of drought, Water Plus also believes that the project must meet other conditions as well before the Commission gives it a certification of public convenience and necessity. These other conditions include sizing the desalination plant to be capable of meeting the entire demand for water on the Monterey Peninsula and failure of both competing projects proposed for sale to a public agency to go forward on a level legal playing field. Cal Am's project will be unnecessary if either of the competing projects proves to be viable.

VI. A Small Desalination Plant Would Be Inadequate and Too Costly

LandWatch Monterey County joined the Surfrider Foundation in its opening brief arguing that the plant size proposed in the sizing agreement was too large because, by allowing for building on empty lots and tourism bounce back, it permitted increased development. As indicated in its opening brief, Water Plus takes the opposite position: Even with augmentation by legal supplies from fresh-water and other non-desalination sources, the plant size proposed in the sizing agreement is, if anything, too small, though not by much, as indicated in a supply-demand analysis included in the brief. According to that analysis, taking cost and demand into account, the plant size proposed in the sizing agreement would not in fact permit increased growth. As indicated earlier here, Water Plus proposes a plant size large enough to accommodate the entire water demand on the Monterey Peninsula, a demand its analysis showed to be close to the one the sizing agreement used to determine plant capacity. The supply-demand analysis also shows that any smaller plant size would result in an increased unit cost of water for ratepayers. Sizing a plant where supply and demand unit costs are equal would not stimulate growth, while a boutique desalination plant would be grossly inadequate to meet the local demand for water in coming years of drought.

VII. Cal Am's Project Is Too Slow, Too Costly, and Too Bad for the Environment

Concerned about the environment and promoting conservation, the Planning and Conservation League supports the settlement and sizing agreements because their approval by the Commission could speed up the development of the proposed project without stimulating growth or hurting the environment. No less concerned with the environment, Water Plus considers these to be flawed arguments and opposes the project supported by the settlement agreement as not the quickest and most environmentally friendly project to provide the water needed on the Monterey Peninsula. As a ratepayer advocate, Water Plus considers the project to suffer from punishingly high costs bloated by profits and taxes and from environmentally threatening energy demands bloated by sub-seafloor intake, as well as legal, political, and physical hurdles that have already delayed it so much that it is at least a year over schedule to meet the state cease-and-desist order ("CDO") deadline of December 31, 2016. Thankfully, competing projects exist that do not share all these shortcomings.

VIII. While Flawed, the Regional Project Was Superior to the Current Project

The Office of Ratepayer Advocates ("ORA") supports the settlement agreement as locally popular and in the best interests of ratepayers, better than

any project previously proposed to the Commission. As a local ratepayer advocate, Water Plus disagrees with that assessment.

Except for its intake site, Water Plus believes the Regional Desalination Project (“regional project”) previously approved by the Commission to be far superior to the project now proposed by Cal Am. The reason: the public ownership of the regional project vs. the private ownership of Cal Am’s project. Because of that difference alone, the regional project would have cost ratepayers hundreds of millions of dollars less than Cal Am’s project, as demonstrated in the opening brief by Water Plus.

On January 5, 2010, the author of this brief told the Monterey County Board of Supervisors at a meeting considering the regional project that he believed the project had an Achilles’ heel in its intake site. Different from ORA, Water Plus believes that Cal Am’s project suffers from the same fatal problem.

The local popularity cited by ORA is only illusory, as the number of signatures Public Water Now secured in its initiative petition for a public buyout of Cal Am illustrates. The mayors who support Cal Am’s project have not secured, or even elicited, the approval of their city councils, let alone ratepayer approval. The support cited by ORA is political, but by no means popular. The vote in June will be a true measure of popularity, and the Commission should be advised by

that before making a decision on the settlement agreement, if not Cal Am's project itself.

IX. Times Are Changing

The Public Trust Alliance ("PTA") opposes the settlement agreement for its failure to take global warming and other ongoing changes into account, and Water Plus joins PTA in that concern -- a concern that has also led Water Plus and PTA in different directions. While PTA opposes desalination, especially with sub-seafloor intake, because of rising sea levels produced by global warming, Water Plus favors desalination because alternative water sources depend on water supplies that will dry up in the coming years of drought predicted by climatologists and aggravated by global warming. The Commission must weigh these two concerns, among others, in making its decision to issue or deny Cal Am a certification of public convenience and necessity.

X. A Project Designed for Yesterday Cannot Meet the Needs of Tomorrow

In response to a request by the Administrative Law Judge (ALJ) assigned to this proceeding, Cal Am made a compliance filing on February 7, 2014. The filing was to let the ALJ know whether Cal Am believed it should modify its project

proposal to take the drought recently proclaimed by the Governor into account. Cal Am's answer was no. Water Plus strongly disagrees. As indicated earlier, we believe that significant ongoing changes drastically affect the solution to local water problems, ranging from availability and reliability to cost. The same solution cannot apply to all problems, and the water problems faced today are far different from the problems faced yesterday by Cal Am ratepayers.

Among the ongoing and developing changes, years of drought will dry up a good portion, if not all, of the water supplies available from the Carmel River, the Seaside aquifer, treated sewage, and Salinas Valley industrial and agricultural runoff, as well as supplies from the San Antonio and Nacimiento reservoirs. Certainly, drought will also affect the reliability of all natural sources of water. The need now and in the future is for a desalination plant large enough to meet the entire local demand for water. That requirement brings cost as an issue front and center. The PWN initiative can have a tremendous effect on cost. If approved by the voters and implemented by the water management district, public ownership of the local water company will result in hundreds of millions of dollars of savings to ratepayers on the new water-supply project, as noted earlier here and demonstrated in the opening brief by Water Plus. The increased plant size and the increased energy requirements of sub-seafloor intake, accompanied

by increased hydrocarbon emissions, dictate that any new water-supply project use solar energy to accommodate at least the difference in energy requirements between sub-seafloor and open-ocean intake. The Commission must instruct Cal Am to take these and possibly other ongoing and developing changes into account in an amended application for its water-supply project. Possibly, Cal Am believes otherwise because making these changes in its proposal would likely price its project out of existence.

XI. Brief Summary of the Position of Water Plus

Water Plus supports only the hydrologic-study part of the settlement agreement and only the demand estimation in the sizing agreement. The remainder of these agreements relies on the availability of water that will not exist in the coming years of predicted drought. To provide adequate and reliable water under drought conditions, Water Plus recommends that the Commission approve a desalination plant large enough to accommodate the entire demand for water estimated in the sizing agreement. As indicated in the supply-demand analysis by Water Plus reported in its opening brief, a plant of this size using sub-seafloor intake, which limits plant capacity, will not stimulate growth.

XII. Conclusion

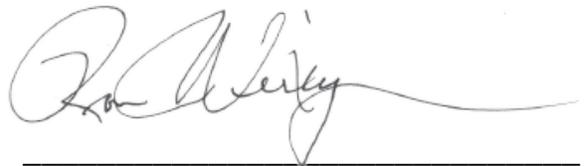
For these reasons, Water Plus urges the Commission to (a) adopt only the requirement for hydrologic testing in the settlement agreement, (b) adopt the sizing agreement modified to take the ongoing drought into account by requiring that the capacity of the proposed desalination plant be sufficient to meet the entire local demand for water, (c) require Cal Am to amend its water-supply proposal to include mitigation for the difference in energy requirements between sub-seafloor and open-ocean intake, and (d) deny the proposal if either of the competing projects shows a reasonable chance to materialize.

DATED: February 14, 2014

Respectfully submitted,

WATER PLUS

By

A handwritten signature in black ink, appearing to read "Ron Weitzman", is written over a horizontal line.

RON WEITZMAN

PRESIDENT