

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

In the Matter of the Application of California-American Water Company (U 210 W) for an Order (1) Approving a Settlement Agreement with the County of Monterey and the Monterey County Water Resources Agency to Settle and Resolve Claims and Issues Between the Parties and to Promote the Development, Construction and Operation of a Water Supply Project for Monterey County on an Expedited Basis, and (2) Authorizing the Transfer of Authorized Costs Related to the Settlement Agreement to Its Special Request 1 Surcharge Balancing Account.

A.13-05-017

(Filed May 24, 2013)

**Invited Responses by Water Plus  
to Queries by ALJ**

March 14, 2014

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## **I. Introduction**

On February 28, ALJ Seaneen McCarthy Wilson invited parties to this proceeding to file responses no later than March 14 to the following:

1. What is the potential dollar exposure to ratepayers if the suit in the Superior Court of the State of California – County of San Francisco (Superior Court) should go to trial and be determined by the court?
2. Brief what you believe is the effect of the attached Order by the Superior Court on the request in Application 13-05-017.

Herewith are the responses by Water Plus to these queries.

## **II. Query 1: Dollar Cost of a Future Court Ruling to Ratepayers**

According to the February 25 rulings by Judge Curtis E. A. Karnow, Monterey County (“the County”) has four options: (A) to await the outcome of the Stephen Collins conflict-of-interest trial before either (i) filing suit to invalidate the three agreements that underlie the Regional Desalination Project (“regional project”) or (ii) choosing between options C and D, (B) to challenge the three agreements in court immediately, (C) to pursue the regional project , or (D) to abandon the regional project illegally and pay the expenses of all parties to the agreement, including its own. Each of these options has a different potential cost to ratepayers.

**A. Await the outcome of the Collins trial.** Since the cease-and-desist-order deadline is fast approaching, option A would appear to be the least attractive of the four. Besides, the County could not wait to file suit forever. It has only four years from the time it knew or should have known about a conflict of interest to take action. After that time, the options default to options C and D.

**B. Challenge the agreements immediately.** If the County were to choose option B, given that this action was still within the statute of limitations, it would have to show that Stephen Collins gained or expected to gain financially from the three agreements underlying the regional project. That is because Collins is not guilty of any conflict of interest, his having not yet gone to trial. It is well known that he gained financially from helping to develop the agreements, but no evidence has been proffered, at least in public, that he gained or expected to gain financially from specifics in the agreements themselves. The County has assigned five successive judges to the Collins case and seems in no hurry to prosecute it, likely because it is not a slam-dunk case. For that reason, the County may be left with options C and D.

In the event that the County does in fact go to trial, the cost to ratepayers would depend on the trial's outcome. If the County prevailed, the cost to ratepayers would be more or less what it would have been had Judge Karnow ruled in Cal Am's favor: The ratepayers would pay all of Cal Am's costs, somewhat over \$30

million and, if the Commission approved the agreement sought in this proceeding, an additional \$2.8 million to \$3.5 million, for a total of about \$35 million. The Commission would anticipate this result if it approved the agreement prior to the trial and so would be challenging the authority of the court. On the other hand, if the County lost, it would be left with options C and D.

**C. Pursue the regional project.** If the County should choose option C, ratepayers would lose no money because the money spent on the regional project would not have been wasted. For ratepayers and taxpayers alike, this is the preferred option.

**D. Abandon the regional project illegally.** Finally, if option D were the County's choice, the taxpayers of the County would have to pay the expenses incurred by all parties to the agreements, including the County. Ratepayers would have to be reimbursed for the \$30 million or more they have already paid for Cal Am's expenses on the regional project, and the County's taxpayers would not only have to pay this amount but also about \$2.8 million to \$3.5 million for the County's own expenses and about \$18.5 million for the expenses incurred by the Marina Coast Water District. If these amounts are correct, the total for the taxpayers would be about \$50 million and zero for the ratepayers, as ratepayers.

Since ratepayers are also taxpayers, however, ratepayers would be responsible for a portion of the \$50 million taxpayer total. Whatever that portion

is, it is likely to be somewhat equal to the ratio of the population of the Monterey Peninsula to the total population of the County, equivalent to about 25 percent. That would mean a ratepayer cost of about \$12.5 million as a loss resulting from the choice of this option. For ratepayers, this would be the second-preferred among the four options.

### **III. Query 2: Effect of Judge Karnow's Rulings on A.13-05-17**

The February 25 rulings by Judge Karnow on the old regional project are highly consequential to Monterey Peninsula ratepayers. Cal Am had filed suit requesting a decision to invalidate the three agreements underlying the old project: the Reimbursement, Settlement, and Water Purchase agreements. In his denial of Cal Am's request, the judge effectively ruled that the three agreements are still in effect.

The judge also ruled that only Monterey County can challenge the three agreements, provided that the challenge (a) is based on the existence of a conflict of interest by at least one of the parties involved in the development of the agreements and (b) occurs within the four-year statute of limitations.

These rulings affect both this proceeding and the proceeding on Cal Am's Monterey Peninsula Water Supply Project application.

In the first place, the rulings mean that the regional project is no longer dead (if it ever really died), and, that being the case, no new project to replace it is necessary. Here “necessary” is the operative word because, before a project can go forward, it must receive certification by the Public Utilities Commission that it is publicly convenient and necessary. That means, for now, the new project, rather than the old one, is dead.

That also means that Monterey County may be able to resurrect the new project while reburying the old one by winning a ruling in court that the three agreements underlying the old project are invalid because of the existence of a conflict of interest in their development.

Almost two-and-one-half years ago, the Monterey County District Attorney brought criminal conflict-of-interest charges involving the old project against Stephen Collins. These charges were the putative basis for the withdrawal of Cal Am and the County from the agreements underlying the old project.

Like any other defendant in the United States, however, Collins is innocent unless and until he is found guilty in a court of law. Because of the inexplicable and inexcusable assignment of five successive judges to his case, Collins is yet to go to trial. That means for now, at least, no conflict of interest exists, along with no basis for the County to file suit seeking invalidation of the agreements underlying the regional project.

The County and Cal Am likewise have no basis to seek Commission authorization for a new agreement to trade loan forgiveness for ordinance exemption, the subject of this A.13-05-017 proceeding. That is because the loans sought to be forgiven do not constitute lost money but instead provide financial support for a live project. If the Commission were to authorize the proposed agreement, it would be circumventing the rulings of Judge Karnow and challenging the authority of the court to resolve the regional-project issue.

If the County were to file suit, it would have to show that Collins either gained or expected to gain financially from the agreements underlying the old project he helped to put together. Whatever financial benefit Collins gained from the old project, however, had nothing to do with these agreements. If anything, it had to do only with project-development work reimbursed by RMC Water and Environment that ended prior to the effective date of the Settlement and the Water Purchase agreements. The County would not only face a difficult challenge if it went to trial on this issue, but it would also have to do so prior to the expiration of the four-year statute of limitations. It may already be too late.

Meanwhile, the Monterey Peninsula is facing a water crisis unless a new supply of water comes on line prior to January 1, 2017. The old project is still alive and could resolve the Monterey Peninsula's water-supply problem if it had a legal source of water to desalinate. The Ag Land Trust successfully challenged its

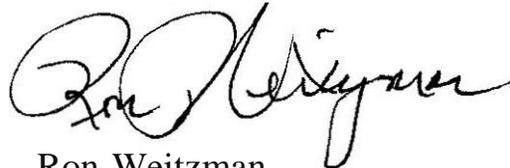
first water-source choice in local court. That means for the regional project to go forward in a timely manner, it would have to draw its water for desalination from an alternative source, likely sited at Moss Landing, one of the other water-source options evaluated in the project's environmental impact report. This is a likely outcome of Judge Karnow's rulings.

#### **IV. Conclusion**

For these reasons, the A.13-05-17 proceeding should not go forward unless and until the criminal trial against Stephen Collins ends with his conviction.

Dated March 14, 2013

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ron Weitzman". The signature is fluid and cursive, with the first name "Ron" being particularly prominent.

Ron Weitzman  
President, Water Plus