

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



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In the Matter of the Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates	A.04-09-019 (Filed September 20, 2004; Amended July 14, 2005)
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COMMENTS BY CITIZENS FOR PUBLIC WATER ON CPUC/DRA PROCEDURES, ESTABLISHMENT OF SHORT-TERM WPA AMENDMENT REVIEW PROCESS WITH ELECTED OFFICIALS, PROPOSAL FOR BUY-IN BY MPWMD, AND WATER PURCHASE AGREEMENT COST CONTROLS.

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April 30, 2010

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In the Matter of the Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates	A.04-09-019 (Filed September 20, 2004; Amended July 14, 2005)
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I. INTRODUCTION

Citizens for Public Water (CPW) is a grassroots community activist network that formed in 2005. CPW is composed of individuals and networks of interested citizens. CPW advocates public ownership of water assets in support of the public commons, reduced costs through public ownership, and a sustainable and affordable future. CPW accomplishes this through research, community education events, feedback, organizing and advocacy.

In accordance with Public Utilities Commission Rules, Citizens for Public Water respectfully submits these points in the above-referenced Proceeding. In these comments, CPW seeks a procedure endorsed by the CPUC to convene an amendment review process by local elected officials to address specific policy related to the Water Purchase Agreement that are still outstanding, a more

relevant working style by DRA, proposed buy-in by MPWMD, and discussion of cost controls in the Water Purchase Agreement.

II. DISCUSSION

A. PUC PROCEDURES

CPUC ordered the confidential negotiations under a different ALJ in a facilitated process. It was ordered to avoid the litigation track. It was intentionally confidential to encourage compromise, and to speed up the process. And there were tight deadlines to meet CPUC schedules. However there has been substantial public alarm on the Peninsula about ‘secret meetings, and the lack of time for public understanding. This lack of time, the rush to meet deadlines, the inadequate exposure to public input on details, even the lack of time for adequate dialogue and understanding by extremely interested individuals, all have become the antagonisms. No agency or party that declined to sign the Settlement Agreement has expressed opposition to the Regional Project. Yet all have expressed concern about lack of time and lack of details that take time to understand. This is a procedural dilemma, as much as a policy problem. One more step added to the process, and keeping to the current CPUC schedule, could be enormously helpful.

Citizens for Public Water adheres to the idea that a good process can lead to generally acceptable results. However a suspicious process will not satisfy even the proponents. Up to this point, the public side of the process has not yet reached the level of “good”. And public policy questions about representation have not been adequately addressed.

Request. Therefore CPW respectfully requests that there be an opportunity for the parties to convene one or more meetings of elected representatives in May and/or June to see if there might be recommended amendments to the WPA/SA. The intent is to seek compromises that may be supported by non-signing parties, and to avoid litigation. More details in Section C below.

B. DRA PROCEDURES

DRA has undertaken an aggressive approach to the public agency proponents. Perhaps because of lack of knowledge, or an overriding analytical style, it nevertheless appears that the public agencies are under suspicion.

CPW believes the water purchase agreement was a fulfillment of the charge given the proponents—get your act together, or the CPUC will proceed with pieces rather than a whole. The public agencies have responded consistently within scheduled timelines.

Yet, neither the DRA nor the CPUC has specific jurisdiction over public agencies. On the other hand, this Regional Project partnership is unique, and there may be more to come in California. CPW can support many issues pursued by DRA. But when it appears to look like analysis paralysis, or suspicion without evidence, then something must change.

The WPA seems to be a line in the sand about demarking the jurisdictional line of separation. It specifies local agency rights and responsibilities, and its direct obligations to provide Product Water to the satisfaction of CAW and CPUC. CPW hopes DRA can find that public agencies have their own set of laws governing their performance, including open meeting and disclosure laws, public hearing and public access requirements, locally elected officials where there is recourse when differences are significant. All these regulations far exceed anything applying to CAW. Public agencies have requirements concerning authorization of financing mechanisms and payments, expenditure controls, and audit requirements. Public agencies, at some point, must be allowed to operate within its legal framework.

Request. Since there is no direct jurisdiction over public agencies by CPUC or DRA, it is requested that this be acknowledged in future interactions.

C. CONVENE WPA AMENDMENT REVIEW COMMITTEE

The Regional Project is the most expensive and most critical public project, and public-private partnership, ever to affect Monterey County. It specifically impacts the near term and long term future of over 100,000 residents, over 3,000 businesses, and dozens of public agencies with over 500 connections on the Monterey Peninsula (everything in the CAW service area). These facts alone demand that an adequate public and policy review process be established.

Furthermore, the policy process is uniquely local, and it is political! The best outcome will allow adequate interaction and dialogue by the public agencies directly responsible for water supply issues. Local differences should be resolved within local agency dialogue. Such differences should not be 'kicked upstairs' for CPUC resolution, at least not without one last attempt by the local elected officials themselves.

Granted there are pressures from SWRCB with its Cease and Desist Order, court-ordered management of Seaside Ground Water Basin, and of course CPUC jurisdiction. But the agencies in and near the partnership are not so far apart. All agencies and parties that so far have declined to sign the Settlement Agreement have continued to express support for the Regional Project. Yet all have expressed similar concerns about lack of time and lack of details that required time to understand, and lack of representation by the other body with elected officials—MPWMD. This could be addressed through a procedural step. One more step added to the process, and contained within the current CPUC schedule, has the potential to produce very significant results.

Also the public sector has a long legal history of allowing for public input before major public policy or project decisions. With the tight CPUC deadlines, this step was at best, pro forma, and at worst, inadequate and distrusted. The lack of time did not allow discussion of possible modifications that could improve the agreement, build more trust in the management of the Regional Project, and therefore generate more inclusive support for it.

Most of the differences between local agency perceptions are uniquely local, and somewhat political. CPUC has done a magnificent job of forcing the proponents to seek a settlement agreement. It has expedited this with workshops and the ADR process. Even at this late date, there is the opportunity to resolve additional outstanding issues, if CPUC procedure and schedule provide for it.

Because this is a partnership with public agencies, and it is unique to CPUC procedures, CPW requests one additional step to accommodate the normal public process so engrained it public interest deliberations and public agency commitments.

Recommendation: CPW proposes that the three public agencies most prominent in the WPA and water responsibilities on the Monterey Peninsula, namely MCWD, MCWRA and MPWMD, sponsor a WPA Amendment Review Committee. It should be composed of elected representatives only, in order to address the political and public policy differences that currently exist. The recommended configuration is this:

- 1) Six members, two from each of MCWD, MCWRA (Board of Supervisors) and MPWMD.
- 2) All elected officials designated by the parent jurisdiction;
- 3) No tie-breaking mechanism.
- 4) If any majority of members agree to an amendment or amendment concept, it would be referred to the three jurisdictions for drafting of appropriate SA/WPA language.
- 5) If members have a tie vote or expression of position, the amendment or amendment concept will be forwarded to a) the parent jurisdiction for consideration as in 4) above, and b) to CPUC (Commissioner Bohn and ALJ Minkin) for consideration.
- 6) Convene a maximum of three times.
- 7) Allow consideration of amendments only, in language specific enough to be clear and toward a targeted objective.

- 8) Finish its meetings in time to submit to Commissioner Bohn and ALJ Minkin generally agreed-upon language before the scheduled Public Participation Hearings.

The very process of selecting the representatives will engage political issues that need addressing. This plan could expedite CPUC procedures as follows: clarify items of public interest, prioritize those matters most needing attention, isolate language or concepts for CPUC and other party consideration, resolve some differences outside of litigation, and represent an expression of agreement by elected officials most affected by the Regional Project.

D. MPWMD Finance Transfer Pipeline (est. \$11,000,000)

This suggestion is made if certain financial factors need to be included in a local policy dialogue recommended above in Section C. Convene WPA Amendment Review Committee.

MPWMD could finance the Transfer Pipeline now listed under CAW Only. It is entirely outside the CAW service area. This 3-mile (15,000 feet) pipeline connects the product water at the southern boundary of the City of Marina to the MCWD-CAW boundary in Seaside. It is totally within MCWD service area. It is free of connections and interfaces with other water supply components.

This Transfer Pipeline was originally listed under MCWD responsibility at the August 2009 cost workshop. Around January 2010 it was moved from MCWD to CAW Only. It was used as a pawn in CAW-MCWD negotiations. Since it was used once as a pawn, it can be used again as a pawn to resolve crucial differences still outstanding.

If it were under MPWMD financing, it could remain under MCWD contract and construction responsibility. There would be no change in design or construction

cost estimates. MPWMD could become a partner and supporter of the Regional Project, and be added to the advisory committee (Article 6).

Furthermore it would add MPWMD to the partnership of public trustor stewardship of ratepayer-financed infrastructure. There are few opportunities to remind everyone of the stewardship duties that public agencies have toward use of public funds and protection of the commons. This balancing act is crucial in CPUC deliberations.

Recommendation: If useful to a resolution of differences, CPUC request the parties to submit a rationale both for and against, and the steps necessary for possible implementation.

E. WPA COSTS AND COST CONTROLS.

The intent is to discuss weaknesses in the WPA, and suggest ways to protect the ratepayer investment for purposes of fairness, accountability and stability in the public interest.

1. FEES LIMIT by MCWD, in definitions

The Fees Limit (in Definitions) addresses \$22,000,000 that MCWD receives from FORA (Fort Ord Reuse Authority). The \$22 million offered by MCWD to offset transfer costs is based on today's connection fee schedule, and does not reflect future escalated value for when the actual connections will be made. The \$22,000,000 should be a minimum, and should increase in accordance with a fair and acceptable formula to account for future value and a future reality. Such a formula exists in the current Outfall Agreement (Exhibit C), which is Attachment 2 to the WPA. (Included here as Attachment). The formula in the Outfall Agreement provides for buy-in to an existing infrastructure, and includes these factors: initial capital costs, less grant funds, less depreciation, plus current replacement costs, factored to a percentage of use. The depreciation value comes from SWRCB provisions. The replacement value is based on ENR CCI

(Engineering News Record Construction Cost Index). The net amount, prorated to the user, is the buy-in cost. This formula has been used before, and should be acceptable for the FORA connection fees.

Recommendation. There should be a new definition, (i.e., ‘Fees Advance’), which could explain the \$22,000,000 as an advance prior to being earned, and as a minimum payment, to benefit financing the Project, but to be trued up at a future date in accordance with the ‘buy in’ formula, (and adjusted for the future value of money since it is an advance).

2. RENEWAL TERMS Article 2.3

Current Renewal Term provisions allow CAW or MCWD to terminate the WPA. CAW is not required to give any reason for its notice of termination. MCWD is required to give a reason: specifically when a new supply is available to CAW that is “at a cost equivalent to or less than the then current cost of Product Water to CAW”. Although this may seem reasonable, it leaves the ratepayer-financed investment in the ownership of an agency without responsibility to the very ratepayers that paid for it. Furthermore the ratepayers may be obligated to buy water from CAW under new capitalized costs, which might be only equivalent to current costs, and without any compensation for the asset value remaining with the Regional Project Facilities. This is unfair, and does not even seem logical. This seems like a version of self-declared stranded costs whereby CAW or MCWD may walk away and leave ratepayers without any means to recover the remaining asset value.

Recommendation: Modify the reference by eliminating the phrase: “equivalent to or”, and insert the word “substantially”; so as to read “at a cost substantially less than the current cost of Product Water to CAW”. This means that the word “substantially” will force a wider review of costs and related issues, not allow a termination notice to be based simply on calculations of “equal to or less than”. Without such modification, the provision could allow a huge shift in water costs and management responsibilities for the simple reason that a new supply is equal in cost. Such a flimsy circumstance is unacceptable for terminating

services from the Regional Project. At least there needs to be consideration of stranded investments, alternate uses, liability and risk assumptions, investment options, litigation, and more.

An alternative approach is for the CPUC to condition the application of Article 2.3 to a more far-reaching concept of considerations.

3. PRE-EFFECTIVE DATE COSTS

There have been questions about this. In the case of MCWD, its pre-effective date costs led directly to its knowledge base, institutional interest and ability to take the risk to sponsor the Regional Project. Its contributions to the REPOG (Regional Water Project) dialogues were enormously helpful. MCWD input gave hope to the participants who sought a regional partnership that it was feasible and it was possible. MCWD had built up its capacity to understand and explain issues, and comment appropriately on technology, engineering, planning, permitting, legalities, water rights, and more. It had already partnered with MCWRA and MRWPCA, and it understood Monterey Regional Waste Management District. Its pre-effective date costs directly support the Regional Project today.

However the effective date for such costs has not been determined, and details have not been presented. Since the three parties to the WPA have little incentive to challenge the costs presented by each other, except to seek agreement, then some form of additional review is necessary, consistent with the public interest. (See Section 4 – Cost Controls in WPA below for recommendation).

4. COST CONTROLS IN WPA

Cost containment measures mentioned in the Settlement Agreement (Section III.D.) include value engineering, competitive procurement processes, and a

constructability review. There needs to be an additional level of review of cost discretion and decisions allowed in the WPA to the individual public parties. Public agency costs are generally described as “reasonable and prudent” in the SA/WPA. This is a special phrase to assert justification without proof. Such costs should undergo an independent but related review process.

There have been various suggestions for a new government structure for Regional Project oversight, such as a new Joint Powers Agency. This may or may not have justification. But in the short run, there are some issues that should have oversight. After all the Regional Project is the largest, most critical public project and partnership ever in Monterey County. It affects the future of every resident, business and government agency in the CAW service area. These facts alone demand that some public oversight or review process be established.

Recommendation: Add new language to the WPA giving the authority of each public agency to form an oversight committee with representation deemed appropriate to the agency, and/or for pertinent public agencies to jointly create such an oversight committee. Representation shall be open to individuals, organizations and elected officials, as determined by the agency or agencies. Meetings should be quarterly, consistent with schedules determined by the Advisory Committee.

F. DEBT EQUIVALENCY

The Debt Equivalency request by CAW threatens to undermine all public agency advantages in the Regional Project. After the cost workshops when all construction components were standardized, it became clear that the public agency components had clear cost advantages, largely due to 1) public financing qualifying for lower interest rates, and 2) availability of grants and special program low interest loans. Recent cost spreadsheets continue to identify and quantify these advantages.

If the cost of debt equivalency becomes a substantial cost issue, then it could offset the savings from public participation. This would then quash any future interest by public agencies to partner with CAW or any other Investor Owned Utility. This is a serious threat to public-private partnerships, this one specifically, and all future ones.

III. CONCLUSION

Citizens for Public Water requests discussion and testimony as appropriate on these issues.

Respectfully submitted,

/s/ GEORGE RILEY

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April 30, 2010

ATTACHMENT TO CITIZENS FOR PUBLIC
WATER COMMENTS (dated April 30, 2010),
RE A04-09-019

EXHIBIT C

(attached to Citizen for Public Water comments)

CALCULATION OF CAPACITY CHARGE FOR BRINE DELIVERED TO THE OUTFALL PURSUANT TO THIS AGREEMENT

Marina Coast Water District (MCWD) shall pay a capacity charge for delivering Regional Desalination Brine to the Monterey Regional Water Pollution Control Agency (MRWPCA) outfall. This charge does not include any costs associated with the Brine Receiving Station which are addressed separately in this Agreement. The Capacity Charge is calculated as stated below:

- A = Outfall Capacity, gallons per day
- B = Brine delivered to outfall, gallons per day
- C = Outfall Asset Value
- D = Unit cost of Outfall Capacity
- E = Capacity Charge

FORMULA

$$C/A = D$$

$$D \times B = E$$

EXAMPLE ONLY BASED ON DECEMBER 31, 2009 ASSUMED CONNECTION TO THE OUTFALL:

$$\$12,469,276 / 65,000,000 = \$.192 \text{ per gallon}$$

$$\$.192 \times 12,700,000 = \$2,436,305 = \text{CAPACITY CHARGE}$$

OUTFALL ASSET VALUE

Outfall original cost	\$	29,477,348
Less Grants Funds (approx. 72%)		20,203,241
Local Share Original Cost	\$	9,274,107
Escalated cost based on the December 2009 ENR CCI		
From the month/year asset was acquired	\$	18,305,246
Less: Accumulated Depreciation		5,835,970
Total (local share) Outfall Asset Value as of 12/31/09	\$	12,469,276

CERTIFICATE OF SERVICE

I, George Riley, certify under penalty of perjury under the laws of the State of California that the following is true and correct:

On May 5, 2010 I served the attached:

COMMENTS BY CITIZENS FOR PUBLIC WATER ON CPUC/DRA PROCEDURES, ESTABLISHMENT OF SHORT-TERM WPA AMENDMENT REVIEW COMMITTEE OF ELECTED OFFICIALS, PROPOSAL FOR BUY-IN BY MPWMD AND WATER PURCHASE AGREEMENT COSTS.

on all eligible parties on the attached lists **A.04-09-019** by sending said document by electronic mail to each of the parties via electronic mail, as reflected on the attached Service List, and by US postal Service as indicated. .

Executed this May 5, 2010, at Monterey, California.

_____/S/_____
George Riley

SERVICE LIST
A.04-09-019

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