

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

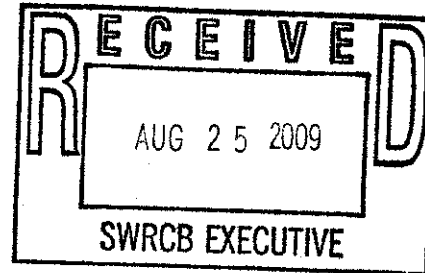
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



August 20, 2009

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



Re: July 27, 2009 Draft Cease and Desist Order in the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company

Dear Ms. Townsend:

Thank you for this opportunity to provide comment on the State Water Resources Control Board's new draft Cease and Desist Order (CDO) in the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company (Cal-Am). The California Public Utilities Commission (Commission) has rate and service regulation responsibility over Cal-Am throughout California. This Commission is intimately familiar with both Cal-Am's operations and the unique and complex water supply issues on the Monterey Peninsula, and we are entrusted with ensuring that utility consumers have safe, reliable utility service at reasonable rates, in compliance with all laws and regulations.

This letter presents information about the regulatory policies we have put in place for Cal-Am and how we have been working to resolve this crisis. It is an exposition of the Commission's actions since Order WR 95-10 was issued, including a detailed review of the conservation policies we have imposed upon Cal-Am in recent orders, and a suggestion that at this time, it would be disruptive to impose immediate and harsh water supply reductions on Cal-Am. We urge the Board to work out a realistic time line cooperatively with Cal-Am and the Commission to align the effective date of the ultimate Order with the completion of new system upgrades now contemplated.

Since Order WR 95-10 was issued, this Commission has issued numerous rate and service decisions, commissioned studies, and imposed a number of stringent conservation measures on Cal-Am. The various local water management agencies have likewise made good faith attempts to reduce the overall water deficit conditions that prevail in Monterey. The Community has also responded, and Monterey Peninsula's water consumption has dropped over 5,000 acre-feet per annum (AFA) from its peak in 1987, despite service connection growth of over 20 percent.

In short, even with the current level of overdraft of the Carmel River, existing residents of Monterey are under the most stringent conservation conditions in the State, and have achieved the lowest per-capita consumption of any region. Despite numerous unsuccessful and costly attempts to secure alternative sources of water, and a dramatic reduction in water usage, the Carmel River issue remains a major concern among the many water problems that bedevil Monterey. The historic proliferation of particular interests has made any practical solution elusive thus far. We are confident that our current process, set to conclude in May 2010, will authorize a permanent solution to the overdraft problem.

The Commission has proactively worked with Cal-Am to develop water conservation strategies over the past 14 years. In 2009 alone, the Commission has issued three decisions that implement steeply tiered conservation rate designs, put in place comprehensive voluntary and mandatory conservation programs, address system loss issues, and greatly increase funding for water conservation programs.

On May 21, 2009, the Commission issued Decision No. 09-05-029 which adopted a three-year conservation budget of \$2.4 million for Cal-Am and \$1.2 million for its conservation project partner Monterey Peninsula Water Management District (MPWMD) for calendar years 2009-2011. The conservation goal is to reduce per customer consumption at least three- to six- percent over three years.

We followed with two more decisions issued on July 9, 2009. The first, Decision No. 09-07-021, orders Cal-Am to:

- Implement a steeply-tiered five block conservation rate design with the highest block priced 10 times higher than the first block;
- Replace \$7.1 million of leak- and break-prone pipeline;
- Install 13,500 new water meters at a cost of \$2.5 million
- Reduce unaccounted for Water from 11.5-percent to 9-percent in the short term with a corresponding financial incentive / penalty program to make this reduction obligatory, and with the expectation that further reductions can be achieved; and
- Develop a program to reduce or prohibit the use of potable water for landscape irrigation during periods of maximum system demand.

This decision raised water rates by about 35-percent, and the water rates and the tiered blocks that we implemented are by far the highest we have ever approved. During the public participation hearings, many residential and business customers expressed great distress over the impacts on families and businesses of increasing water rates. The CDO's aggressive supply reduction schedule, if not changed, will put even more upward pressure on rates.

The second, Decision No. 09-07-023, adopts new conservation tariff rules for Cal-Am that:

- Include comprehensive expanded conservation and rationing plan that coordinates Cal-Am's and MPWMD's response to severe water supply limitations;
- Limit specific types of outdoor watering, establish water budgets for large water users, and allocate each customer a water ration; and
- Implement emergency conservation rates and later rationing rates, including the installation of flow restrictor devices for water wasters.

These rules are the most stringent of any the Commission has imposed on any investor-owned utility. I cite these decisions to demonstrate to the Board our commitment to water conservation on the Monterey Peninsula to reduce the need for Carmel River water.

In 2004, Cal-Am applied for a Certificate of Public Convenience and Necessity (CPCN) to resolve its long-term water supply deficit in Monterey, and that proceeding, Application 04-09-019, is ongoing. Multiple paths are under consideration to provide sufficient alternative water resources that upon completion, Cal-Am would be able to construct and operate a new water supply project and end permanently any overdraft of the Carmel River. The application was filed in response to a study commissioned by the Commission, known as the "Plan B Project Report," issued in July 2002. The draft Environmental Impact Report (EIR) was issued earlier this year and the comment period is now closed. The Final EIR is expected to be issued next month and certified thereafter. The remainder of our process will entail evidentiary hearings in December 2009, with a final decision approving an appropriate permanent solution by the Commission expected in May 2010. I have attached a Commission Ruling dated August 10, 2009 containing our intended schedule. The results of that proceeding are not final, and it would be premature for the Commission to indicate exactly how it will be resolved. Still, we are close to culminating this multi-year effort so that Cal-Am can comply with Order WR 95-10 while meeting its obligations to current customers.

Ultimately, the result of all of these actions – our orders imposing strong conservation measures on Cal-Am and its customers, system upgrades to reduce losses, and the imminent resolution of the CPCN proceeding – are expected to yield a combination of lower water demand and increasing water supply from other sources such that overdrafts of the Carmel River will end. However, these efforts will need time to come to fruition.

We share your concern for protecting the Carmel River, yet we are of the view that the terms of the revised CDO cannot be met except at unreasonable cost and with serious negative impact on the health and safety of Peninsula residents. The latest version of the CDO tempers the required mitigation measures compared to the original CDO. Still, the timing of the CDO could adversely reduce Cal-Am's water supply in advance

of completing planned mitigation efforts. There is a very real possibility that Cal-Am will find itself short several thousand acre-feet of water in advance of the completion of any new project. The consequences could be severe for Monterey Peninsula residents and businesses.

Although the CDO recognizes that an "immediate and substantial reduction in the quantity of water that Cal-Am diverts from the Carmel River could present a threat to public Health and Safety," the CDO imposes such an immediate substantial reduction on Cal-Am. The CDO calls for an immediate reduction of 549 AFA starting October 1, 2009. It appears this number is calculated from a potential reduction of system losses. The CDO goes on to call for an additional annual cutback of 121 AFA, starting October 1, 2009, for system loss reduction, indoor retrofits and outdoor irrigation savings. This totals to a first year reduction of 670 AFA, or about 9 percent of the annual over-diversion of 7,632 AFA, or about 5 percent of Cal-Am's current annual demand.

The CDO calls for further annual reductions of 121 acre-feet annually through October 1, 2014, increasing to 242 acre-feet per year until Cal-Am has ended all over diversions. By 2015, the CDO calls for a minimum reduction of 1,638 AFA, or 21-percent. This will force usage down to just 55 GPCD even assuming no increase in population. Another way to look at this is that each acre foot of water in Monterey serves about four households for one year. A 1,638 acre foot annual reduction, with no replacement water, would be equivalent to no water for about 6,500 families. And since any new water supply infrastructure probably will not be on line by that time, Monterey Peninsula residents would be subject to even more strict conservation measures and higher water rates.

Currently water use in Monterey averages 70 gallons per-capita per day (GPCD). This is the lowest usage of any region in California and it reflects the effectiveness of the conservation efforts taken by Cal-Am, the MPWMD, the broader Monterey community, and others since your order was issued. By contrast, Sacramento average usage is over 250 GPCD. According to the 20x2020 Water Conservation Plan, the 2005 statewide GPCD is 192 GPCD. Under the proposed CDO, the current lowest GPCD in California would be reduced to the lowest levels actually experienced in the industrialized world.

If the CDO timetable for stopping over-diversions can be aligned with the completion of a new water supply project and other actions already on the drawing board, unnecessary hardship could be avoided, and an alternative supply solution could become a reality.

In summary, the Commission has been working diligently with Cal-Am and the MPWMD to reduce water usage until a new source of supply can be brought on line. Water issues in the Monterey Peninsula are always contentious and extensively contested, and they bring out a vast array of interest groups, each with its own vision of what should be done. While this ensures a vigorous debate, it also ensures that the decision-making process takes an unusually long time. We are all frustrated that a

permanent solution to over-diversions by Cal-Am of the Carmel River is not yet in effect. We believe, however, that we are close. It would be best to coordinate our efforts.

Fourteen years have elapsed since Order WR 95-10 was issued. At this critical time it would be extremely disruptive to impose immediate and harsh water supply reductions on Cal-Am. Monterey residents, business groups, a substantial portion of the environmental community, and the various relevant agencies have negotiated painfully what is expected to be a long term, comprehensive solution to the "Monterey problem," and several proposals are soon to be presented to this Commission for decision. It should be possible to adjust the timeline and terms of the Order to provide a realistic plan to resolve this and the other water issues. The CDO as written will unnecessarily harm Monterey Peninsula residents and businesses by driving down their water usage beyond their already low per-capita usage while at the same time driving up their rates. Instead of taking a punitive action against Cal-Am and thereby against its customers, we urge the Board to work out a realistic timeline cooperatively with Cal-Am and ourselves to align the effective date of the CDO with the completion of the Commission's current proceeding to authorize a new water supply project.

Sincerely,



PAUL CLANON
Executive Director

Attachment

cc: President Michael R. Peevey
Commissioner John R. Bohn
Commissioner Rachelle Chong
Commissioner Dian M. Grueneich
Commissioner Timothy A. Simon

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

Application 04-09-019
(Filed September 20, 2004; Amended
July 14, 2005)

ADMINISTRATIVE LAW JUDGE'S RULING REGARDING MOTION TO BIFURCATE AND EXPEDITE DECISION CONSIDERING CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT

Summary

On July 14, 2009, the Marina Coast Water District (MCWD) filed and served a motion proposing that the decisions in Phase 2 of this proceeding be bifurcated, such that certification of the Final Environmental Impact Report (FEIR) would be considered by the Commission in a separate decision issued prior to a decision addressing other issues associated with the Certificate of Public Convenience and Necessity (CPCN). MCWD's motion also proposes that the schedule be modified to consider cost issues after certification of the FEIR is considered by the Commission. Parties had the opportunity to respond and no party opposed this motion.¹ After consultation with Commissioner Bohn, I grant the motion to the extent that there will be a separate decision regarding certification of the FEIR. However, I deny the motion to the extent that additional changes in the schedule are considered. Parties shall adhere to the schedule set forth in my ruling of July 21, 2009, with the modifications set forth today.

¹ California-American Water Company (Cal-Am), the Division of Ratepayer Advocates (DRA), Monterey County Water Resources Agency (MCWRA), Monterey Peninsula Water Management District (MPWMD), and the Surfrider Foundation (Surfrider) filed responses to MCWD's motion.

Motion and Responses

As a public agency, MCWD states that it desires to participate actively in this matter and to participate in any settlement discussions that may occur. MCWD explains that the lack of a certified FEIR limits its ability to take a position before the Commission and discuss possible joint projects with other parties. MCWD opines that expedited certification of the FEIR could result in a decision regarding the CPCN within six months of the decision certifying the FEIR. MCWD believes that this approach could benefit ratepayers because such action could enable project participants to take advantage of the current economic climate which could result in favorable construction bids, thereby potentially reducing costs to ratepayers.

MCWD acknowledges concerns raised by Cal-Am at the cost workshops regarding the Permit Streamlining Act (PSA).² In sum, Government Code § 65950(a)(1) requires that the lead agency approve or disapprove of the project within 180 days from the date of certification of the FEIR. The applicable timeline can be extended once by mutual agreement of the project proponent and the lead agency for a period not to exceed 90 days from the date of the extension (Government Code § 69597). MCWD asks that Cal-Am agree to such an extension. If the lead agency does not complete its review of the project within the requisite timeframe, Government Code § 65956 provides that the applicant's proposed project could be "deemed approved"; however, there are certain procedural safeguards in place that require notice and public hearing.

Cal-Am, while supporting the motion, does not agree to this extension. Cal-Am is concerned that such an agreement could jeopardize its position before the State Water Resources Control Board vis-à-vis the draft Cease-and-Desist Order In the Matter of the Unauthorized Diversion and Use of Water by the California American Water Company, issued by that board on July 27, 2009 (Order WR 2009-00XX). Cal-Am does recognize that

² Government Code §§ 65950 *et seq.*

there are several procedural steps which must be invoked before any proposed project could be deemed approved. Cal-Am contends that "the timing of any such action is well in the future and there would be ample notice to all parties if Cal-Am attempts to invoke such procedure. Most importantly, California American Water has no intention at this time of invoking that process."³

The other responding parties simply state their support for MCWD's motion, although Surfrider Foundation requests that intervenors be allowed to file claims for intervenor compensation after the certification decision is issued.

Discussion

Having reviewed the motion and responses, Commissioner Bohn and I concur that it is reasonable to revise the procedural schedule in this proceeding to accommodate a separate decision regarding certification of the FEIR. This approach will allow the public agencies who are participating in this matter, who are also responsible agencies for purposes of the California Environmental Quality Act, to consider the FEIR in their deliberations. However, we will not further revise the schedule at this time. This approach allows for a separate decision regarding certification of the final environmental document, consistent with my workload, and will ensure that the proceeding can continue to move forward with all deliberative speed. The scope remains that set forth in the Scoping Memo Ruling issued on March 26, 2009. Once the FEIR is issued, I will issue a ruling identifying both the Draft EIR and FEIR as reference items and proposing to receive them into evidence, once parties have notice and the opportunity to file and serve objections, if any.

Revised Schedule

Comparison Exhibit to be filed and served	August 14, 2009
Target date for FEIR	September 30, 2009

³ CAL-AM Response at 3.

Supplemental Testimony submitted by CAL-AM and MCWD (Costs and CPCN issues)	October 16, 2009
Mitigation Cost Workshop	October 23, 2009
Prepared Testimony served by DRA and Intervenor (Costs and CPCN issues)	November 6, 2009
Concurrent Rebuttal Testimony and estimates of cross examination time (Costs and CPCN issues)	November 20, 2009
Target date for Proposed Decision re: Certification of FEIR	November 23, 2009
Evidentiary Hearings (Costs and CPCN issues)	November 30 - December 4, 2009
Target date for Proposed Decision re: Certification of FEIR on Commission Agenda	1 st Commission meeting in January 2010
Concurrent Opening Briefs Filed and Served (Costs and CPCN issues)	January 8, 2010
Concurrent Reply Briefs Filed and Served (Costs and CPCN issues)	January 29, 2010
Proposed Decision re: CPCN	April 2010
Proposed Decision re: CPCN on Commission Agenda	May 2010

As to Surfrider's request regarding its ability to apply for an award of compensation after the issuance of the decision regarding the FEIR certification, this is permissible, consistent with the provisions of Rule 17.3.⁴

IT IS SO RULED.

Dated August 10, 2009 at San Francisco, California.

⁴ I refer parties to the updated Rules of Practice and Procedure (http://docs.cpuc.ca.gov/published/RULES_PRAC_PROC/105138.htm).

/s/ ANGELA MINKIN

Angela Minkin
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated August 10, 2009, at San Francisco, California.

/s/ CRISTINE FERNANDEZ

Cristine Fernandez