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NOV - 4 2008

To: Enclosed List of Participants

HEARING TO CONSIDER A CEASE AND DESIST ORDER AGAINST CALIFORNIA AMERICAN WATER COMPANY (CAL AM): PENDING MOTIONS IN THE CAL AM PROCEEDING

The following are the Hearing Officers' rulings on pending motions now before the State Water Resources Control Board (State Water Board) regarding matters related to the hearing to consider a Cease and Desist Order against Cal-Am.

1. **Public Trust Alliance, Motion to Strike Portions of Attachment 3 to Cal Am Closing Brief.**

Attachment 3 to Cal Am's Closing Brief is the copy of its April 23, 2008 Motion to Ensure Due Process. Cal Am contends that there is an "appearance of bias" in this proceeding due to the participation of certain staff members in the proceeding. Among other cases, Cal Am cites *Morongo Band of Mission Indians v. SWRCB*, 153 Cal.App.4th 202, 203 (*Morongo*) for the proposition that due process is violated if it appears that the same staff participate in a hearing by advising decision makers and by assisting in prosecuting a case before the same decision makers.

The Public Trust Alliance moves to strike on the grounds that the citation is a violation of procedural rules because *Morongo* is under appeal and may not be cited as if it were settled law.

The State Water Board will not rely upon the specific passages of Cal Am's brief that are supported only by *Morongo* for its argument and reasoning. Appropriate weight will be given to passages that cite authorities in addition to *Morongo* provided that the line of reasoning is supported by non-*Morongo* citations.

2. **Cal Am, Motion to Strike Closing Brief of the Sierra Club.**

Cal Am moves to strike the Sierra Club's entire brief because it is one page too long (16 pages) and because the brief includes a 1 page attachment that is, in effect, another page of brief.

We do not appreciate the Sierra Club's failure to comply with the page limits established for briefs; however, Cal Am's motion to strike the Sierra Club's entire brief for having failed to comply with the page limit is denied.

California Environmental Protection Agency

3. Prosecution Team's Request for Official Notice.

The Prosecution Team moves the admission of a report prepared by the Public Utilities Commission's, (PUC) Division of Ratepayer Advocates (DRA) entitled Report on the Results of Ratepayer Advocates, California Public Utility Commission, Report on the Results of Operations, California American Water Company Monterey District, Application 08-01-027 issued on August 21, 2008. Chapter 4 in the report, addresses Cal Am's unaccounted for system losses, proposals for addressing such losses, estimates possible water savings and makes recommendations for PUC approval.

Cal Am opposes the Prosecution Team's Request for Admission of the DRA exhibit into evidence for official notice. Cal Am contends the DRA document is prejudicial and that Cal Am would have no effective means to rebut statements in the document.

The Prosecution Team's request for admission is denied. Even if admitted contents of the report are hearsay and could be used only to give additional weight to direct testimony and exhibits in the record.

4. Cal Am's Motion to Strike

Cal Am also moves to strike that portion of the Prosecution Team's closing brief that relies upon the DRA report.

Because we have denied the Prosecution Team's Request for Official Notice, the State Water Board will not rely on those passages of the Prosecution Team's brief that rely solely on the DRA report and that portion of Exhibit A that depends upon information drawn from the DRA document.

5. Cal Am, Motion to Strike Prosecution Team's Closing Brief

Cal Am makes no argument and offers no authority to support a motion to strike the Prosecution Team's entire brief. The sole thrust of the motion is directed at the Prosecution Team's request that the DRA document be admitted into evidence. See previous discussion.

6. Cal Am requests permission to extend its responsive brief from 25 to 35 pages.

Cal Am states that more pages are needed because it must respond to the briefs of many interveners. The same is true for the Prosecution Team. Therefore, Cal Am's request is granted. We will also grant the Prosecution Team an additional 10 pages for their responsive brief.

7. Cal Am's Request for Official Notice.

Cal Am requests that Official Notice be taken of 16 exhibits. Official notice has been previously taken of these documents solely for the purpose of addressing procedural matters in the initial portions of this proceeding. (Exhibit CAW-001, 002, 003, 004, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016 and 022.) Cal Am now seeks to have the same documents made a part of the evidentiary record by official notice. No papers were filed in opposition to Cal Am's request.

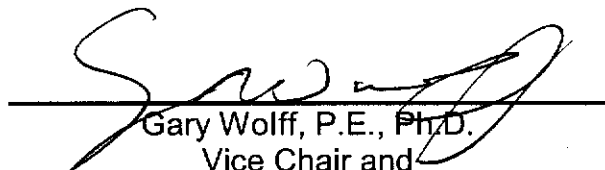
Official notice will be taken of the documents. Most of these documents are factually important to Cal Am's contention that there is an appearance of bias in this proceeding that rises to the level of a due process violation. While disagreeing with this contention, it would be inappropriate to obstruct Cal Am from attempting to establish the factual predicate necessary to make and preserve its legal argument.

Should you have further questions in this matter, please contact Paul Murphey, Division of Water Rights Hearings Unit, at (916) 341-5435 or PMurphey@waterboards.ca.gov; or Buck Taylor, Office of Chief Counsel, at BGTaylor@waterboards.ca.gov.

Sincerely,



Arthur G. Baggett, Jr.
Board Member and
Hearing Officer



Gary Wolff, P.E., Ph.D.
Vice Chair and
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Enclosure

**CALIFORNIA AMERICAN WATER CEASE AND DESIST ORDER
JUNE 19, 2008 HEARING
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