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Subject: Counter Proposal by Water Plus to Modify the CDO

State Water Resources Control Board

Dear Board Members:

On 29 April, Cal Am, supported by a number of other petitioners, submitted an Amended Application to Modify the SWRCB Cease and Desist Order (CDO), the latest in a series of such applications. Water Plus is hereby submitting a counter-proposal.

All Cal Am's applications to modify the CDO have had the brazen chutzpah of a criminal defendant pleading for a change in the law to make his otherwise miscreant behavior acceptable and no longer subject to punishment. That chutzpah is so unbelievably brazen as to raise the suspicion that Cal Am must have received a signal in advance of your board's intention to go along with it. Preferring to believe otherwise, Water Plus is left with this explanation: Cal Am, together with some of its supporters, has been submitting its series of applications simply as acts of desperation arising out of the company's inability to meet the imminent CDO deadline.

Chutzpah is not the most serious problem of Cal Am's applications to modify the CDO. Much more serious is that each of these applications, if adopted, would remove the onus of failure to comply with the CDO from Cal Am and impose it on the company's local ratepayers. No longer would Cal Am be confronted with a fine, but now ratepayers would be confronted with draconian cutbacks in their water supply as Cal Am continues to fail to meet "milestones" putatively on the way to full compliance with the CDO. How could anyone knowingly condone, let alone be complicit in, such blatant injustice?

So here is what Water Plus proposes: first, that you simply erase the CDO deadline. Its imposition could only hurt ratepayers who have no power to meet it. If you fine Cal Am it will seek recovery of the fine from ratepayers. You appear to have no power to prevent that. If you adopt Cal Am's Amended Application, ratepayers—and only ratepayers-- will again be vulnerable. The deadline may also recklessly accelerate projects that need experimental confirmation before they are they are safe and economical enough for operational development. What you can do that will not harm ratepayers but will facilitate compliance with the CDO is formally to recognize and help move along alternative water-supply projects. That would be a positive approach based on competition rather than coercion. In addition to erasing the CDO deadline, therefore, Water Plus proposes that you encourage competition among existing water-supply projects, including Cal Am's. Water Plus further proposes that you facilitate progress through the permitting process for any project that substantially minimizes cost to ratepayers and adverse impacts to the environment, such as by using solar energy to power its desalination plant.

Missing from Cal Am's detailed account of actions, not all by the company, that work in the direction of CDO compliance are two apparently taboo items. The first is Cal Am's unilateral decision to abandon the Regional Desalination Project in favor of one, the MPWSP, which is much more lucrative to the company. That action alone more than compensates on the negative side for all the positive-side actions cited in Cal Am's applications to modify the CDO. The second is the progress made by the People's Moss Landing Water Desalination Project, together with its public partner, the Moss Landing Harbor District. An administrative draft of that project's EIR is under review by the Harbor District's consultant, Aspen Environmental Group, with the draft EIR expected to be circulated for public review possibly by the end of this month. That schedule puts the People's project months ahead of the MPWSP, whose draft EIR is due for circulation late in December. The People's project faces none of the serious legal challenges confronting the MPWSP, possible water-rights and Agency Act violations being among them.

Perhaps the most obvious challenge facing the MPWSP is conflict of interest, which has already delayed the project for at least a year. The conflict involves hydrogeologist Dennis Williams who, though no longer employed by the Public Utilities Commission as an EIR consultant, still works for Cal Am as both designer and evaluator of its slant-well operation. Holding patents on slant wells, Williams truly has a conflict of interest in his work on the MPWSP. Contrast that conflict with the conflict of interest charged against Stephen Collins for his work on the Regional Desalination Project. Other than receiving pay for that work, Collins had nothing, monetary or otherwise, to gain from the project. Yet, his conflict, long prior to any judgment in court, was used by Cal Am to justify its abandonment of the Regional Desalination Project. That project being substantially less costly and more timely than the MPWSP, Collin's conflict in fact worked positively to serve Monterey Peninsula ratepayers and Carmel River restoration while Williams' conflict continues to serve himself, along with Ca Am. Something is surely amiss here.

Please let me know if you have any questions about this proposal. Thank you.
Most respectfully,

Ron Weitzman
President, Water Ratepayers Association of the Monterey Peninsula (aka Water Plus)