

July 12, 2016

State Water Resources Control Board
Division of Water Rights
Attn: Matthew Quint
PO Box 2000
Sacramento CA 95812-2000

PUBLIC COMMENT

**Re: Preliminary Staff Recommendation
to Modify Cease and Desist Order WR 2009-0060,
dated June 17, 2016.**

Dear Chair Marcus, Members of the Board, and Executive Director,

I submit this comment ahead of the revised deadline of July 13, 2016, and wish to make three major points. Although I have to state them very briefly, I believe you may agree that their force calls for major changes in both the revised CDO and the process for completing it.

1, The Milestones Are Loaded Against Legitimate Competing and Alternative Projects

The milestones favor Cal Am in attempting to lock in their plans, that are controversial, and in some cases, already the subject of litigation. This problem extends as far as reducing consideration of competing desalination projects to footnote 3 on page 3, which puts Cal Am and the Deputy Executive Director in charge, if the footnote is ever invoked, without any required public involvement. Projects such as the People's Project, and DeepWater Desal, both at Moss Landing, may be achieving comparable milestones, while Cal Am fails to meet theirs, and yet the punishing reduction in pumping would come into play. It is doubtful whether the footnote 3 is even technically correct, since it specifies a Certificate of Public Convenience and Necessity issued by the CPUC, but private desalination companies are not utility companies and hence are not subject to governance by CPUC.

Please consider how the milestones from 2018 onwards should be redrafted to allow the alternative that Cal Am agreeing to purchase water from competing desalination projects that satisfy comparable milestones would be given equal treatment. In this way, Cal Am would be let off the hook if someone else helped them meet the milestone. The CDO has never in the past required that Cal Am produce the extra water themselves, only that they find a way to obtain it. There is no justification for changing that aspect of the CDO.

The 2016 and 2017 problems may not be on quite such a large scale, but they have added urgency. For example, there are issues with the Pure Water Monterey project (not Monterrey when in California, please!), ranging from feasibility and cost of purification to the questions of the expensive pipe route proposed by Cal Am, and whether Cal Am should be building it anyway, rather than a much more cheaply financed public agency delivering the water to them. Please remove the "shotgun wedding" milestone for 2016, and edit the 2017 milestone to say "any Cal Am components" instead of "the Cal Am components". How can a Water Purchase Agreement be set in a Milestone in September 2016 when so little is currently known about the possible hazards to public health resulting from the levels of purification achieved by the processes envisaged (what are they exactly?), and about the costs on which the purchase price could be based?

A danger of controversial milestones is that they can be used by Cal Am to argue for speedy, if not necessarily correct decisions in their favor, e.g. “to satisfy a milestone, and avoid the imposition of rationing.” A rather surprising current example is that they are attempting to put pressure on CPUC Judge Weatherford by filing motions to accelerate his schedule and to recommend CPUC approval of Pure Water Monterey in time for Milestone 1.

In both of the above areas, it should not be the role of the State WRCB to give Cal Am leverage in seeking the solutions that are most profitable to them, at the expense of California residents who are their ratepayers and would foot the bill.

Room should be left also to encourage satisfaction of milestones by completely new ideas for sources of water, e.g. the possibility of modifying Pure Water Monterey, or extending Aquifer Storage and Recovery, to draw from the Salinas River near the rubber dam during the wet season, when the water would otherwise run out into the ocean.

2. The CDO’s Use of Fines on Cal Am Should Be Retained

By far the biggest decision in the staff recommendation is to remove any obligation on Cal Am to pay fines, And yet I have been unable to find any mention of this in staff’s motivation document – what was the reason for omitting any motivation? Was it thought that it was unimportant, or that no one would notice? I am seriously asking for an answer to this question, please.

There is no reason to forgive Cal Am, since the delays have been largely of their own making, the major example being their decision to drop out of the Regional Project in order to become the owners of a new Water Supply Project, replacing Marina Coast Water District who had led the Regional Project. Since the cost of the Cal Am WSP is currently quoted at \$340 million, the implications are that water ratepayers would be charged at least this much for finance charges, profits and taxes, i.e. an average of at least \$8,500 for each of the 40,000 connections, as a gift to Cal Am. The alleged reason for abandoning the Regional Project was a situation of conflict of interest, and yet since that time, Cal Am cheerfully promoted the conflict of interest of their subcontractor Dennis Williams in the slant well testing for the Coastal Commission and the PUC. I leave it to the reader’s judgement as to whether the profit motive was the overwhelming reason that Cal Am undermined the Regional Project, despite knowing that it would inevitably delay the satisfaction of the CDO. Cal Am should not be forgiven the penalty of choosing that route, which was of no benefit to their ratepayers – indeed, to the contrary, would be much more costly to them.

Staff’s recommendation of reduction of Effective Diversion Limits is no penalty at all to Cal Am, since CPUC always allows them to recover from ratepayers any loss of revenues due to pumping less water. However, for ratepayers it means not only the extra costs, but also the very severe threat of rationing. This is not imagination. On July 10, 2016, the Director of the Monterey Peninsula Water Management District co-authored an article in the Monterey Herald that mentioned “stages of the local rationing plan likely to be triggered”.

State Water Board, please do not do this to ratepayers who have been heroic in their conservation efforts for the last several years, while you are letting off the culprits scot-free. Instead, adapt the previous fines to the new milestone structure.

3. There’s Nothing Sacred about July 19, 2016

Issues raised in this, and many other public comments, call for staff to be given different direction by the Board, and to be given sufficient time to do the quality work that they would like to do.

Even if this extends beyond December 31, 2016, and Cal Am begins paying fines under the existing CDO, this would not be all bad - it would motivate them to work towards a solution that does not dishonor either their customers or the State Water Board. And the amount of money involved would be trivial compared to what they are looking to take from their ratepayers.

The SWRCB has failed in its duty to hear more than one side of the issue until the last minute, issuing the preliminary staff recommendation on June 17, 2016, i.e. after the original deadline for public comment on June 1, 2016. The revised deadline of July 13, 2016, allows staff perhaps only 3 working days to revise their recommendation in response to valid significant public comments. On the other hand (Rationale Document, p.1), "For approximately two years prior to November 20, 2015, State Water Board staff members met with representatives of Cal-Am and other interested parties with the goal of seeing whether it was possible for Cal-Am to develop proposed modifications to State Water Board Order 2009-0060 that staff and other stakeholders could recommend to the State Water Board. These discussions were productive, and a broad framework emerged. ..." It is easy to see how, without any opposing voice, staff were persuaded to amend the CDO in a way that removed any penalty from Cal Am, and placed all penalties on ratepayers.

It should be noted that the "other interested parties" were allies of Cal-Am who were all signatories to a document in which they agreed, in exchange for a seat at the Cal Am table, not to oppose publicly any proposal that Cal Am wished to bring forward. If you have not seen this document, you may feel you wish to ask to see it now, since it disqualifies the signatories from being able to represent ratepayers in situations, such as the current proposed CDO Revision, which are diametrically opposed to ratepayer interests.

A further point to note on adequacy of representation is that some commercial ratepayers are supporting Cal Am, but this has earned them special favor in the past, such as a flat rate for water consumed instead of the steeply tiered rates imposed on residential users. What advantage is there to commercial users now in supporting Cal Am, except the hope of future favors, e.g. if rationing is imposed, and it is argued that the Monterey Peninsula economy cannot be allowed to be impacted, whereas residents can always be squeezed a bit drier?

I humbly request you to make up for lost time, and give adequate opportunity to genuine ratepayer representatives to meet face to face with your staff. This courtesy was extended to Cal Am and supporters for many hours in the past, and it is needed now for your staff to gather an in-depth understanding of better and fairer solutions. Maybe a Workshop would be a good first step. To restrict Monterey residents to something like 3 minutes of public comment, at a Board meeting or hearing, would be poor reward for them making the nearly 400-mile round trip from Monterey to Sacramento.

Failure to arrange urgently for adequate residential ratepayer input would needlessly expose the State Water Board to its handling of this proposal being challenged at a higher level.

If the present recommendation is not reversed, the message in the headlines would be "Cal Am were right for 21 years: the CDO could be flouted, the Carmel River continue to suffer illegal overpumping, and the State Water Board would never dare to enforce the penalties on Cal Am."

Respectfully submitted,

David Beech

Residential Cal Am Ratepayer
Board Member, WRAMP (Water Ratepayers Association of the Monterey Peninsula)
and PWN (Public Water Now)