

20 September 2016

Ms. Felicia Marcus, Chair
Board Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

SUBJECT: SUPPLEMENT TO PETITION FOR RECONSIDERATION SUBMITTED IN
RESPONSE TO ORDER WR 2016-0016

Dear Chair Marcus and Board Members:

The Water Ratepayers Association of the Monterey Peninsula (“WRAMP”) hereby submits this Supplement to our Petition for Reconsideration submitted on 16 August 2016.

No apparent Consideration given to the Petition for Writ of Mandate filed to address the illegal Actions by California American Water Company (“Cal-Am”) compromising the Monterey Peninsula Water Supply Project’s largest Source of Replacement Water

Neither Order WR 2016-0016 adopted by your Board on 19 July 2016 nor the Joint Opposition filed by Cal-Am on 2 September 2016 addressed the issues raised in WRAMP’s Petition for Writ of Mandate filed in the Superior Court of Monterey County on 28 June 2016 against the County of Monterey, Monterey County Board of Supervisors, Monterey County Water Resources Agency, California Coastal Commission, and the California Coastal Commission Board of Commissioners, Respondents; and the California American Water Company, Real Party in Interest. The causes of action and underlying facts concerning Cal-Am’s Monterey Peninsula Water Supply Project’s desalination facility raised issues regarding the company’s lack of any appropriative water rights to pump groundwater from an over-drafted groundwater basin, as well as its violation of the provisions of the North Monterey County Local Coastal Plan and the Agency Act. Unless the Superior Court recognizes the right of someone without appropriative water rights to pump from an already over-drafted groundwater basin, access to Cal-Am’s only source of intake water for its proposed desalination facility will be enjoined and its desal project will be literally *dead in the water*. The issue of water rights was raised in WRAMP’s Petition for Reconsideration on page 7:

“The record should also reflect the facts that Cal-Am has proceeded to plan and implement a substitute water-source project, the Monterey Peninsula Water Supply Project, that has been delayed by conflict-of-interest and lacks essential water rights.”

As your Board is aware, the Salinas Valley Groundwater Basin has been identified as being in over-draft by the California Department of Water Resources, the California Coastal Commission, and the Monterey County Water Resources Agency for over sixty years. Cal-Am’s “test well” violates provisions of the certified North Monterey County Local Coastal Plan. Its illegal pumping and its “water dumping” of potable groundwater resources is resulting in significant and cumulative adverse impacts. The continuing operation of Cal-Am’s test well harms the groundwater supply, violates the Groundwater Sustainability Act of 2014, and violates the

SWRCB's Non-Degradation Policy, while appropriating groundwater from an over-drafted groundwater basin without any appropriative water rights. Multiplying these offenses substantially, the operational wells in the Monterey Peninsula Water Supply Project will violate the local Coastal Plan, California Coastal Commission permit conditions, and the Agency Act by drawing water illegally from an over-drafted basin for use outside the basin. The downward effect of this behavior on the likelihood that Cal Am's proposed desalination project will ever materialize to provide an alternative to the company's illegal diversions of Carmel River water is what WRAMP addressed in its Petition for Reconsideration. Without legal rights to Salinas Valley groundwater, Cal-Am is extremely unlikely to meet the revised Cease and Desist Order deadline of 31 December 2021. As a result, your Board will almost certainly be in the same position in 2021 that it is in 2016. (Please see attached Petition for Writ of Mandate.)

Pure Water Monterey Project

In addition to wastewater (sewage), this project proposes to use agricultural runoff water long-collected in the Blanco Drain and the Reclamation Ditch, as well as occasional winter storm water. These source waters include significant amounts of DDT, arsenic, and mercury, as well as nitrates and other pesticides, that cannot be treated to safe drinking-water standards without multiple and expensive rounds of treatment, each round of treatment increasing the level of toxins in the effluent to the Monterey Bay National Marine Sanctuary. The essentially same project was rejected by Cal-Am as a component of the Coastal Water Project in 2009. (Please see attached 2009 testimony on behalf of Cal-Am by a consultant of Cal Am attorneys Manatt, Phelps & Phillips, particularly p. 15.) WRAMP earnestly requests that your Board question the Monterey Regional Water Pollution Control Agency's plans for treating this water to safe drinking-water and effluent standards. At the same time, you should inquire why no independent current biological and chemical analyses have been done on the treatment of the proposed source-water mix to ensure public health and safety, as well as the protection of environmental resources. WRAMP has been raising these issues in numerous communications with your Board dating from at least 23 November 2015.

Cal-Am's Withdrawal from Regional Desalination Project Years before Monterey County Water Resources Agency Board Member's Conflict of Interest was established in Court

Cal Am putatively withdrew from the Regional Desalination Project because of a conflict-of-interest by a board member of the Monterey County Water Resources Agency ("MCWRA") who also served as a paid consultant on the project. Yet, Cal-Am's withdrawal from the project on 28 September 2011 occurred years before the conflict-of-interest court action ended in a no-contest plea on 23 March 2014. It occurred even before his 15 November 2011 indictment. On 17 January 2012, following five months of CPUC-sponsored mediation, Cal Am publicly withdrew from the Regional Desalination Project, more than two years before the no-contest plea. (Please see attached excerpt from Cal Am CPUC filing.) Cal Am also had to be aware of the board member's dual role even prior to 2011, the company's having paid four of his early invoices in 2010. (Please see attached deposition of Rob MacLean.)

In addition, even if the agreements underlying the project became void as a matter of law, the project partners could have disclosed the dual role of the board member, terminated his role as a consultant, and, realizing that a consulting fee of less than \$200,000 was a poor reason to terminate a project that had already incurred the expenditure of millions of dollars, revised the agreements or drafted new ones. Most importantly, Cal-Am could, and should, have recognized

its obligation to meet the Cease and Desist Order's deadline of 31 December 2016 and continued with a project that was on schedule to produce water before the end of 2016.

Aquifer Storage and Recovery ("ASR")

While this is a great means to save water that would otherwise flow into the ocean, it would require new sources of water to replace current illegal diversions from the Carmel River. Given the reduced volumes available from the Carmel River during years of continued drought, significant new volumes from a desalination facility and the Pure Water Monterey project would be required. During its eight years of operation to mid-2015, ASR has injected an average of only 387.6 acre-feet of water per year into the Seaside Basin, far short of the planned average of between 1,500 and 1,700 acre-feet per year. If the desalination project and Pure Water Monterey project also fell short because of legal and regulatory challenges, as described herein, ASR would remain simply a storage facility for ever-decreasing excess flows of the Carmel River.

Without development of the Cal Am desalination facility and the Pure Water Monterey project, whose compliance with legal requirements and safe drinking-water and effluent standards has been questioned herein, the milestones of Order WR 2016-0016 cannot be met. Instead, the residents of the Monterey Peninsula will continue to pay increasingly higher water rates for less and less water while continuing to compensate Cal-Am for its ongoing failure to develop an alternate water-supply project and adequately mitigate the adverse impacts of its over-pumping on the Carmel River and its public-trust resources.

Inadequacy of Mitigation Measures

In support of its petition to extend the CDO deadline, Cal Am described numerous mitigation measures it has taken in conjunction with other parties, but unfortunately the facts speak for themselves, as the attached recent photos of the Carmel River demonstrate: almost complete devastation. The Carmel River is a public resource that cries out in desperate need of help. WRAMP urges your Board to provide that help as expeditiously and effectively as possible.

Incorrect Allegation intended to denigrate WRAMP

In an apparent attempt to denigrate WRAMP, the Joint Opposition incorrectly claimed that we had not received CPUC approval to claim intervenor compensation. In fact, we have received such approval in two separate proceedings, including the one on the Monterey Peninsula Water Supply Project. Your Board should take note of this lack of truth and candor in evaluating the Joint Opposition, as well as other Cal Am claims and assertions.

Most respectfully,

/s/ Ron Weitzman

Ron Weitzman, President
Water Ratepayers Association of the Monterey Peninsula

Attachments