



State Water Resources Control Board

May 8, 2020

Mr. John Ainsworth
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

John.Ainsworth@coastal.ca.gov

RE: Application No. 9-19-0918 and Appeal No. A-3-MRA-19-0034 (California American Water Company)

Dear Mr. Ainsworth:

I write to express the State Water Resources Control Board's (State Water Board) interests in the Coastal Commission's timely action on the above-referenced proceedings, regarding California American Water Company's (Cal-Am) consolidated application and appeal for a coastal development permit for its proposed 6.4-million-gallon-per-day desalination project, the Monterey Peninsula Water Supply Project (Project). As I explained in oral comments to the Coastal Commission at the November 14, 2019 meeting, the State Water Board's efforts to resolve long-standing problems caused by excessive diversions from the Carmel River depend on prompt resolution of Cal-Am's application and appeal. We therefore urge the Coastal Commission to act on the permit at its meeting in August 2020.

Background on Long-standing Unlawful Diversions from the Carmel River

As summarized in the Coastal Commission's staff report dated October 28, 2019, the State Water Board has ordered Cal-Am to terminate its unauthorized diversions from Carmel River no later than December 31, 2021. The State Water Board is concerned not only about longstanding and continuing violations of state water rights law but also the diversions' negative impacts on public trust resources of Carmel River, which provides habitat for the federally threatened South-Central California Coast Steelhead Distinct Population Segment, the federally threatened California red-legged frog, and the candidate western pond turtle, and which also supports coastal wetlands and riparian vegetative communities.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Since 1995, Cal-Am has been required to “diligently implement . . . actions to terminate its unlawful diversions,” and its inadequate progress led the State Water Board to issue a cease and desist order in 2009 requiring Cal-Am’s full compliance by the end of 2016. (State Water Board Order WR 95-10, p. 40; State Water Board Order WR 2009-0060, p. 57.) Most recently, after additional setbacks in the development of a local water supply project to replace Cal-Am’s continuing unauthorized Carmel River diversions, the State Water Board extended the compliance deadline to the end of 2021. At the same time, the State Water Board established enforceable interim milestones and effective diversion limits to ensure “that the State Water Board will not again find itself in the same position of again extending the compliance deadlines” (State Water Board Order WR 2016-0016, pp. 9, 19-24 [Order WR 2016-0016].) The State Water Board identified the Project, together with the 3,500-acre-foot-per-year Pure Water Monterey project and Cal-Am’s existing rights to Carmel River and the Seaside Basin, as a viable path to ending Cal-Am’s unlawful diversions from Carmel River by the end of 2021.

The State Water Board set milestones based on development of the Pure Water Monterey project and the Project accordingly, and it indicated that it would consider modifying the order’s milestones if another feasible, larger-scale water supply project were to emerge to terminate Cal-Am’s unauthorized diversions by the end of 2021. (Order WR 2016-0016, pp. 15-16 & 20, fn. 17.) But the State Water Board has also established conditional reductions in Cal-Am’s interim effective diversion limit, to ensure that “diversion limits are ratcheted down such that unlawful diversion end by December 31, 2021 regardless of whether Cal-Am meets the milestones.” (*Id.*, p. 13.) The cease and desist order, including the prohibition against new service connections and against certain increased water deliveries to existing service connections, will only be resolved or “lifted” after Cal-Am satisfactorily demonstrates that it has “obtained a *permanent* supply of water that has been substituted for water illegally diverted from the Carmel River.” (*Id.*, ordering paragraph 15 [p. 27], italics added.)

Cal-Am has satisfied all milestones to date and in recent years obtained important approvals to construct the Project, including the Public Utilities Commission’s certification of the final environmental impact report (Final EIR)¹ and issuance of a certificate of public convenience and necessity, as well as the County of Monterey’s issuance of a development permit for the desalination plant. This trend shifted beginning in the later part of 2019.

Recent Developments Have Caused Delay

¹ Because a portion of the Project is proposed within the Monterey Bay National Marine Sanctuary (MBNMS), the Public Utilities Commission and the National Oceanic and Atmospheric Administration (NOAA), the lead agency under the National Environmental Policy Act, prepared a joint Final EIR and Environmental Impact Statement (EIS). MBNMS Superintendent Paul Michel stated at the Coastal Commission’s November 19, 2019 meeting that NOAA worked with the Public Utilities Commission and the consultant team to “ensure that the Final EIR/EIS identified all potential impacts and met all levels of NEPA sufficiency.”

Since the Commission's November 14, 2019 meeting in Half Moon Bay, the scheduled date for completion of the hearing and Coastal Commission action on the Project application and appeal has shifted from March 2020, to June 2020, and now given extensions related to the COVID-19 emergency, to August or September 2020. Coastal Commission staff has indicated a continued desire for Cal-Am to withdraw its application, thereby removing any deadline for Coastal Commission action on the Project, until after Coastal Commission completes an extended review and investigation of various issues, including the Project's groundwater impacts and the Monterey Peninsula's projected water supply and demand.

The Coastal Commission states that the delay is due to a need to resolve these remaining technical questions. But these issues have already been resolved by the Public Utilities Commission, after extensive environmental review and consideration of evidence and testimony over a multi-year adjudicative proceeding. (See Public Utilities Commission Decision 18-09-017 & Decision 19-01-051. See also *Marina Coast Water District v. Public Utilities Commission*, review den. Dec. 12, 2018, S251935; *City of Marina and Marina Coast Water District v. Public Utilities Commission*, review den. Aug. 28, 2019, S253585.) Importantly, several of the Coastal Commission staff's recommendations and findings from November 2019 regarding the Project are contrary to the Public Utilities Commission's determinations. Coastal Commission staff suggests the Public Utilities Commission acted on either incomplete or outdated information regarding these issues. The State Water Board does not agree.

State Water Board staff has reviewed the existing hydrogeologic studies and reports, including Weiss Associates' independent hydrogeological review of more recent data and studies dated November 1, 2019 (Coastal Commission, Items Th8a & Th9a, Exhibit 7) and Weiss Associates' proposed scope of work for an additional "aquifer impacts" analysis dated March 11, 2020. State Water Board staff has concluded that the North Marina Groundwater Model already conducted, revised, and relied upon by the Public Utilities Commission as part of its certified Final EIR (see, e.g., Section 4.4, Section 5.5.4, and Appendices E2 and E3), provides a conservative overprediction of the volume of shallow, inland water that the Project would capture during full operation.

The Project's test slant well was operated for over two years and has shown minimal impacts to groundwater levels approximately 2,100 ft from the well (at MW-4) and little to no impacts to groundwater levels further inland (at MW-7). The existing model predicts hydraulic impacts much farther inland than has been observed during actual operation. Efforts to calibrate the model to better match observed data would result in an increase in the simulated extraction of seawater and *less* simulated capture of inland groundwater compared to existing modeling results. Accordingly, even if the additional investigation, monitoring, and modeling could provide some instructive data or information, any new information obtained from this work would not undermine or substantially change the current understanding of the hydrogeologic system. State Water Board staff's opinion remains that the groundwater impacts of the Project will not be any greater than those stated, analyzed, and mitigated under the Public Utilities Commission's certified Final EIR.

Furthermore, the additional groundwater analysis proposed to be conducted by Weiss Associates would focus on an area of approximately two square miles, which is approximately 1% of the area covered by the existing model. Refinement of the model in this relatively small area would not result in substantial differences in the model output. Given that the additional information will not further inform the Coastal Commission's decision regarding the Project's alleged "depletion of ground water supplies" (Pub. Resources Code, § 30231)², the additional six months (or more) this work is expected to take is not necessary.

State Water Board staff has also reviewed the available documents regarding Monterey Peninsula water supply and demand and has discussed drinking water requirements, including standards for new and existing water source capacity, with Coastal Commission staff and other parties. Even though actual water use within Cal-Am's Monterey District service area in recent years has been lower than the Public Utilities Commission's estimated current demand, State Water Board staff does not have a basis to conclude that the Public Utilities Commission's prior analysis and determinations regarding the water demand, sizing, reliability, or diversity of supply were unreasonable, invalid, or outdated.

The delays in proceedings before the Coastal Commission and the resulting effects on other proceedings, including the State Land Commission's processing of Cal-Am's general lease application and the Superior Court of Monterey County's prolonged stay of the County's issued development permit, will almost certainly prevent Cal-Am from meeting the 2020 and 2021 milestones for construction and completion of the Project under Order WR 2016-0016. In the State Water Board's observation, further Coastal Commission delay will also limit Cal-Am's ability or willingness to consider and pursue, let alone fund and construct, other short-term or long-term water supply alternatives to terminate unauthorized diversions from Carmel River as required no later than December 31, 2021.

For example, the proposed schedule for implementing a 2,250 acre-foot-per-year Pure Water Monterey expansion has itself already been delayed well beyond December 31, 2021, and requires approvals and funding for which the details are uncertain and the timeline is indefinite. In practice, Pure Water Monterey expansion appears to be viewed by the Coastal Commission and others not merely as a "back-up" to, but rather as a potential full substitute for, the Project. It is uncertain whether or when the proposed

² Despite Coastal Commission staff's reliance on section 30231 of the California Coastal Act of 1976 in its November 4, 2019 addendum as the basis for recommending additional groundwater modeling, it is unclear whether Coastal Commission staff asserts, or has any factual basis for asserting, that the Project could potentially impact groundwater resources in a manner that would affect the coastal resources protected by that provision. The statute specifies the Coastal Commission shall maintain and, if feasible, restore the "biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to *maintain optimum populations of marine organisms and for the protection of human health . . .*" (Pub. Resources Code, § 30231, italics added.)

Pure Water Monterey expansion project may proceed beyond its currently pending environmental review, but significant additional progress appears unlikely while the Project is still pending.

Furthermore, as the NOAA Fisheries Central Coast Branch Chief publicly commented before the Coastal Commission in March, there could be dire consequences for the steelhead and other public trust resources if a reliable and sustainable water supply allowing Cal-Am to terminate its unlawful diversions is not promptly developed. For all of these reasons, the State Water Board urges the Coastal Commission to consider whether it actually requires additional information or investigation regarding the Project, and to then promptly complete any additional work so it can issue a final decision on Cal-Am's application and appeal no later than is currently planned at the August 2020 meeting.

We appreciate your attention to these important issues and remain available to discuss any of this with you or your staff if further discussion would be helpful.³

Sincerely,



Eileen Sobeck, Executive Director
State Water Resources Control Board

cc: **[via email only]**

Alison Dettmer, Senior Deputy Director, Coastal Commission
Kate Huckelbridge, Deputy Director of Energy, Ocean Resources, & Federal Consistency, Coastal Commission
Tom Luster, Senior Environmental Scientist, Coastal Commission
Rich Svindland, President, California American Water
Layne Long, City Manager, City of Marina

³ These comments regard technical and legal matters that are within the State Water Board's purview and expertise. They should not be interpreted by the Coastal Commission or any other parties as support for or opposition to the Project, Pure Water Monterey expansion, or any other efforts that will permanently end Cal-Am's unauthorized diversion from Carmel River as soon as possible. The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) also has permitting authority over the Project, and will apply subdivision (b) of section 13142.5 of the Water Code and the California Ocean Plan in the exercise of that authority. These comments may not necessarily reflect the positions of the Central Coast Water Board.