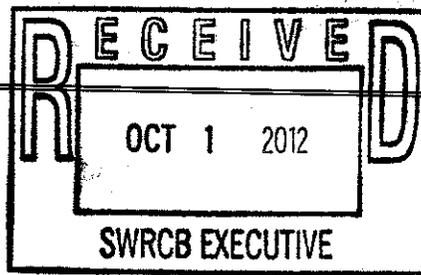


## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

September 26, 2012

File No.: Application 12-04-019

Thomas Howard  
Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

RE: Request for assistance on water right issue; Monterey Peninsula Water Supply Project proposed in Application 12-04-019 by California-American Water Company

Dear Mr. Howard:

As you know, the Commission has pending before it Application (A.) 12-04-019 of the California-American Water Company (Cal-Am), proposing a Monterey Peninsula Water Supply Project (Project). As proposed, this Project would consist of a desalination facility combined with planned groundwater replenishment and aquifer storage and recovery. Water from this project is intended to replace the portion of Cal-Am's supply from the Carmel River that becomes unavailable in December 2016 under the Board's October 20, 2010 Cease and Desist Order (WR-2009-0060).

The Project Application calls for ocean feedwater for the desalination facility that may contain "potentially a small amount of groundwater" (Application at 7). This feedwater would be extracted via slant wells extending a few hundred feet offshore beneath the seabed. Data-gathering test slant wells are planned as a first stage, to be followed by a series of permanent slant wells if the data from the test wells and modeling are favorable.

Given the Application's reference to a potential component of groundwater, which could be from the Salinas River Basin aquifer, several parties in the proceeding are questioning Cal-Am's claim that it will have a legal right to extract feedwater through the proposed test and permanent slant wells. As a result, the Commission's assigned Administrative Law Judge, noting that project approval would require a Commission finding of legal feasibility, requested and received legal briefing on the issue. The positions of the parties vary widely on the issue, and taken together indicate that the issue is complex.

The Commission generally disclaims jurisdiction to determine water rights. The Commission does have both jurisdiction and an obligation in this instance, though, to determine whether any claim by Cal-Am to a right to feedwater that would be essential to the reliable operation of the proposed desalination plant is credible enough to support a finding of legal feasibility for the Project.

Given the expertise of the Board's staff in the field of water rights, we are asking for your assistance as soon as possible in the Commission's review of Cal-Am's contention that it will have a credible claim to the right to extract the feedwater at the rates and volume needed for the proposed Project. We understand that the Salinas River Basin aquifer has not been adjudicated, therefore we explicitly are not asking for a determination of water rights. In particular, we are not invoking or requesting an exercise of the Board's jurisdiction or authority to adjudicate water rights. Rather we are requesting your opinion as to whether Cal-Am's claim to being able lawfully to extract feedwater is credible. That opinion can inform the Commission's determination of whether the proposed project is legally feasible.

The Commission would make the proposed referral of this issue to the Board under the Commission's general authority, and for the specific purpose of building the record in proceeding A.12-04-019. We envision that after we refer the issue to the Board, the Board would prepare an initial staff report on a relatively short timeframe, preferably by December 14, 2012. (This is necessary because Cal-Am is scheduled to submit written supplemental testimony on January 11, 2013 and the other parties will be submitting written rebuttal testimony on February 22, 2013.) It would be desirable for the parties to have an opportunity to comment on the initial staff report, and for Board staff to evaluate those comments.

Given the importance of the issue to the Board (and the parties), we understand that the Board may want to approve the staff report at a formal meeting, after consideration of the report and the parties' comments. We further understand that Board approval of the report may take longer than December, but parties to the Commission proceeding would have the initial staff report available for the preparation of their testimony, and could cite to that staff report in their testimony.

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The Commission appreciates the Board's expertise and the Board's willingness to share that expertise to assist the Commission in its review and consideration of the proposed project.

In aid of your review and consideration of this request, I enclose a copy of Cal-Am's Project Application, including exhibits, and a copy of the Docket card in A.12-04-019, highlighting those documents filed to date that bear on the feedwater, water right claim issue. Copies of documents cited on the Docket card can be accessed on the Commission's web site at:

<http://delaps1.cpuc.ca.gov/CPUCProceedingLookup/f?p=401:1:0> (Instruction: Enter A1204019 as the proceeding number.)

Should the Board agree to assist the Commission in the manner requested, I will identify one or more Commission staff for the purpose of formalizing arrangements and coordinating the undertaking, including reimbursement of the Board's costs. Thank you for considering this request.

Sincerely,



Paul Clanon  
Executive Director

PAC:sbf

cc: President Michael R. Peevey w/o enclosures  
ALJ Weatherford w/o enclosures  
A.12-04-019 Service List w/o enclosures