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**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of the Unauthorized Diversion and
Use of Water by the California American Water
Company; Cease and Desist Order WR 2009-0060

**JOINT OPPOSITION TO
SUPPLEMENT TO PETITION FOR
RECONSIDERATION OF STATE
WATER RESOURCES CONTROL
BOARD ORDER WR 2016-0016**

I. WRAMP’S SUPPLEMENT TO PETITION FOR RECONSIDERATION SHOULD BE DISREGARDED AS UNTIMELY AND WITHOUT MERIT

A. The Supplement Is Untimely

Water Ratepayers Association of the Monterey Peninsula (“WRAMP”)¹ filed its Supplement to Petition for Reconsideration of the State Water Resources Control Board’s (“SWRCB”) Order WR 2016-0016 (“Order”) on September 20, 2016 (“Supplement”) – *sixty-three days* after the SWRCB issued its Order and *eighteen days* after California-American Water Company (“Cal-Am”), Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Pebble Beach Company, and City of Pacific Grove (collectively, “Applicants”) filed their Joint Opposition to the Petition for Reconsideration (“Joint Opposition”). WRAMP does not, and cannot, assert that it is offering the Supplement, or its exhibits, to provide relevant evidence that could not have been previously presented. *See* 23 CCR §§ 768(c), 769(b) (requiring a sworn statement explaining the reason newly submitted information was not previously provided to the board). WRAMP is simply attempting to bolster its previous arguments and reply to the Joint Opposition with information that it had well before filing its moving papers. The California Code of Regulations does not provide for any such filing. *See* 23 CCR § 768, *et seq.* As such, the Supplement and its exhibits should be disregarded. *See* 23 CCR §§ 770(a)(1), 770(a)(2)(C).

B. The Supplement Is Without Merit

Even if the SWRCB was to overlook the fact that WRAMP’s Supplement is untimely, it should still disregard it, as the arguments raised are irrelevant to the Order at issue and without any evidentiary support. The Supplement, like the Petition for Reconsideration, simply provides no basis for the SWRCB to reconsider its properly issued Order.

WRAMP’s argument that the Order and Applicants’ Joint Opposition failed to address the issues raised in WRAMP’s Petition for Writ of Mandate, which was filed on June 28, 2016,

¹ WRAMP was previously known as “Water Plus.”

and is currently pending before the Superior Court of Monterey County, is of no moment, as those issues have yet to be resolved by the Superior Court and WRAMP did not raise the then-pending Petition for Writ of Mandate in its moving papers. In any event, as detailed in Cal-Am's pending Demurrer to the writ petition, WRAMP's Petition for Writ Mandate is entirely without merit and should be dismissed because, among other things: (i) there is no basis to issue a writ because WRAMP challenges discretionary determinations by public agencies that are not subject to judicial review; (ii) WRAMP's challenges to the Coastal Commission's November 2014 approval of the test slant well project are time-barred; and (iii) WRAMP's challenge to approval of the Monterey Peninsula Water Supply Project ("MPWSP") is not ripe because the MPWSP is currently under review by the California Public Utilities Commission ("CPUC") and has not yet been approved. Moreover, the SWRCB thoroughly addressed the issue of water rights in its July 31, 2013 Final Review of Cal-Am's MPWSP. Accordingly, WRAMP's allegations regarding potential water rights issues should be disregarded.

WRAMP's allegations regarding the Pure Water Monterey, Aquifer Storage and Recovery, and Regional Desalination Projects are equally unavailing. First, WRAMP's allegations regarding (i) water quality of the Pure Water Monterey Project and (ii) the sufficiency of the Aquifer Storage and Recovery program to allow Cal-Am to meet the milestones if, as WRAMP argues, Cal-Am's other proposed projects fail, are both irrelevant. The Order extended the deadline for Cal-Am to reduce its use of Carmel River water, setting milestones for it to achieve along with step-wise reductions of diversions if Cal-Am does not meet those milestones. The Order did not review the substance of Cal-Am's proposed projects or the likelihood of Cal-Am's ability to meet the milestones through those projects. Nor did the SWRCB need to do so, because the milestone penalties included in the Order assure that Carmel River diversions will be reduced regardless of whether the proposed projects succeed. Second, WRAMP's continued insistence that Cal-Am should have continued with the Regional Desalination Project is contradicted by the record, including the decision of the Court of Appeal, First Appellate District, deeming the subject agreements void (*Cal-Am Water Co. v. Marina Coast Water Dist.*

(2016) 2 Cal. App. 5th 748), and the CPUC's approval of Cal-Am's withdrawal from the project, which it found had "no reasonable prospect of achieving its goals" (CPUC Decision 12-07-008 (July 18, 2012)). The timing of the conflict of interest criminal action is inapposite. Applicants noted WRAMP's predecessor's active participation in that proceeding, including the CPUC's denial of Water Plus' Notice of Intent to Claim Intervenor Compensation in the same decision approving Cal-Am's withdrawal from that project. *See* Joint Opp. at 9; CPUC D.12-07.008 on App. 04-09-019; *cf.*, Supplement at 3.

WRAMP's bald challenge to the sufficiency of Cal-Am's mitigation measures should also be disregarded because WRAMP fails to identify what mitigation measures it is challenging or how any such measures failed to meet their objectives.

II. CONCLUSION

As set forth above, Applicants respectfully request that the SWRCB disregard the Supplement as untimely or, in the alternative, as irrelevant and lacking evidentiary support. As detailed in Appellants' Joint Opposition, the SWRCB's Order was proper and the Petition for Reconsideration should be denied.

Dated: September 27, 2016

Respectfully Submitted,



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On Behalf of Applicants