

30 September 2016

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

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

Dear Chair Marcus and Board Members:

This back-and-forth between WRAMP and the JOINT OPPOSITION is coming to resemble a shouting match. I am sorry to trouble you with yet another round of this match, but I cannot let misrepresentations in the JOINT OPPOSITION response on 27 September 2016 go unchallenged.¹

The least important, but nonetheless noteworthy, is the JOINT OPPOSITION's claim that WRAMP (aka Water Plus) did not receive CPUC permission to claim intervenor compensation in the proceeding on the Regional Desalination Project. The party to which the JOINT OPPOSITION is referring in its reference to that project is not WRAMP but Public Water Now (formerly Citizens for Public Water) which, different from WRAMP, was a party to the proceeding on that project. Not being a party to that proceeding, WRAMP could neither receive nor fail to receive permission to claim intervenor compensation for participation in it. Once again, in an attempt to denigrate WRAMP, the JOINT OPPOSITION has been disingenuous and untruthful.

The same opprobrium characterizes its attempt to dismiss WRAMP'S 20 September 2016 Supplement to Petition for Reconsideration for being untimely. Citing 23 CCR § 768, the JOINT OPPOSITION states, "The California Code of Regulations does not provide for any such filing." Nor does it prohibit it.

Again, the same opprobrium characterizes the JOINT OPPOSITION's attempt to dismiss the issues addressed in the Petition for Writ of Mandate filed by WRAMP on 28 June 2016. The JOINT OPPOSITION cites a *pending* demurrer by Cal Am, filed on 29 August 2016, when the time for filing a demurrer, being within 30 days of filing the writ petition (CCP 430.40), had long passed.

Yet, one of the issues the JOINT OPPOSITION raised in this regard deserves special attention. That is the issue of ripeness: "WRAMP's challenge to the approval of the Monterey Peninsula Water Supply Project is not ripe because ... [it] has not yet been approved." The challenge at issue in the writ petition was not to the project but to the project's reliance on its "return water" doctrine: *The return of only a tiny fraction of the groundwater exported from the Salinas Valley will satisfy*

¹ The 16 August 2016 WRAMP Petition for Reconsideration and the 20 September 2016 WRAMP Supplement to that petition are included here by reference.

the Agency Act's prohibition of the exportation of groundwater from the valley. The fraction of water proposed to be returned, however, is a fraction of total dissolved solids, not water. Total dissolved solids representing no more than 3.2 percent of groundwater at the site of extraction, that fraction of total dissolved solids corresponds to no more than 0.3 percent of the water (H₂O) proposed for extraction and exportation. The return of only 0.3 percent or less of exported water (H₂O) clearly violates the Agency Act's exportation prohibition.² The 28 June 2016 writ would require the Monterey Water Resources Agency to enforce that prohibition and, in so doing, make it impossible for the Monterey Peninsula Water Supply Project to meet its milestones set forth in Order WR 2016-0016.

The JOINT OPPOSITION claims that meeting the milestones is irrelevant because Order WR 2016-0016 assures that water cutbacks will occur regardless of whether the milestones are met. That is anything but clear. Cal Am has the option of incurring a fine by failing to make required cutbacks and, possibly, passing the fine along to ratepayers. Cal Am also cannot make the cutbacks without guidance on the extent to which they should apply to residential and commercial customers. Currently, no such guidance exists. The critical issue is this: Since only one or two, if any, of the milestones are likely to be met, Order WR 2016-0016 assures either continued devastation of the Carmel River for years to come or devastation of lives and livelihoods on the Monterey Peninsula due to lack of water. Order WR 2016-0016 does not assure a new and sufficient water supply.

The evidence is clear that Cal Am did not abandon the Regional Desalination Project because of anyone's conflict of interest. The evidence is equally clear that Cal Am can make a substantially larger profit on the Monterey Peninsula Water Supply Project than it could on the Regional Desalination Project. The evidence is undeniable that Cal Am went to court to kill the Regional Desalination Project in favor of the Monterey Peninsula Water Supply Project.³ The obvious and disheartening devastation of the Carmel River today is a direct result of these actions—actions, not inactions—by Cal Am, and for this reason the company deserves to have its Carmel River water rights taken away from it and transferred to the California Department of Water Resources, which has ministerial responsibility for both public trust resources and public health and safety. WRAMP urges you to take this action. It is in the public interest.

Most respectfully,

/s/ Ron Weitzman

Ron Weitzman

President, Water Ratepayers Association of the Monterey Peninsula

² WRAMP has challenged the "return-water" doctrine in numerous venues. See, e.g., the attachment, Demonstration of Return Water Fallacy.

³ See, e.g., *Cal-Am Water Co. vs. Marina Coast Water Dist.* (2016) Cal. App. 5th 748.