

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

Application 12-04-019  
(Filed April 23, 2012)

**OPENING BRIEF OF THE OFFICE OF RATEPAYER ADVOCATES**

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## SUMMARY OF RECOMMENDATIONS

1. The Commission should authorize California American Water Company to enter into the Water Purchase Agreement for the Ground Water Replenishment (GWR) Project water;
2. The Commission should deny authorization for the expedited construction of the Monterey Pipeline and Monterey Pump Station at this time because:
  - a. Existing infrastructure is capable of delivering extracted GWR and aquifer storage and replacement (ASR) water, and diverting excess Carmel River water;
  - b. Cal Am has not demonstrated the independent need for these facilities, separate from the desalination plant and overall components of the Monterey Peninsula Water Supply Project (MPWSP);
  - c. Future determinations on the MPWSP may impact the final design of these facilities;
3. The Commission should find exhibit CA-47 inadmissible under Rule of Practice and Procedure 12.6, and strike any cross examination on that exhibit from the transcript.

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**I. INTRODUCTION**

The Office of Ratepayer Advocates (ORA) respectfully submits this opening brief pursuant to the schedule set by the Assigned Administrative Law Judge (ALJ). The California Public Utilities Commission (“Commission”) should: (1) authorize California American Water Company to enter into the Water Purchase Agreement (WPA) for Ground Water Replenishment (GWR) Project water, (2) deny authorization for the expedited construction of the Monterey Pipeline and Monterey Pump Station at this time because Cal Am has not demonstrated the independent need for these facilities, separate from the desalination plant and overall components of the Monterey Peninsula Water Supply Project (MPWSP) and (3) find exhibit CA-47 inadmissible.

**II. PROCEDURAL HISTORY**

California American Water Company (“Cal Am”) filed Application (A.) 12-04-019 on April 23, 2012. In its application, Cal Am requested a Certificate of Public Convenience and Necessity (CPCN) for the MPWSP, and authorization to recover in rates all present and future costs associated with the MPWSP. Sixteen parties, including the Office of Ratepayer Advocates (ORA), jointly filed a Settlement Agreement,<sup>1</sup>

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<sup>1</sup> Settlement Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, Landwatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District,

establishing nine findings for the Commission to consider in determining whether Cal Am should construct a 6.4 million gallon per day (MGD) desalination plant with GWR water or a 9.6 MGD desalination plant without GWR (“GWR Determination”).<sup>2</sup> The Settlement Agreement is still pending before the Commission.

On August 21, 2013, Cal Am filed a Motion to Bifurcate this proceeding on behalf of the Settling Parties, to establish a separate phase of this proceeding, as well as a procedural schedule, that would lead to a timely Commission decision on whether to authorize Cal Am to build a smaller desalination plant that includes a Water Purchase Agreement (WPA) for water produced from GWR. On September 23, 2013, in response to Cal Am’s motion, the Commission issued an Amended Scoping Memo and Assigned Commissioner Ruling, bifurcating the proceeding and setting the scope of Phase 2 as follows:

Phase 2 will focus on whether various findings can be made regarding the viability of the GWR Project, whether a smaller desalination plant can be authorized, and whether a Water Purchase Agreement should be approved between Cal-Am and the relevant public agencies managing the GWR Project. The scope of Phase 2 will also consider the terms of any proposed WPA and the revenue requirement of the WPA, vis-a-vis the desalination plant, including any projected debt equivalence for the WPA.<sup>3</sup>

On November 17, 2015, the ALJ issued a ruling that set the Phase 2 issues and schedule for evidentiary hearings to update cost estimates, provide current information

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Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation submitted on July 31, 2013.

<sup>2</sup> The Settling Parties’ Motion to Approve the Settlement Agreement dated July 31, 2013 summarizes the nine findings at p. 5 as follows: “(1) the GWR Project receives approval pursuant to a Final EIR, (2) adequate progress was made and is expected to continue for obtaining permits for the GWR Project, (3) sufficient legal certainty exists concerning long-term viability for GWR source water, (4) there is a lack of evidence showing health and water quality regulators will deny permits or approval, (5) the GWR Project is on schedule for completion, (6) the GWR Project’s design is at the required level, (7) a sufficiently detailed funding plan is in place, (8) terms to a Water Purchase Agreement (“WPA”) have been agreed to, and (9) the revenue requirement for the combination smaller plant/GWR is just and reasonable compared with the larger plant. A revenue requirement premium for the combination smaller plant/GWR may be just and reasonable if the combination affords significant benefits (including scheduling, diversification of water supply, and environmental benefits) over the larger plant.”

<sup>3</sup> Amended Scoping Memo and Assigned Commissioner Ruling, (September 23, 2013), p. 5.

concerning supply and demand, and do other things necessary to complete the record for both Phases 1 and 2.<sup>4</sup> With regard to the GWR Determination, the Ruling states that “the nine criteria [in the settlement agreement] are important elements in the consideration of the GWR” and “the Commission’s decision must rest on broader principles, including what is just, reasonable, and in the public interest.”<sup>5</sup> The Ruling also set January 22, 2016 as the date for serving supplemental testimony on demand and supply, brine discharge, return water, and updated information necessary for the GWR Determination.<sup>6</sup>

On January 22, 2016, ORA served supplemental testimony supporting the concept of evaluating the nine findings listed in the Settlement Agreement, and providing specific issues that the Commission should consider in evaluating those findings. ORA served rebuttal testimony on March 22, 2016, recommending that the Commission authorize Cal Am to enter into a WPA for GWR if and only if the WPA is modified such that: (1) all costs are not presumed just and reasonable before incurred, and (2) a reasonable and prudent cost cap is provided for the initial purchase price of the GWR water. Evidentiary hearings were held from April 11-15, 2016.

On April 18, 2016, eighteen parties filed a Joint Motion for a Separate Phase 2 Commission decision to address three issues: (1) the WPA between Cal Am, Monterey Peninsula Water Management District (MPWMD), and Monterey Regional Water Pollution Control Agency (MRWPCA); (2) Cal Am’s construction of the Monterey pipeline and pump station in advance of the decision on the CPCN for the MPWSP; and (3) the financing and ratemaking related to the Monterey pipeline and pump station facilities.<sup>7</sup>

On April 25, 2016, the Assigned Commissioner and ALJ issued a ruling that conditionally granted the Joint Motion for a separate Phase 2 decision (“April 25<sup>th</sup>

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<sup>4</sup> Administrative Law Judge’s Ruling Setting Evidentiary Issues and Schedule to Complete the Record for Phases 1 and 2 (11/ 17/ 2015) at p. 8.

<sup>5</sup> Id. at p. 8.

<sup>6</sup> Id. at p. 12.

<sup>7</sup> April 18, 2015 Joint Motion for a Separate Phase 2 Decision at pp. 1-2.



Ruling”). The April 25 Ruling set May 9, 2016 as the date for serving supplemental testimony on the three subjects identified in the Joint Motion, as well as the issues and proposals discussed in the April 25<sup>th</sup> Ruling and May 19, 2016 as the date for serving concurrent rebuttal testimony. Additional evidentiary hearings were held on May 26, 2016.

### **III. ARGUMENT**

Based on the record in this proceeding, the Commission should: (1) authorize Cal Am to enter into the WPA for GWR water and (2) deny authorization for the expedited construction of the Monterey Pipeline and Monterey Pump Station at this time because Cal Am has not demonstrated the independent need for these facilities, separate from the desalination plant and overall components of the MPWSP. Additionally, the Commission should rule that exhibit CA-47 is inadmissible under Rule of Practice and Procedure 12.6.

#### **A. The Need for Water Supply on the Monterey Peninsula**

In 1995, State Water Resources Control Board (SWRCB) found that Cal Am was drawing water from the Carmel River in excess of its legal rights. In 2009, SWRCB issued a Cease and Desist Order (CDO) to Cal Am, finding that Cal Am was drawing 7,000 acre feet per year in excess of its legal allotment.<sup>8</sup> The SWRCB ordered Cal Am to stop drawing water from the Carmel River in excess of its legal allotment by 12/31/2016 or be subject to financial penalties. Despite extensive water conservation efforts, Cal Am still draws an average of 4,280 acre feet per year over its legal allotment. GWR is expected to provide 3,500 acre feet per year of water and therefore allow a major reduction in the diversions from the Carmel River, assisting with compliance with the CDO issued by the State Water Resources Control Board (SWRCB). The earlier expected operational date of GWR and its expected level of water production may show

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<sup>8</sup> Ex. PCL-6, p. 4.

that sufficient progress is being made in reducing unauthorized diversions and may assist in securing an extension from the SWRCB to the CDO deadline.<sup>9</sup>

## **B. The GWR Project Water Purchase Agreement**

### **1. Summary of Position on GWR WPA**

The GWR and Small Desalination Plant combination provides the most advantageous water supply option in comparison to the Large Desalination Plant alone. The GWR and Small Desalination Plant combination's numerous benefits include: a material advantage with regards to schedule and certainty, reasonable cost and cost certainty with the inclusion of the \$1,720 soft cap for the GWR water, and significant non-monetary and external benefits.

GWR is projected to provide 3,500 acre feet of water per year, available for extraction by Cal Am in the first quarter of 2018.<sup>10</sup> In addition to the schedule advantages, GWR has significant benefits with regards to certainty.<sup>11</sup> Recent developments regarding source water agreements, construction schedule, and funding of the GWR project provide a considerable degree of certainty as to GWR's development.<sup>12</sup> Furthermore, the GWR and small desalination plant combination will provide significant non-monetary benefits.

Based on these advantages and the satisfaction of the nine Settlement Agreement criteria<sup>13</sup>, the Commission should authorize Cal Am to enter into the GWR WPA.

### **2. Status of the Final EIR for the GWR Project (Criterion #1)**

Criterion #1 of the Settlement Agreement requires that "MRWPCA has approved the GWR Project pursuant to a certified final environmental impact report (EIR); and no

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<sup>9</sup> Ex. PCL-8.

<sup>10</sup> Ex. PCA-1 (Scuito Opening Testimony) at p. 11-12.

<sup>11</sup> Discussed in detail in Ex. DRA-16 (ORA 1/22/16 Supplemental Testimony) at pp. 6-8 and Ex. DRA-17 (Rose 3/22/16 Rebuttal) at pp. 7-11.

<sup>12</sup> Ex. PCA-1 (Scuito Opening Testimony) at pp. 8-13.

<sup>13</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), pp. 6-7.

California Environmental Quality Act (CEQA) appeal has been filed within 30 days of a Notice of Determination”.<sup>14</sup> CEQA review for GWR is complete, with the final EIR certified on October 8, 2015 by MRWPCA.<sup>15</sup> There have been no legal challenges to the GWR EIR.<sup>16</sup> Comparatively, the environmental review process for the MPWSP is not expected to be complete until late 2017.<sup>17</sup> Therefore, Criterion #1 is satisfied.

### **3. Permitting Progress for the GWR Project (Criterion #2)**

Criterion #2 of the Settlement Agreement requires the status of required permits is consistent with the published project schedule, and any yet to be obtained are likely to be obtained in a timeframe consistent with the project schedule.<sup>18</sup> Per the record in this proceeding, it appears that Criterion #2 is satisfied, with the progress of securing the required permits consistent with the GWR schedule.<sup>19</sup>

### **4. Source Waters for the GWR Project (Criterion #3)**

Criterion #3 of the Settlement Agreement requires that there is sufficient legal certainty as to agreements or other determinations in place to secure delivery of source water(s) necessary to produce between 3,000 to 3,500 acre feet per year of GWR product water for the recommended project.<sup>20</sup> Criteria #3 is satisfied because agreements for sufficient source water to produce 3,500 acre feet per year have been secured with City of Salinas and Monterey County Water Resources Agency (MCRWA).<sup>21</sup>

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<sup>14</sup> Id., p. 6.

<sup>15</sup> Ex. PCA-1 (Scuito Opening Testimony) at p. 7.

<sup>16</sup> Ex. WD-9 (Stoldt Direct Testimony), p. 6; Ex. PCA-1 (Scuito Opening Testimony) at p. 8.

<sup>17</sup> Ex. DRA-17 (3/22/16 Rose Rebuttal Testimony), p. 11.

<sup>18</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 6.

<sup>19</sup> Ex. PCA-2 (Imamura Opening Testimony), pp. 1-9, Attachment D; Ex. 41 (Svindland 1/22/16 Supplemental Testimony), p. 3.

<sup>20</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 6.

<sup>21</sup> Ex. PCA-1 (Scuito Opening Testimony) at pp. 8-10; Ex. 41 (Svindland 1/22/16 Supplemental Testimony), p. 3.

## **5. GWR Project's Product Water Quality and Regulatory Approvals (Criterion #4)**

Criterion #4 of the Settlement Agreement requires that the California Department of Health or the Regional Water Quality Control Board will not decline to accept or approve the GWR extraction or GWR treatment and injection processes.<sup>22</sup> The record supports that Criterion #4 is satisfied, and that the approval of the above agencies will be forthcoming.<sup>23</sup>

## **6. The GWR Project's Schedule As Compared to Cal Am's Desalination Project (Criterion #5)**

Criterion #5 of the Settlement Agreement requires that GWR is on schedule to be operable on or before the effective date of Cease and Desist Order (CDO) of the SWRCB or the date the MPWSP is scheduled to become operable.<sup>24</sup> GWR is currently on schedule to provide 3,500 acre feet per year (AFY) by the first quarter of 2018.<sup>25</sup> MPWSP has experienced significant delays regarding its environmental review, the latest being a delay of the completion of the environmental review process until November 2017.<sup>26</sup> Based on the current schedule, it is unlikely that MPWSP will be operable until after 2019.<sup>27</sup> While GWR will not be operable before the current CDO deadline of 12/31/2016, it is ahead of schedule compared to MPWSP. Therefore, Criterion #5 is satisfied.

## **7. Status of the GWR Project's Engineering (Criterion #6)**

Criterion #6 of the Settlement Agreement requires that preliminary design for GWR is at least at the 10% level or at a level similar to or more advanced than the

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<sup>22</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 6.

<sup>23</sup> Ex. PCA-4 (Nellor Opening Testimony), pp. 1-10; Ex. 41 (Svindland 1/22/16 Supplemental Testimony), p. 4.

<sup>24</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 7.

<sup>25</sup> Ex. PCA-1 (Scuito Opening Testimony) at p. 11-12.

<sup>26</sup> Ex. DRA-17 (3/22/16 Rose Rebuttal Testimony), p. 9; Ex. PCA-5 (Scuito Rebuttal Testimony) at p. 2.

<sup>27</sup> Ex. PCA-1 (Scuito Opening Testimony) at p. 12; Ex. PCA-5 (Scuito Rebuttal Testimony) at p. 2.

desalination portion of MPWSP.<sup>28</sup> Criterion #6 is satisfied because preliminary design for GWR is at the 10% percent design level as of January 2016 and a 30% design level is expected by June 2016.<sup>29</sup>

#### **8. The GWR Project's Funding Plan (Criterion #7)**

Criterion #7 of the Settlement Agreement requires that a GWR funding plan, sufficient in detail for a State Revolving Fund loan, is in place.<sup>30</sup> A GWR funding plan is in place, with a majority of funding financed through the Clean Water State Revolving Fund administered by the SWRCB.<sup>31</sup> An application was submitted to the SWRCB in May 2014, which deemed the application complete.<sup>32</sup> Therefore, Criterion #7 is satisfied.

#### **9. The Reasonableness of the Terms of the WPA (Criterion #8)**

Criterion #8 of the Settlement Agreement requires that the terms of the WPA are just and reasonable.<sup>33</sup> The initial version of the WPA submitted in January 2016 included some terms that were not reasonable, as identified by ORA<sup>34</sup> as well as the Assigned Commissioner and ALJ.<sup>35</sup> However, the revised WPA submitted on May 9, 2016 has addressed these unreasonable terms by replacing some WPA language and including additional terms.<sup>36</sup> An important new term provides a \$1,720 per acre foot soft cap, and includes a mechanism to address a situation where the first-year GWR water rate exceeds

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<sup>28</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 7.

<sup>29</sup> Ex. PCA-3 (Holden Opening Testimony), pp. 2-3.

<sup>30</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 7.

<sup>31</sup> Ex. PCA-1 (Scuito Opening Testimony) at p. 13.

<sup>32</sup> Id.

<sup>33</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 7.

<sup>34</sup> Ex. DRA-17 (3/22/2016 Rose Rebuttal Testimony), pp. 20-22.

<sup>35</sup> April 8, 2016 Assigned Commissioner and ALJ's Ruling, p. 4, Attachments 1 and 2.

<sup>36</sup> Ex. JE-2, pp. 4-6, Attachment 2 (Draft Revised WPA).

the \$1,720 per acre foot soft cap.<sup>37</sup> With the changes included in the revised WPA, Criterion #8 is satisfied.

#### **10. The Reasonableness of the GWR Project's Revenue Requirement (Criterion #9)**

Criterion #9 of the Settlement Agreement requires that the revenue requirement of the combination of GWR and the small desalination project is just and reasonable when compared to that of the large desalination project alone.<sup>38</sup> Criterion #9 is satisfied because the projected cost of GWR and small desalination plant combination is just and reasonable in comparison to the projected cost of the large desalination project when evaluated on the basis of a: (1) first-year revenue requirement impact, (2) net present value (NPV) of a 30-year lifecycle and (3) total revenue requirement over 30-year lifecycle.<sup>39</sup>

The revised WPA includes a \$1,720 per acre foot soft cap.<sup>40</sup> MPWMD has indicated that the \$1,720 per acre foot soft cap is conservative and the initial cost of water from GWR is expected be below that figure.<sup>41</sup> Regardless, this soft cap provides a reasonable cost basis for the GWR water when evaluated (in combination with the small desalination plant, in comparison to the large desalination plant) on the basis of a: (1) first year revenue requirement impact, (2) net present value (NPV) of a 30-year lifecycle and (3) total revenue requirement over 30-year lifecycle.<sup>42</sup> Several plausible scenarios indicate that the cost of GWR and small desalination plant combination is reasonable, especially when evaluated on both a 30-year lifecycle NPV basis.<sup>43</sup>

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<sup>37</sup> Id.

<sup>38</sup> Ex. CA-44 (July 2013 Large Settlement Agreement), p. 7.

<sup>39</sup> Ex. DRA-17 (3/22/2016 Rose Rebuttal Testimony), pp. 18-19; Ex. JE-1; Ex. JE-2, pp. 6-8.

<sup>40</sup> Ex. JE-2, at Attachment 2 (Draft Revised WPA), p. 11.

<sup>41</sup> Ex. WD-11, (Stoldt Rebuttal Testimony) at p. 3; Reporter's Transcript, Vol. 16, p. 2589, line 8.

<sup>42</sup> Ex. DRA-17 (3/22/2016 Rose Rebuttal Testimony), pp. 18-19; Ex. JE-1; Ex. JE-2, pp. 6-8.

<sup>43</sup> Ex. JE-1, p. 1.

Additionally, although there is no single number that represents a “point of indifference” for the cost of water, the \$1,720 per acre foot soft cap is also reasonable when evaluated under a Year 1 indifference cost of water basis. It falls squarely within the range of indifference costs calculated under several plausible scenarios.<sup>44</sup>

Furthermore, even if the \$1,720 per acre foot soft cap does result in a small premium over the first year revenue requirement of the large desalination plant, such a premium is reasonable in this circumstance given the external benefits accrued with GWR/small desalination plant combination. These external benefits include, but are not limited to: reduced atmospheric carbon emissions, reduced brine discharge, reduced runoff and the implementation and encouragement of State of California policies regarding water recycling through early adoption of a water reuse project.<sup>45</sup>

Lastly, new terms in the revised WPA provide certainty regarding the reasonableness of the cost of GWR water. The revised WPA includes a Tier 2 advice letter process if the first-year GWR water rate will exceed the \$1,720 soft cap.<sup>46</sup> Although it is expected that the rate for GWR water will fall below the \$1,720 soft cap, this Tier 2 advice letter process should provide a sufficient opportunity for the Commission, ORA and other interested parties to evaluate the reasonableness of any cost above the \$1,720 soft cap.

### **C. California American Water Facilities**

Cal Am has requested Commission authorization to construct the Monterey Pipeline and Monterey Pump Station prior to a final determination regarding MPWSP. The Commission should not authorize the expedited construction of these facilities at this time because: (1) Cal Am’s existing infrastructure can accommodate extraction of GWR water, and the injection and extraction of aquifer storage and recovery (ASR) Project

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<sup>44</sup> Ex. DRA-18 (5/9/16 Rose Supplemental Testimony, p. 7; Ex. JE-2, pp. 6-8; Reporter’s Transcript, Vol. 9, p. 3268, line 26.

<sup>45</sup> Ex. DRA-17 (3/22/2016 Rose Rebuttal Testimony) at p. 6; Ex. PCA-1 (Scuito Opening Testimony) at pp. 6; Ex. WD-10 (Bruce Direct Testimony) pp. 5-10.

<sup>46</sup> Ex. JE-2, at Attachment 2 (Draft Revised WPA), p. 11.

water, (2) Cal Am has not demonstrated the independent need for these facilities, separate from the desalination plant and overall components of the MPWSP and (3) the final design of the MPWSP and the design details of the facilities necessary to support that project are uncertain, pending the completion of a final EIR. The prudent approach would be for Cal Am to wait to construct the Monterey Pipeline and Pump Station until more certainty exists regarding the design of the desalination plant.

### **1. Monterey Pipeline**

Cal Am asserts that the Monterey Pipeline is necessary for full deliverability of ASR and GWR water and to maximize diversions of excess Carmel River Water.<sup>47</sup> The Commission should not authorize the construction of the Monterey Pipeline at this time because: (1) existing infrastructure is capable of diverting excess Carmel River water for later extraction, and can extract and deliver ASR and GWR water to the Cal Am system, (2) the independent necessity of the Monterey Pipeline, separate from the desalination plant, has not been demonstrated and (3) future determinations on the MPWSP may impact the final design of the Monterey Pipeline.

#### **a) Existing infrastructure can deliver extracted ASR and GWR water and can divert excess Carmel River water**

Cal Am asserts that the Monterey Pipeline is necessary for full deliverability of ASR and GWR water as well as fully utilizing excess Carmel River water diversions.<sup>48</sup> However, Cal Am's existing infrastructure can already accommodate these functions. Since Cal Am did not provide detailed information on its existing system, it was not possible for ORA to perform a complete analysis. However, available information indicates that there is additional available capacity in the Cal Am system for extraction of GWR and ASR water, as well as for the diversion of excess Carmel River water.

Cal Am currently utilizes the ASR system to divert excess flows from the Carmel River and inject these flows into the Seaside Groundwater Basin ("Seaside Basin") via

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<sup>47</sup> Id., pp. 13-16.

<sup>48</sup> Id.



four existing ASR wells. Cal Am then extracts water from the Seaside Basin via the ASR wells at a later time to distribute to customers. Cal Am's proposed future water system will utilize six ASR wells (four existing, two proposed) for the following purposes: injection and extraction of ASR Project water; injection and extraction of desalination plant water; and extraction of GWR Project water.<sup>49</sup>

To utilize water from the GWR Project, Cal Am would extract water from the Seaside Basin via the existing ASR wells. Cal Am's existing infrastructure has the ability to pump water from the Seaside Basin to the Cal Am system via the ASR wells, and has been doing so for a number of years.<sup>50</sup> This existing system has the additional capacity available to utilize GWR water. During a three month period from October 2011 to January 2012, 1,117 acre feet of ASR water was recovered from the Seaside Basin and pumped into the Cal Am distribution system.<sup>51</sup> Since January 2012, two additional ASR wells (ASR-3 and ASR-4) became operational,<sup>52</sup> more than doubling the total extraction capacity of the ASR wells.<sup>53</sup>

Despite this doubling of extraction capacity, the total capacity of Cal Am's existing infrastructure for withdrawals is not necessarily determined by the extraction capacity of the wells, as there could be other constraints on the system.<sup>54</sup> Cal Am estimates that ASR-3 and ASR-4 added 1,000 acre feet per year to the system's withdrawal capacity,<sup>55</sup> or 250 acre feet per quarter. This brings the withdrawal capacity of Cal Am's existing infrastructure to a minimum of 1,367 acre feet per quarter.<sup>56</sup>

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<sup>49</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 8.

<sup>50</sup> Id.

<sup>51</sup> Id., p. 9.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Ex. JE-2, p. 15.

<sup>55</sup> Ex. CA-41 (2/12/16 Supplemental Testimony Update of Svindland), Attachment 2, states at p. 10.

<sup>56</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 9.

The GWR project is designed to provide Cal Am with 3,500 acre feet per year of water. Cal Am's projections for its future water supply include an estimated 1,300 acre-feet per year of water from the ASR system (excess water previously diverted from the Carmel River and injected into the Seaside Basin).<sup>57</sup> Therefore, the total amount of water projected by Cal Am for extraction from the ASR wells with the GWR project on-line is 4,800 acre feet year. If distributed equally across the four quarters, this results in withdrawals of 1,200 acre feet per quarter – slightly more than the 1,117 acre feet per quarter demonstrated capacity of Cal Am's existing infrastructure *without* the increased capacity associated with existing wells ASR-3 and ASR-4.<sup>58</sup> It is also less than the projected minimum 1,367 acre feet per quarter withdrawal capacity of existing infrastructure when existing wells ASR-3 and ASR-4 are considered.

Additionally, while Cal Am's projections for its future water supply include 1,300 acre feet year from ASR extraction of excess Carmel River water, there is no guarantee that 1,300 acre feet of water will be available for diversion each year. In recent years the diversions have been far less than 1,300 acre feet per year, ranging from 1,117 acre feet in 2011 to zero acre feet in 2014. The existing system has been able to accommodate the high end of these diversions, and the associated withdrawals.<sup>59</sup> Table 1 below shows the amount of excess Carmel River water diverted to ASR between 2010 and 2016.

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<sup>57</sup> Ex. CA-41 (2/12/16 Supplemental Testimony of Svindland), Attachment 1.

<sup>58</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 10.

<sup>59</sup> *Id.*, p. 10, Table 1.

**Table 1 – Excess Carmel River Water Diverted to ASR<sup>60</sup>**

Water Year	ASR Diversions (acre feet)
2010	1,111
2011	1,117
2012	131
2013	295
2014	0
2015	215
2016	700

**b) The independent necessity of the Monterey Pipeline has not been demonstrated**

It has been asserted that the Monterey Pipeline is necessary to maximize Carmel River diversions for injection via the ASR Project and to maximize the delivery of extracted ASR and GWR water.<sup>61</sup> However, Cal Am has not demonstrated the independent necessity of the Monterey Pipeline separate from the desalination plant and the record in this proceeding and does not include sufficient support for the expedited construction of the Monterey Pipeline at this time.<sup>62</sup> A facility that will cost nearly \$50 million requires a high level of evidence that it is independently necessary given the considerable rate impact it will have on ratepayers, and the potential risk for an under-utilized stranded investment.

The independent necessity of the Monterey Pipeline, separate from the desalination plant, is asserted without providing calculations, model outputs, or other

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<sup>60</sup> Id.

<sup>61</sup> Ex. JE-2, p. 14.

<sup>62</sup> Ex. JE-2, p. 15; Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 4.

sufficient proof that this facility is necessary to fully utilize GWR and ASR water or maximize diversions of excess Carmel River water. There are no distribution system modeling scenario outputs (with and without the proposed facilities), limited hydraulic grade line schematics, and little, if any, hard data that demonstrates the limitations of the existing distribution system in utilizing GWR and ASR water. There is also no analysis of the amount of additional ASR water estimated to have been available in previous years that remained uncaptured due to deficiencies in existing system.<sup>63</sup>

Furthermore, an accurate evaluation of the independent necessity of the proposed Monterey Pipeline is considerably complicated by the significant changes to the facility from previous filings. The initial version of the Monterey Pipeline was over 6,000 feet shorter than the current version.<sup>64</sup> Additionally, the cost spiked from \$13.2 million in November 2013 to \$32.9 million in December 2015 and then increased again to \$46.5 million in May 2016.<sup>65</sup> The pipeline cost estimate has more than tripled since the initial estimate in 2013.

The Joint Parties assert that expedited construction of the Monterey Pipeline is necessary to address an alleged constraint on the Cal Am system. It is asserted that during ASR extraction mode, there is a constraint on the existing system that prevents Cal Am from moving ASR water past the Seaside and Old Monterey area of Cal Am's system.<sup>66</sup> This constraint is referred to as a "hydraulic trough."<sup>67</sup>

Although the concept of the hydraulic trough may have been briefly discussed in the GWR EIR<sup>68</sup>, it was not discussed in detail in any Cal Am filings prior to the joint testimony submitted on May 19, 2016. Cal Am's initial application stated that "[t]he Monterey Pipeline will allow for the delivery of desalinated water and ASR water to

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<sup>63</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 5.

<sup>64</sup> *Id.*, p. 6.

<sup>65</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 6.

<sup>66</sup> Ex. JE-2, p. 15.

<sup>67</sup> *Id.*

<sup>68</sup> Ex. CA-48.

Forest Lake Tanks” and more recent testimony still recognizes that the Monterey Pipeline will also serve the desalination plant.”<sup>69</sup> While there previously was not necessarily a reason to evaluate the independent utility of the Monterey Pipeline, separate from serving the desalination plant, it is significant that the concept of the “hydraulic trough” and the independent necessity of the Monterey Pipeline was not presented for evaluation prior to May 9, 2016.

Furthermore, Cal Am has not provided the detailed information necessary to show that a “hydraulic trough” currently exists, nor has it provided information necessary to determine that there are any constraints on the existing system that would prevent Cal Am from fully utilizing GWR water in the future. There are no detailed studies, model outputs, or any data demonstrating how the alleged “hydraulic trough” affects the existing Cal Am system, or how it will affect future system operations when GWR water is available for withdrawal.

In addition, Cal Am has not provided detailed information demonstrating how the Monterey Pipeline will remedy the concerns Cal Am has regarding the alleged “hydraulic trough”.<sup>70</sup> Moreover, even assuming that the “hydraulic trough” exists, the specifics of it seem uncertain, with Cal Am’s own witness admitting that the location varies on a daily basis.<sup>71</sup> System operations will undoubtedly change as a result of the desalination plant coming online. In the absence of information analyzing these changed system operations, it is impossible to know if the alleged “hydraulic trough,” if it exists now, would still exist in the future. These are all concerns that call for more specific details to validate the independent necessity of the Monterey Pipeline prior to the expedited approval of this costly facility.

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<sup>69</sup> Ex. CA-4 (Direct Testimony of Schubert), at p. 6; Ex. JE-2, p. 14 (“[t]he Monterey Pipeline is a component of the MPWSP and is needed to deliver desalinated water to Forest Lake Reservoir.”)

<sup>70</sup> Reporter’s Transcript, Vol. 19, p. 3233, lines 2-9.

<sup>71</sup> Reporter’s Transcript, Vol. 19, p. 3204, lines 16-20.

**c) Future determinations on the MPWSP may impact the final design of the Monterey Pipeline.**

The Commission has yet to issue a Draft EIR for the MPWSP, and the current project schedule estimates that the Final EIR will not be available until late 2017. The Draft EIR will analyze project alternatives, which will include variations on the proposed design of the desalination plant and related facilities. Since the CPCN process will take the EIR results into consideration, the exact details of what the Commission will authorize with regards to MPWSP are uncertain. Details such as the size, location, and other aspects of the desalination plant may impact the appropriate design of the supporting facilities. Therefore, at this time, the appropriate design details of these supporting facilities, including the Monterey Pipeline, remain uncertain.

Although Cal Am asserts that the Monterey Pipeline has independent necessity, it was a facility initially proposed as part of a larger project and is still a vital facility for the use of MPWSP water. Given the uncertainty regarding the final design of MPWSP, the prudent approach, would be for Cal Am to wait to construct the Monterey Pipeline until more certainty exists regarding the design of the desalination plant. This would be consistent with the Commission's approach with facilities initially proposed as part of the withdrawn Regional Desalination Project in proceeding A.04-09-019.<sup>72</sup> The Commission determined that it would not be reasonable to authorize construction of the facilities due to uncertainty with regards to the desalination project that the facilities would support.<sup>73</sup>

Waiting for greater certainty on the proposed desalination plant before authorizing construction of the Monterey Pipeline provides the following benefits:

- Allows Cal Am to determine the appropriate design details of the Monterey Pipeline, based on results of EIR alternatives analysis.

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<sup>72</sup> D.12-07-008, p. 4; Ex. DRA-19, pp. 13-14.

<sup>73</sup> Id.

- Allows Cal Am to assess the changed system hydraulics associated with adding GWR to the system, and fully assess the capacity of the existing system for GWR water and ASR under those new conditions.
- Allows the Commission the opportunity to consider the Monterey Pipeline in conjunction with the desalination plant, which this facility is designed to support.
- Minimizes ratepayer risk and the potential for stranded costs from independent pre-approval of facilities designed to support a desalination plant prior to the final EIR.

## **2. Monterey Pump Station**

Cal Am requests Commission authorization to construct the Monterey Pump Station.<sup>74</sup> It is asserted that the Monterey Pump Station is necessary for Cal Am to maximize its existing ASR facilities.<sup>75</sup> The Commission should not authorize the construction of the Monterey Pump Station at this time because: (1) existing infrastructure is capable of diverting excess Carmel River water to the ASR system, (2) the independent necessity of the Monterey Pump Station, separate from the desalination plant, has not been demonstrated and (3) future determinations on the MPWSP may impact the final design of the Monterey Pump Station.

### **a) Existing infrastructure is capable of diverting excess Carmel River water to the ASR system**

Available information indicates that Cal Am's existing infrastructure has the ability to pump excess water from the Carmel River for injection into the Seaside Groundwater Basin wells, and has been doing so for a number of years. Cal Am utilizes the ASR system to divert excess water from the Carmel River and inject these flows into

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<sup>74</sup> Ex. JE-2, pp. 13-14.

<sup>75</sup> Ex. JE-2, p. 13.

the Seaside Groundwater Basin (“Seaside Basin”) via four existing ASR wells.<sup>76</sup> Cal Am then extracts water from the Seaside Basin via the ASR wells at a later time to distribute to customers.

The amount of excess Carmel River water diverted depends on yearly rainfall and varies widely, with 1,117 acre feet diverted in 2011 and zero acre feet in 2014.<sup>77</sup> The existing infrastructure has demonstrated the capacity to divert as much 1,117 acre feet, an amount of water that is well above the amount available for diversion since 2012 with the drought limiting the volume of water diverted for ASR injection for Water Years 2012–2015 to a high of 295 acre feet.<sup>78</sup> Table 1 above shows the amount of excess Carmel River water diverted to ASR between 2010 and 2016.

Furthermore, two additional ASR wells (ASR-3 and ASR-4) have become operational since 2011.<sup>79</sup> Cal Am estimates that wells ASR-3 and ASR-4 added 1,000 acre feet per year to the system capacity, raising the estimated capacity of the existing system for ASR diversions of excess water from the Carmel River to the Seaside Basin to a total of at least 2,117 acre feet per year.<sup>80</sup> Therefore, the capacity of Cal Am’s existing infrastructure for diverting excess water from the Carmel River to the Seaside Basin is greater than the amounts of water diverted in 2011, which was the largest amount of water available since 2010. The existing capacity of the system also has the capability to accommodate Cal Am’s projections of 1,300 acre feet per year of water from the ASR system.<sup>81</sup>

While it is not possible to determine the exact additional capacity available in Cal Am’s existing system from the information provided, ORA’s analysis with the limited

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<sup>76</sup> The permit governing Cal Am’s ASR operations limits the diversions from the Carmel River to a six month period from December 1 to May 31 (Ex. DRA-19, p. 11).

<sup>77</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 10, Table 1.

<sup>78</sup> Id.

<sup>79</sup> Id., p. 9.

<sup>80</sup> Ex. CA-41 (2/12/16 Supplemental Testimony Update of Svindland), Attachment 2.

<sup>81</sup> Id., Attachment 1.



information available under the expedited schedule demonstrates that there is additional capacity available for injection of excess Carmel River water into the ASR system.

**b) The independent necessity of the Monterey Pump Station has not been demonstrated**

Cal Am has not demonstrated the independent necessity of the Monterey Pump Station separate from the desalination plant. The record in this proceeding does not include sufficient support for the independent necessity of the Monterey Pump Station, separate from the other components of the MPWSP.<sup>82</sup>

Joint testimony served on May 9, 2016 asserts the independent necessity for the Monterey Pump Station<sup>83</sup>, separate from the desalination plant, but does not provide sufficient back-up documentation to validate this assertion. It does not include distribution system modeling scenario outputs (with and without) the proposed facilities or anything that demonstrates, in sufficient detail, the limitations of the existing system to inject excess Carmel River water into the ASR system. Nor does the joint testimony contain any analysis of the amount of additional excess Carmel River water that was available in previous years for injection into the ASR system but remained uncaptured due to deficiencies in the existing system. Additionally, the necessity of the Monterey Pump Station is asserted without providing sufficient calculations, model outputs, or any other proof that this facility is necessary to fully capture excess Carmel River water.

In addition to the absence of the demonstrated independent necessity of the Monterey Pump Station, this is the first time this version of the Monterey Pump Station has been presented. Various other versions of the Monterey Pump Station have been presented in this proceeding in the past, but they differ significantly in size, location, and cost from the version proposed in the May 19 Joint Testimony, making an evaluation of the currently proposed facility difficult, absent more detail.<sup>84</sup> For example, in prior

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<sup>82</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), p. 5.

<sup>83</sup> Ex. JE-2, p. 10.

<sup>84</sup> Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), pp. 6-7.

filings, the Monterey Pump Station was presented in conjunction with the Terminal Reservoir and ASR Wells 5 and 6, which are proposed to serve the desalination plant component of the MPWSP.<sup>85</sup> Cal Am's initial application indicated that "[t]he cost estimate and final design [of the ASR Pump Station] will be based on final design injection capacity of the ASR well facilities."<sup>86</sup> However, Cal Am is not requesting accelerated construction of wells ASR-5 and ASR-6. These wells are being evaluated as part of the MPWSP EIR; therefore the final design injection capacity of the ASR well facilities remains uncertain.

Given the insufficient support for the independent necessity of the Monterey Pump Station, the Commission should not authorize the request to expedite construction of the Monterey Pump Station.

**c) Future determinations on the MPWSP may impact the final design of the Monterey Pump Station.**

The Commission has yet to issue a Draft EIR for the MPWSP, and the current project schedule estimates that the Final EIR will not be available until late 2017. The Draft EIR will analyze project alternatives, which will include variations on the proposed design of the desalination plant and related facilities. Since the CPCN process will take the EIR results into consideration, the exact details of what the Commission will authorize with regard to MPWSP are uncertain. Details such as the size, location, and other aspects of the desalination plant and associated facilities impact the appropriate design of the supporting facilities. Therefore, at this time, the appropriate design details of these supporting facilities, including the Monterey Pump Station, remain uncertain.

Although Cal Am asserts that the Monterey Pump Station has independent necessity, it was a facility initially proposed as part of a larger project and is still a vital facility for the use of MPWSP water. Given the uncertainty regarding the final design of MPWSP, the prudent approach would be for Cal Am to wait to construct the Monterey

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<sup>85</sup> Ex. CA-4 (Direct Testimony of Schubert) at p. 10.

<sup>86</sup> Id.

Pump Station until more certainty exists regarding all the components of the MPWSP. This would be consistent with the Commission's approach with facilities initially proposed as part of the withdrawn Regional Desalination Project in proceeding A.04-09-019.<sup>87</sup> The Commission determined it would not be reasonable to authorize construction of the facilities due to uncertainty with regard to the desalination project that the facilities would support.<sup>88</sup>

Waiting for greater certainty on all the components of the MPWSP prior to authorizing construction of the Monterey Pump Station provides the following benefits:

- Allows Cal Am to determine the appropriate design details of the Monterey Pump Station, based on results of EIR alternatives analysis.
- Allows Cal Am to assess the changed system hydraulics associated with adding GWR to the system, and fully assess the capacity of the existing system for GWR water and ASR under those new conditions.
- Allows the Commission the opportunity to consider the Monterey Pump Station in conjunction with the desalination plant and the other components of the MPWSP, which this facility is designed to support.
- Minimizes ratepayer risk and the potential for stranded costs from independent pre-approval of facilities designed to support other pending proposed components of the MPWSP prior to final EIR.

### **3. Financing/Ratemaking**

As discussed above, the Commission should not authorize the expedited construction of the Monterey Pipeline and Pump Station at this time. Since the construction of these facilities in question should not be authorized at this time, financing and ratemaking considerations are moot.

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<sup>87</sup> D.12-07-008, p. 4; Ex. DRA-19 (5/19/16 Rose Rebuttal Testimony), pp. 13-14.

<sup>88</sup> *Id.*

**D. ADMISSIBILITY OF EXHIBIT CA-47**

At evidentiary hearings on May 26, 2016, Cal Am utilized Exhibit CA-47, which is a settlement agreement signed by multiple parties, including Cal Am and ORA in July 2013. ORA's understanding is that the settlement agreement was never submitted to the Commission for approval.<sup>89</sup> ORA objects to the admissibility of CA-47 because it would violate Commission Rule of Practice and Procedure ("Rule") 12.6. Accordingly, ORA moves to strike this exhibit and portions of the transcript related to cross examination on this exhibit.

Rule 12.6 reads:

No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

If a settlement is not adopted by the Commission, the terms of the proposed settlement is also inadmissible unless their admission is agreed to by all parties joining in the proposal.

First, the settlement agreement submitted as Exhibit CA-47 was never submitted to the Commission. The settlement agreement reflects ORA's settlement position and embodies the product of settlement discussions. Therefore, Rule 12.6 requires the parties to keep this document confidential until it is submitted for Commission approval or ORA consents to disclosure. The document has not been submitted for Commission approval, nor has ORA consented to its disclosure. To allow a confidential settlement document that was not submitted or approved by the Commission to be used against a party in cross examination violates Rule 12.6 on its face and potentially chills future settlement efforts.

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<sup>89</sup> Reporter's Transcript, Vol. 19, p. 3221, line 19.

Second, since the settlement agreement was never submitted to the Commission or adopted by the Commission, per Rule 12.6, the terms of the settlement are inadmissible unless admission is agreed to by all parties. ORA has not consented to the admissibility of the settlement agreement. Therefore, Exhibit CA-47 should not be admissible in this proceeding. The Commission should not admit the exhibit and should strike any cross examination on the exhibit from the transcript.<sup>90</sup>

#### IV. CONCLUSION

For the reasons discussed above, the Commission should: (1) authorize Cal Am to enter into the WPA for GWR water and (2) deny authorization for the expedited construction of the Monterey Pipeline and Monterey Pump Station at this time because Cal Am has not demonstrated the independent need for these facilities, separate from the desalination plant and overall components of the MPWSP and (3) find that Exhibit CA-47 is inadmissible and strike any cross examination on that exhibit from the transcript.

Respectfully submitted,

/s/ MARCELO POIRIER

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<sup>90</sup> The relevant portions of the transcript are Vol. 19, p. 3219, line 27 to p. 3223, line 11 and p.3259, line 23 to p. 3262, line 8.