



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

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SUPPLEMENT TO 8/15/05

MPWMD BOARD PACKET

Attached are copies of letters received between July 11 and August 5, 2005. These letters are also listed in the August 15, 2005 Board packet under item 12, Letters Received.

Author	Addressee	Date	Topic
Michael W. Stamp	David Berger	7/8/05	MPWMD Proposed Ordinance 122 Exempting Some Water Distribution Systems from CEQA Review and Proposed Negative Declaration
Clark and Gudrun Beck	Steve Leonard	7/13/05	Property at 23765 Spectacular Bid Lane, Monterey
Kelly Morgan	David A. Berger	7/14/05	Sand City Desalination Project
Steven Leonard	David A. Berger	7/15/05	Coastal Water Project
Steven Leonard	David A. Berger	7/15/05	Proposed Ballot Measure re Investigation into Public Ownership of Cal Am Water Distribution System
Joseph J. von Schwind	Arlene Tavani	7/19/05	Proposed Ballot Measure re Investigation into Public Ownership of Cal Am Water Distribution System
Michael Armstrong	David A. Berger	7/19/05	Marina Coast Water District (MCWD) Water Augmentation Project MPWMD Letter dated June 30, 2005
Steven Leonard	David A. Berger	7/20/05	Proposed Ballot Measure re Investigation into Public Ownership of Cal Am Water Distribution System
John Klein	Betsy S. Lichti	7/20/05	Summary of Discussions Regarding Desalination Pilot Study
John Glenn	Alvin Edwards	7/28/05	Takeover of Cal Am
Thomas L. Andrew	Steven Leonard	7/28/05	Power Outages at Paralta Well Site
Charles Kemp	Clark and Gudrun Beck	8/3/05	Property at 23765 Spectacular Bid Lane, Monterey



LAW OFFICES OF
MICHAEL W. STAMP

Facsimile
(831) 373-0242

479 Pacific Street, Suite 1
Monterey, California 93940

Telephone
(831) 373-1214

July 8, 2005

RECEIVED

JUL 11 2005

MPWMD

Via Facsimile #644-9560

David Berger, General Manager
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

Re: MPWMD Proposed Ordinance 122 exempting some water distribution systems from CEQA review and proposed Negative Declaration

Dear Mr. Berger:

On behalf of clients Patricia Bernardi, Save Our Carmel River, and The Open Monterey Project, we offer these comments on the proposed Ordinance 122 and the negative declaration, collectively referred to as "the documents."

My clients support the aspects of the ordinance that enhance control of water resources and enhance environmental review of water distribution systems. The overall approach is welcomed in many respects.

However, my clients are particularly concerned about the increasing number of wells in fractured rock that are being used to enable residential construction. Allowing residential construction to rely on those ephemeral primary sources is short-sighted and irresponsible. While recognizing the County is the primary agency for these approvals, my clients urge the Water District to take proactive steps to prevent these wells, because it is only a matter of time before one or more of the fractured granite wells fails or proves inadequate. When that happens, the developments that rely on those wells will seek relief from the Cal Am system, which has no water to spare. The Water District is charged with integrated management of the water supply on the Monterey Peninsula, and should include all water systems in its review.

My clients are very concerned about the ordinance's proposal to exempt certain water distribution systems from CEQA review. Further, the negative declaration does not comply with the mandates of the California Environmental Quality Act.

The brand new "Level 1/Ministerial Permit" would expand the number of new water distribution systems exempt from CEQA review.

The ordinance's proposed brand new "Level 1/Ministerial Permit" is extremely unwise, and places at risk the adequacy of the negative declaration. The ordinance

David Berger, General Manager
July 8, 2005
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proposes the District completely forfeit the District staff's right to review applications for environmental sufficiency, and forfeit the public's right to review the environmental impacts of certain water distribution systems. Under the proposed Level 1, if a property meets the five requirements, the Water District must issue a permit. Even if District staff had concerns about an application, staff would be prevented from asking questions to resolve those concerns. Under Level 1, staff would be forced to issue a permit.

My clients urge the District to (1) remove the "ministerial" label from Level 1 entirely (perhaps refer to this as a permit that staff may issue, with a review by the Board, and (2) add a sixth requirement that retains District discretion in the environmental review process. Staff could still determine the application to be exempt, but would be able to ask questions and obtain information to address specific environmental concerns, as necessary. Applications that present unusual circumstances or potential impacts could be heard by the Board, and decisions made by staff could be appealed to the Board, thereby protecting both the public and the applicant. This discretion is an essential element to ensure that the Water District has the necessary tools to manage the resource.

An unanticipated consequence of the current proposal is that properties located in Canada Woods and other Carmel Valley upland areas may qualify for this new Level 1 exemption. The negative declaration's claim that "the County of Monterey would . . . address environmental concerns in its role as CEQA lead agency for any development proposal" misses the point. First, the Water District cannot rely on other agencies to do the District's environmental review. Second, the negative declaration assumes that there is a development proposed concurrent with the well application, which is not always the case. Third, the development proposal may be potentially exempt from CEQA (for example, a single family residence), so the County's lead agency status would not provide any other environmental review.

The negative declaration says that a Level 1 permit "would require no permanent interties to other water systems." However, the ordinance does not include this language. Separately, why are any inter-ties to another water system allowed, even temporarily? The environmental impacts of any inter-tie with any other water system or systems should be identified or discussed in the negative declaration if they are allowed at all. That discussion is absent and the negative declaration fails accordingly.

For all these reasons, all "ministerial" designations of Level 1 should be eliminated entirely. The Water District should not give up its and the public's ability to ensure appropriate environmental review. Because the negative declaration fails to discuss the elimination of CEQA review for these Level 1 projects, and fails to identify or

David Berger, General Manager
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discuss the environmental impacts of that elimination, the document is inadequate under CEQA. Failure to follow the procedural requirements of CEQA is not harmless error.

Table 22-A, Matrix of Permit Review Levels is inconsistent with the ordinance itself.

Table 22-A refers to "residential" use on lines 1 through 12. However, the ordinance does not require that all those categories be "residential."

"Land Use/Type" is misleading because, for example, a "new subdivision" is not land use. We suggest a more accurate label that focuses on the water issues involved, such as Project Type.

The category "Commercial/Residential" should be identified as "Non-Residential" because the intent would be clarified. This clarification would relieve District staff from having to make judgment calls on, say, a 2-acre vineyard that the applicant claims is intended for personal use.

The matrix entries currently overlap at 2.5 acres at line 2 and 3, and at lines 6 and 7, and at line 10 and 11. What happens on a 2.5-acre parcel? We suggest the use of the "greater than" and "less than" signs to avoid confusion.

Lines 4, 8 and 12 are inconsistent. It appears that on those lines that Parcel Size should be "10+" to be consistent with "Est Use."

The Negative Declaration demonstrates a misunderstanding of the required environmental review under CEQA

The negative declaration makes the claim that any "[attempt] to determine whether there would be adverse impacts is premature and speculative." Negative Declaration, page 15. Let there be no mistake: CEQA requires the Water District to make that attempt. CEQA requires a good faith effort, based on the Water District's knowledge, to determine whether there would be adverse environmental impacts. The Water District's apparent misunderstanding of the CEQA review process is troubling.

Inconsistently, the Water District considers Ordinance 122 "to have a beneficial, neutral, or less than significant environmental effect" because it "would refine regulations that . . . may facilitate new construction and potential new water use." Negative Declaration, page 15. The District apparently does not consider that determination to be "premature and speculative." It is not the Water District's role to

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David Berger, General Manager
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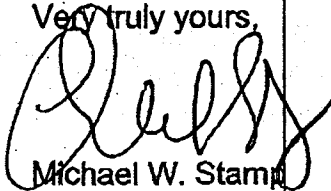
"facilitate new construction and potential new water use." These statements raise serious concern about the District's willingness to bend CEQA to facilitate development, which is inconsistent with the scope of the District's powers, as well as the responsibilities entrusted to the District under State law.

Conclusion

Thank you for the opportunity to comment. My clients urge the District to make these critical changes to the ordinance.

Please put my office on the distribution list for notices relating to all hearings and all actions on this matter.

Very truly yours,



Michael W. Stamp

Clark & Gudrun Beck
23765 Spectacular Bid Lane
Monterey, CA 93940

RECEIVED

JUL 15 2005

MPWMD

July 13, 2005

Steve Leonard
Vice President, California American Water
General Manager, Monterey Division
50 Ragsdale Drive, Suite 100
Monterey, CA 93940

Dear Mr. Leonard:

We are the owners of property located at 23765 Spectacular Bid Lane, Monterey, California. California American Water ("Cal Am") owns and operates a water storage facility uphill from our property. That storage facility was acquired by Cal Am several years ago.

In 2004 Cal Am installed two new metal tanks to replace the old redwood tank at this location. After the new tanks were installed, on July 22, 2004 there was a release of water that rushed onto our property and caused damage. This was the result of a malfunctioning piece of equipment owned and operated by Cal Am at the facility. At that time, we found that it was essentially impossible to contact Cal Am to alert you to the situation. We are concerned about what steps Cal Am has taken to prevent future events of this type.

We ask that Cal Am provide us with documentation to show the following:

(1) Efforts taken by Cal Am to make sure that the water is not released again in the future, including technical improvements to the facility, changes in the inspection regimen for the Cal Am site, and installation of additional equipment both to prevent the release of water and to alert Cal Am to releases when they occur;

(2) The technical specifications for the water storage facility, showing the reliability of the system.

In addition, we request that you provide us with at least three LOCAL phone numbers that we could call in an emergency (including nights and weekends) in order to reach Cal Am.

We understand that Cal Am is required to exercise reasonable care in its storage of water, and that Cal Am is strictly responsible for the release of water that flows onto our land. Our primary goal here is to verify that Cal Am has taken the steps necessary under the law to protect against future damaging releases of water onto our property.

We look forward to hearing from Cal Am no later than August 15, 2005.

Very truly yours,



Clark Beck


Gudrun Beck

cc: Larry Foy, Chair, and Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA. 94102



HAND
DELIVERED

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July 14, 2005

JUL 14 2005

Mr. Dave Berger
General Manager
MPWMD
P.O. Box 85
Monterey, California 93942

MPWMD

Dear Dave:

In response to your district's inquiry as to whether Sand City would expand its proposed desalination project to help meet the water supply needs of the Monterey Peninsula, we offer this response. Sand City will continue to cooperate in finding a regional solution to the long-term water supply requirements of the Monterey Peninsula. In this effort, we have an approved, small desalination facility through the coastal commission which will supply Sand City's water needs for the near and mid-term and help alleviate overdrafting of the local ground water basins. This plant was developed based on a "benign by design" premise whereby a brackish water aquifer would be used to produce a potable water source through reverse osmosis and the byproduct water would be at a similar salinity as that of ocean water; in other words, there would be no "brine" per se. Our hydrogeologist advises us that to expand the plant to produce the quantity of water needed for the entire Peninsula (36 times the amount of our proposed water production, just to eliminate Order 95-10) would destroy that design parameter and produce a brine discharge into the Monterey Bay. Therefore, we cannot expand the plant to any significant degree.

City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
(831) 394-6700

FAX
(831) 394-4272

Police
(831) 394-1451

FAX
(831) 394-1038

Incorporated
May 31, 1960

Based on the above design concept, our proposal has the written endorsement of Assembly member John Laird, Assembly member Simon Salinas, State Senator Abel Maldonado and CSUMB's Desalination Institute. The plant design also received the unanimous approval of the California Coastal Commission, by acclamation, in May, 2005 - a somewhat rare occurrence.

Should the Water District process a proposed water desalination project through all land use entitlement phases, at a suitable location within Sand City, the city would not object provided Sand City would continue to have its 300 acre-foot per year capacity maintained from the then, existing water desalination plant.

Sincerely,

Kelly Morgan, City Administrator
City of Sand City

RECEIVED

Mr. David Berger
 Monterey Peninsula Water Management District
 5 Harris Court, Building G
 Monterey, CA 93940

JUL 15 2005



California
 American Water

MPWMD



Steven Leonard
 Vice President & Manager

Dear Mr. Berger:

California American Water is a major step closer to solving Monterey Peninsula's water supply problem. We are now seeking California Public Utilities Commission (CPUC) approval of the Coastal Water Project (CWP).

A major part of our CPUC application is a 1,700 page *Proponent's Environmental Assessment (PEA)*. This study thoroughly investigates impacts on land, ocean, air, and other factors. Comments from you and your neighbors have been heard through more than 70 public workshops and presentations. Our plan is based on what we have learned from our ratepayers, neighboring communities, scientists, and engineers. To learn more about the CWP and the PEA, please visit the website at www.coastalwaterproject.com.

California American Water has been ordered by the State to replace 10,730 acre feet per year (AFY) of water that is now taken from the Carmel Valley Aquifer. In addition, we need to recharge the Seaside Aquifer by 1,000 AFY. The CWP's main components are a desalination plant at Moss Landing and aquifer storage and recovery (ASR) facilities. The ASR system stores surface water diverted during the high flow season, then pumped out during the summer. With these components, the CWP has proven to be the most cost effective, environmentally responsible, and sustainable water solution available.

The CWP will improve the health and habitat of the Carmel River, stabilize the Seaside Aquifer, and supply Monterey Peninsula residents with reliable, high quality drinking water.

KION-TV recently produced a five minute video about the Coastal Water Project. If you would like to view a copy, please visit our website or return the enclosed card. If there is ever any information I can provide regarding the CWP or any other local water matter, please give me a call at (831) 646-3214.

Sincerely,

Steven Leonard
 Vice President & Manager

California American Water

50 Ragsdale Drive, #100
 Monterey, CA 93940

T (831) 646-3214
 E monterey@amwater.com
 I www.coastalwaterproject.com

Enclosures



RWE GROUP



July 15, 2005

Mr. David Berger
 General Manager
 Monterey Peninsula Water Management District
 PO Box 85
 Monterey, CA 93942-0085

Dear Mr. Berger

California American Water opposes the proposed ballot measure that the Monterey Peninsula Water Management District Board of Directors may place on the November 8th, 2005 ballot because the proposed measure will drive up the cost of providing water to Monterey peninsula residents and does not address the community's critical need for a new source of water. The board should leave this genie in its bottle and focus on securing a sustainable supply of water for residents of the community.

In the event that the board chooses to put a measure on the ballot, I have attached my suggested revisions to the ballot language that the board will consider on Tuesday, July 19th. If the board moves forward with this measure I believe that the ballot statement should contain accurate information about the likely costs, and be clear about who pays the surcharge.

Consider the experience of other communities that have considered condemnation in recent years. In the case of Felton, Santa Cruz County's expenditures have risen from an initial \$32,000 in 2003 to almost \$300,000 in the last two years. If the bond measure in Felton is successful, taxpayers will pay \$600 or more in new taxes annually.

Montara, a small community on the San Mateo coastline, promised to reduce costs through condemnation, but residents there are now paying higher water bills and new property taxes on a \$500,000 home now exceed \$800 dollars annually.

In other parts of the country like Lexington Kentucky and Peoria, Illinois, government agencies have spent hundreds of thousands of dollars and hundreds of hours of staff time to investigate condemnation of their water systems, only to discover that the true cost of a government takeover is more than constituents are willing to bear. I have attached several fact sheets which reflect the status of numerous communities which have pursued condemnation, to our knowledge none have experienced the savings or benefits they were promised. Please note the facts on these sheets may not be 100% up to date as these situations change daily.

In addition, we believe an MPWMD study on public ownership could be both redundant and unnecessary. I call to your attention the attached report, "A Framework for Evaluating Water System Ownership and Management Alternatives" funded primarily by the City of Thousand Oaks. In short, the City of Thousand Oaks has three water systems; a publicly operated City system, a California Water Service Company system, and a



California American Water system. The attached report offers an easy and comprehensive way to compare the performance, cost and service of the two larger investor-owned water companies in Monterey County with public ownership. I have attached a copy of the research project for your review.

I appreciate that the board considers this an incremental measure, but once a course of action has been charted it can be difficult to reverse the momentum. The Monterey community has a real and critical need for a sustainable water source which eclipses any imagined need to condemn the California American Water distribution system on the Monterey Peninsula. It is not realistic to believe that the community could bear the twin financial burdens of creating a new water supply and condemning its water distribution system.

Thank you for your consideration, and for sharing this correspondence with your board. Please don't hesitate to contact me at 831 206 2800 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Leonard", is written over a faint, larger version of the signature.

Steve Leonard
Vice President
California American Water

Note: from General Manager Berger: The final attachment to this letter is a 200 page UCSB academic study that has not been copied due to its length. The Executive Summary is attached for your review. If you would like to view the entire report, please contact Arlene Tavani at 658-5652 or arlene@mpwmd.dst.ca.us.

California American Water
Coastal Division

50 Ragsdale Dr., Suite 100
P.O. Box 951
Monterey, CA 93942-0951

T 831 646 3201
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I www.calamwater.com



1. Exhibit 18-A

Ballot language:

Shall the Monterey Peninsula Water Management District ~~be directed to investigate the cost and process to publicly acquire the private water utility system presently owned and operated by the Monterey District of California American Water (Cal-Am), and be directed to recover costs of the investigation as a surcharge upon Cal-Am's~~ the water bills of Cal-Am's customers?

2. Action

Item 18:

CHANGE
HEADING
TO READ

Prepared By: Henrietta Stern

Cost Estimate: Up to ~~\$50,000~~ \$335,000

IMPACT TO STAFF AND FISCAL RESOURCES: The cost to the District is based on two factors: (1) the cost of holding the election; and (2) the cost to conduct the investigation itself. The election cost will depend upon the number of measures placed on the ballot, and the proportion of printing space as compared to other measures and issues that are on the ballot. The Monterey County Elections Department has estimated that the District's expense would be in the \$50,000 range for consolidating this measure with the November statewide special election. The best estimate at this time of the cost of conducting the investigation is \$285,000. This includes the cost of hiring a consultant to study the issue. This is in addition to the costs of the study, which are unlimited at this time by this resolution. The Fiscal Year 2005-06 District budget does not include a line item to cover either this expense, so a supplemental appropriation from the general operating reserve is required. Because the District's cost for this consolidated measure will not be known until after the November 8, 2005 election, staff proposes that it be included with the Mid-Year Budget Adjustment action item on the Board agenda in February 2006.



Citizens Utilities Company Sweetwater Springs, California

Situation Analysis:

Sweetwater Springs Water District (SSWD) owns and operates the local water system that serves the communities of Monte Rio, Guerneville and Rio Nido, Calif. Until 1990, the system was held by a private water company - Citizens Utilities Company.

In the late 1980s, the area experienced a demographic shift – full-time residents began to replace summer tourists. As the number of permanent residents increased, so did concern over the limited capacity of the water system infrastructure. As a result, Citizens Utilities Company sponsored a study that concluded \$19 million in upgrades were required to meet increasing needs. Troubled over the limited capacity of the system and the potential rise in rates related to the necessary upgrades, a local developer, Hal Wood, and the local fire department, advocated for a takeover of the system. They believed that public ownership would bring more upgrades while keeping rates low.

In addition, the argument of local control was also raised. Although the local staff was highly regarded in the community, there was some general resentment that the corporation was not local and was perceived as the “east coast” corporation that controlled local rates and operations.

Results:

As pressure increased, the District initiated proceedings to acquire the water system. An election was held in November, 1990. Turnout for the election was low with only 17 percent voting, however the measure passed with 60 percent of voter support. As a result, SSWD acquired the water supply system from Citizens Utilities Company in April, 1992, for \$6.5 million.

Actual Costs to Taxpayers:

Current water rates for Sweetwater Springs are in the same range as the California American Water Larkfield District. Both are above average for the Sonoma County area.

Key Facts:

- The communities of Monte Rio, Guerneville and Rio Nido, Calif., experienced a demographic shift which placed increased demand on the water system. Nineteen million dollars of upgrades were needed to meet demand.
- Local residents believed that a government agency could do it “better and cheaper.”
- After condemnation, SSWD water rates are similar to those of other water purveyors in the surrounding area, both public and private. The anticipated rate decrease did not materialize.

*This summary was prepared as an aid only. All facts should be independently verified prior to use.
This summary was last updated 1/7/05.*



California Water Service Company Selma, California

Situation Analysis:

In June 2003, the Selma City Council initiated proceedings to take over its privately-owned water system. After California Water Service rejected the city's offer to buy the system for the appraised value of \$8.5 million, the Selma City Council began to develop its case against California Water Service Company, also known to the 5,200 local customers as Cal Water. The city's primary motivation for attempting to take over the water system included dissatisfaction with rising water rates and developer fees. In fact, the city strongly objected to Cal Water's application to increase water rates by 50 percent over a four-year period – a proposal that was ultimately denied by the California Public Utilities Commission (CPUC).

Results:

Cal Water also launched a defense campaign that began with a letter to the editor of the *Selma Enterprise* in which the company clearly stated the system was not for sale. The letter outlined Cal Water's 42-year history in Selma delivering high-quality water, its excellent customer service and reasonable rates. These messages were reinforced in all communication by Cal Water in the following weeks.

Cal Water developed a comprehensive plan that identified ways the city of Selma and the water company could work together to effectively address issues of concern. Proposed solutions included establishing a business franchise fee, the creation of a citizen advisory board, and increasing Cal Water's presence and involvement in the community. Cal Water's District Manager, Jim Smith, presented the plan to the Selma City Council on September 20, 2004; one month prior to the landmark condemnation hearing.

Over 200 residents attended the public hearing to protest the takeover of Cal Water's system. The protesters dominated the council chambers bearing neon "Keep Cal Water" stickers, signs and banners. Overwhelmed by protestor testimony, the Selma City Council reversed its own initiative to condemn Cal Water's water system and voted against issuing Certificates of Participation to purchase the system.

Actual Costs to Taxpayers:

The city of Selma appraised the water system at \$8.5 million and planned to finance the system through the issuance of Certificates of Participation.

Although the exact impact to Selma ratepayers is unknown, Selma residents could have been burdened with millions of dollars in additional taxes.

Key Facts:

- Because the city of Selma was dissatisfied with rising water rates and developer fees, the City Council voted to take over the Cal Water system.
- The city of Selma appraised the water system at \$8.5 million and planned to finance the system through the issuance of Certificates of Participation.
- Over 200 Selma residents did not support the takeover or the proposed increase in taxes and attended the public hearing in protest.

*This summary was prepared as an aid only. All facts should be independently verified prior to use.
This summary was last updated 1/7/05.*



Illinois American Water Pekin, Illinois

Situation Analysis

Pekin, a small community about 15 miles from Peoria, Illinois, has a long history of wanting to own its water system. With the mayor and city manager driving condemnation, the city's main objective was to control the water and revenue stream. The city of Pekin had previously attempted and failed at condemning the water company back in the early 1990s. City leaders tried to revisit this issue again by waging a well-orchestrated, educational campaign in early 2000 to convince citizens that buying the private water utility was in their best interest.

In August 2000, the city of Pekin decided to place a non-binding resolution on the November ballot asking the voters to authorize the City to condemn Illinois American Water's property in Pekin. Research done prior to August 2000 showed the takeover attempt had a solid base of support. The Pekin City Council unanimously voted for the takeover; since city leaders had successfully convinced virtually all of the city's business leaders the takeover was a good idea. And the publisher of the only media outlet in Pekin, the *Daily Newspaper*, was firmly in favor of the takeover. However, the ballot initiative was defeated 54 percent to 46 percent.

The city of Pekin again tried to pursue condemnation when it was announced in September 2001 that American Water Works, the parent company of Illinois American Water, was selling its stock to RWE Thames Water, a multinational utility company based in Essen, Germany. City leaders cited foreign ownership as the reason for reinitiating the forced buyout, but the company again declined to sell its Pekin assets to the government.

Even though eight out of 10 customers said they were "very satisfied" or "satisfied" with Illinois American Water, the city of Pekin placed the "Proposition to Preserve American Ownership and Obtain Local Control" initiative on the ballot that would authorize the City to start the condemnation process of the water company's assets in Pekin. The ballot measure passed by a 61 percent to 39 percent margin, and the government started the legal process of condemning the water company by submitting a petition to the Illinois Commerce Commission (ICC) for authority to condemn the Pekin District's assets.

In May 2003, the ICC staff made a ruling that the City's acquisition of Illinois American Water's Pekin District would not serve the public interest. The court case was sent to an Administrative Law Judge (ALJ) on May 19, 2003, where both sides presented witnesses and testimony. Following the hearing, the ALJ submitted a proposed order finding that the city of Pekin failed to prove that a government takeover of the water system would better serve the public interest than continued ownership by Illinois American Water.

Results:

The ICC voted 5-0 in their final ruling on Jan. 22, 2004, to reject the city of Pekin's petition to takeover the water system through eminent domain. By making this ruling, the ICC said the residents of Pekin are best served by Illinois American Water.

Actual Cost to Taxpayers:

Between March 2001 and January 2004, the city of Pekin spent more than \$700,000 on the takeover.

Key Facts:

- Eight out of 10 customers said they were "very satisfied" or "satisfied" with Illinois American Water.
- In March 2003, the citizens of Pekin voted the pro-takeover mayor and two pro-takeover council members out of office. The voters sent the message they wanted the government to refocus its resources on more important issues facing the community.

*This summary was prepared as an aid only. All facts should be independently verified prior to use.
 This summary was last updated 1/7/05.*



California American Water Montara, California

Situation Analysis:

Like the Felton water system, the Montara/Moss Beach system was previously owned and operated by a privately-owned corporation, Citizens Utilities Company. For almost 20 years, residents tried to take over the system and eventually passed a bond measure to purchase it. The bond remained unused until California American Water was acquired by RWE Thames Water. When the CPUC approved the change of ownership, they required California American Water to sell the system to the Montara Sanitary District – a system that served 1,650 customers.

Results:

In May 2003, as a result of a court-ordered settlement, California American Water reached an agreement with the Montara Sanitary District and sold the private water assets.

Actual Costs to Taxpayers:

California American Water sold its Montara/Moss Beach assets to the Montara Sanitary District, subsequently renamed the Montara Water and Sanitary District (MWSD), for \$11,097,000, or \$6,725 per customer. It is estimated that an additional \$3 million was spent on attorneys, consultants, and related costs.

This year, the additional tax burden to Montara property owners is \$169 for every \$100,000 of assessed value, or \$845 for a home valued at \$500,000. News reports suggest actual costs may be even more. While the purchase price of the water system was \$11.097 million, a larger bond was floated to pay for legal and transaction costs as well as some system upgrades. **As a result, the increased tax burden on the “average” home is \$1,128 per year for 25 years, or \$28,215.**

Key Facts:

- When voters in Montara/Moss Beach went to the polls in 2002, they were not told the bond measure would cost the average home owner almost \$30,000. The increased tax burden now has some residents facing decreased property values, foreclosure and/or relocation.
- MWSD is being sued by a group of 77 angry property owners who do not believe the new tax burden is fair.
- MWSD avoided raising rates in its first year of operation by cutting operating reserves and capital programs, however promised savings from the takeover have not yet materialized.
- MWSD spent millions in legal and transaction fees, and the county spent money on a bond measure election. Both customers and property owners are repaying these expenses.
- As part of the pro-takeover debate, Montara/Moss Beach customers were promised better-tasting water at a more affordable price, however water taste has not improved, water rates remain the same, and taxes increased.

*This summary was prepared as an aid only. All facts should be independently verified prior to use.
This summary was last updated 1/7/05.*



Ohio American Water Marion, Ohio

Situation Analysis:

In December 2003, Ohio American Water filed for an 18 percent rate increase. This inflamed local officials and initiated takeover discussions at the city level. Six months later, the city of Marion officially considered condemning Ohio American Water by hiring a consultant to advise them on the process of eminent domain and how to legally acquire Ohio American Water's assets.

Results:

The City of Marion abandoned the course of action of eminent domain after researching American Water's history and involvement with condemnation. The council dropped their pursuit once they recognized this course of action could be an enormous cost to taxpayers and a threat to the reputation of local elected officials. Another key disadvantage was the potential length of time necessary for a takeover.

Actual Cost to Taxpayers:

None. There was no cost to taxpayers because the council abandoned their course for condemnation before they spent money on consultants.

Key Facts:

- For more than two decades, the residents of Marion, Ohio, have been predisposed to condemning Ohio American Water. The first takeover attempt occurred in 1979.
- Although the City Council of Marion seriously considered a takeover, they abandoned their pursuit after considering the potential cost and length of time condemnation could burden the city.
- If the city of Marion were to pursue a takeover today, this would affect 14,500 customers currently being served by Ohio American Water.

*This summary was prepared as an aid only. All facts should be independently verified prior to use.
This summary was last updated 1/7/05.*



Kentucky American Water Lexington, Kentucky

Situation Analysis

Kentucky American Water has provided quality water service to residents in central Kentucky for many decades. Throughout its history, the water company has also been one of the key supporters of economic development projects in and around Lexington. These efforts would eventually place the water company and its supporters against those who want to limit economic development in order to protect horse farms. This debate gained momentum in 1999 when Lexington was facing a significant water supply problem. Kentucky American Water believed the most logical and cost-effective solution was to place a new water pipeline from the Ohio River to Lexington. However, after encountering strong opposition, the company abandoned the idea.

The debate was fueled again in September 2001 when American Water Works, the parent company of Kentucky American Water, sold its stock to RWE Thames Water, a multinational utility company based in Essen, Germany. On Jan. 22, 2002, the *Lexington Herald-Leader* published an op-ed calling for the takeover of Kentucky American Water. That editorial, and an op-ed by the late Gov. Ned Breathitt 19 days later, signaled the beginning of the current takeover attempt in Lexington. Many of the same people who opposed the Ohio River pipeline formed Bluegrass FLOW, a non-profit organization advocating local ownership of water. At the same time, a group of pro-business leaders came together and formed the 13,000-member Coalition Against a Government Takeover.

After months of public debate, Louisville lawyer Sheryl Snyder was hired by the government to advise the Lexington-Fayette Urban County Government (LFUCG) on condemnation. In July 2002, Snyder told the council the cost of condemning the company would be \$1 million and that the process would take five to seven years. On July 1, 2003, the LFUCG voted 9-6 to use the government's exclusive power of eminent domain to condemn and take over Kentucky American Water.

Even though the condemnation vote passed the council, public support for the water company and opposition to the takeover remained constant despite attacks from the *Herald-Leader*, which published more than 105 editorials supporting the takeover of the water company. According to the last poll, 58 percent of registered voters chose Kentucky American Water over the LFUCG when asked which entity they want to own and manage the water resources in central Kentucky.

Results:

While the condemnation action by the LFUCG is proceeding in court, the citizens of Lexington went to the polls on Nov. 2, 2004, and supported council candidates opposed to the takeover. Once the new councilmembers assume their offices in January 2005, the LFUCG is expected to end the takeover attempt since the majority (10 of the 15 members) have publicly said they want the takeover attempt to end.

Actual Cost to Taxpayers:

Today, the attempted takeover of Kentucky American Water is now in its 16th month and the government has spent more than \$1.272 million (as of November 2004) on legal expenses and takeover consultants.

Key Facts:

- The community has been debating the issue of public vs. private ownership of the water company since January 2002. For nearly two years, the majority of citizens in Lexington have opposed the takeover and supported the quality water service provided by Kentucky American Water.
- The majority of voters in Lexington believe the government has other priorities to address and should not spend additional taxpayer money to forcibly take over a well-run, local company.
- As they have for nearly two years, a majority of voters (57 to 36 percent) continue to oppose the LFUCG's attempt to take over the water system. The same poll shows voters prefer Kentucky American Water over the LFUCG to own and run the local water company by a 58 to 32 percent margin.
- In the summer of 2002, Louisville lawyer Sheryl Snyder was hired to advise the City Council on condemnation, including the likely length and cost of the case. Snyder said the case would take five to seven years and cost \$1 million. The attempted takeover of Kentucky American Water is now in its 16th month and legal expenses will exceed \$1.272 million.
- A jury, not the Council, will decide the final price the city of Lexington will have to pay for condemning Kentucky American Water. Jury awards and settlements of court cases around the country have shown that the cost to local governments is many times higher than original estimates. That would mean hundreds of millions of dollars to Lexington at a time when local government does not have the money to fund essential services. Purchasing the water company at a court-valued price would certainly mean increased water rates.

*This summary was prepared as an aid only. All facts should be independently verified prior to use.
This summary was last updated 1/7/05.*



Virginia American Water Hopewell, Virginia

Situation Analysis:

In July 2002, in an effort to raise city revenue, Hopewell's City Manager advised Virginia American Water that the City intended to acquire the Hopewell water system. This news came on the heels of significant investment by the company in rebuilding and upgrading the Hopewell water system.

In October 2002, the system, which served over 9,000 customers, was valued by the city at \$30 million. Virginia American Water made it clear that it was not interested in selling the water system; however the City Manager and Mayor continued to discuss condemnation.

The Result:

In a letter dated November 14, 2003, Virginia American Water was notified that the City abandoned its efforts to acquire the system via eminent domain. It is assumed that proceedings were halted once it became apparent to the City that Virginia American Water would challenge the takeover, had strong support of the business community, and had earned an 85 percent customer satisfaction rating.

Actual Cost to Taxpayers:

None. There was no cost to taxpayers because the council abandoned their course for condemnation.

Key Facts:

- Local industry had no interest in paying new taxes for an effectively-operated water system.
- Virginia American Water had an 85 percent approval rating among its customers.
- The fight in Hopewell had little to do with local control or foreign ownership.

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This summary was last updated 1/7/05.*



Massachusetts American Water Grafton, Massachusetts

Situation Analysis:

The city of Grafton condemned Massachusetts American Water in 1988 and offered the company \$1.1 million for its assets. Knowing the water system was worth significantly more, Massachusetts American Water challenged the offer in court. After lengthy debate, the court awarded Massachusetts American Water \$5.6 million for the system, substantially more than the city's original proposal. However, knowing the increased award would have a significant impact on the city's budget, the city of Grafton appealed the decision. Under the appeal, the award was upheld and, in addition, the city of Grafton was required to pay \$2.2 million in accumulated interest.

Results:

Today, the city of Grafton owns and operates the water system. However, it paid \$7.8 million for the water system in 1995.

Actual Cost to Taxpayers:

Residential rates have increased between 36 to 41 percent. Commercial industrial rates are higher than the average commercial rates set by investor-owned utilities.

Key Facts:

- Massachusetts American Water did not accept the city's offer of \$1.1 million and challenged the proposal in court.
- The court sided with Massachusetts American Water, and the city of Grafton was ordered to pay \$7.8 million for the water system - \$6.7 more than originally planned.
- The city of Grafton was in a severe debt crisis for many years following the purchase of the system.

*This summary was prepared as an aid only. All facts should be independently verified prior to use.
This summary was last updated 1/7/05.*

Tennessee American Water Chattanooga, Tennessee



Situation Analysis

For more than 130 years, Tennessee American Water has provided quality water and service to more than 70,000 customers throughout Southeast Tennessee and Northern Georgia. In 1998, Chattanooga Mayor Jon Kinsey, who was just sworn into office, made several public statements about the city of Chattanooga purchasing Tennessee American Water. When the water company said its business was not for sale, Mayor Kinsey urged the Chattanooga City Council to consider a motion to condemn the water company. In November 1998, Tennessee American Water faced an unexpected eminent domain challenge when the Chattanooga City Council voted 9-0 to pursue a takeover and dedicated \$750,000 to begin the process.

While public opinion was mixed on the condemnation issue, initial research showed that the majority of Tennessee American Water customers were satisfied with their water service and predisposed to oppose any government takeover of a private business. Even with this information, Mayor Kinsey and the City Council stood firm in their position that the takeover was a good thing for the community because it would result in a 25 percent reduction in rates and an estimated \$100 million savings to customers over the next 10 years. Mayor Kinsey also leveraged his strong relationships with the Chamber of Commerce and other community leaders to build a solid base supporting his efforts to take over the water company.

Results:

After Tennessee American Water won a series of related legal challenges, Mayor Kinsey and the City Council realized that the takeover was becoming a divisive, politically charged issue. Faced with steadily increasing public opposition to the takeover and fracturing City Council support, Mayor Kinsey entered into a settlement agreement with the company and abandoned the takeover attempt. The City Council completely reversed its previous vote when they voted 9-0 to approve the settlement.

Actual Cost to Taxpayers:

After pursuing the condemnation case for 10 months, the city of Chattanooga spent \$750,000 in legal expenses before agreeing to a settlement with Tennessee American Water.

Key Facts:

- A tracking poll conducted in May 1999 showed public opposition to the city's attempted takeover increased from 53 to 74 percent, while the company's customer satisfaction rate increased from 79 to 91 percent over a six-month period.
- More than 8,000 Chattanooga voters signed petitions calling for a public vote and volunteered to help stop the takeover by posting yard signs and contacting their council members. Talk radio and editorial pages were dominated by supporters of the water company who wanted the takeover to end.
- After spending more than \$750,000 in legal expenses, the city of Chattanooga accepted a settlement containing the same terms that Tennessee American Water offered at the beginning of the condemnation process.
- In the next election cycle, Mayor Kinsey and four pro-takeover council members were either beaten or decided to not run for re-election.

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This summary was last updated 1/7/05.*

UNIVERSITY OF CALIFORNIA
Santa Barbara

**A FRAMEWORK FOR EVALUATING WATER SYSTEM
OWNERSHIP AND MANAGEMENT ALTERNATIVES**

A Group Project submitted in partial satisfaction of the degree
of
Master's in Environmental Science and Management
for the
Donald Bren School of Environmental Science & Management

by

CLAIRE COWAN
AUBREY MESCHER
JOSH MILLER
KEVIN PETTWAY
BENJAMIN PINK

Committee in Charge:

DENNIS AIGNER
ROBERT WILKINSON

APRIL 2005

EXECUTIVE SUMMARY

INTRODUCTION

Water utilities in the United States are facing the staggering cost of maintaining aging system infrastructure, meeting the demands of population growth, and complying with increasingly stringent water quality regulations. The Congressional Budget Office estimates annual investment needs for drinking water systems to be between \$11.6 and 20.1 billion over the next 20 years [1]. To compound the problem, water is frequently under-priced. A 2002 survey by the General Accounting Office (GAO) estimates that for 29 percent of drinking water utilities, user charges do not cover the full cost of providing the service [2].

Most people in the U.S. are served by publicly owned water systems, but the fiscal pressures facing local governments have led some municipalities to look to the private sector for the financial and technical resources necessary to expand systems, address deferred maintenance needs, and upgrade infrastructure to meet new water quality standards [3]. At the same time, since the 1980s the U.S. water industry has been transformed by corporate consolidation among the nation's largest investor-owned utilities (IOUs), and the arrival of multinational corporations specializing in utility management [4].

The shift towards increasing private sector involvement in water supply and services has not been without controversy. Public opposition to privatization in cities like Stockton, California, have brought the issue much media attention and sparked public debate. In addition, some policy makers are concerned about the potential for foreign-owned water utilities to use international trade agreements to circumvent environmental laws or other regulatory requirements [5]. In some places, concerns about private ownership of local water systems have led to public acquisition of utility assets, an action which we term "municipalization."

Public and private firms face different constraints and incentives in the operation and management of water systems. Given these differences, when deciding to replace one ownership model with another, it is important to systematically evaluate alternatives and establish a basis for decision-making that provides the best potential for meeting local needs and priorities.

OBJECTIVE

The purpose of this project was to develop a framework to assist municipal decision-makers with evaluating ownership and management alternatives for retail water distribution systems. The framework is included as Appendix H.

Rather than recommending one ownership model over another (which is problematic given the wide diversity of circumstances and priorities at the local level), our framework is intended to promote a systematic decision-making process, identifying potential tradeoffs between different management objectives and recommending

actions to improve performance, whether the decision outcome is public ownership, public-private partnership, or private ownership.

APPROACH

Decision-making framework

Our framework focuses on four scenarios for changing the ownership and/or management structure of retail water distribution systems:

1. **CIP:** Implementing operational and management changes designed to improve efficiency at a public water system
2. **Municipalization:** Purchasing the assets of a privately owned water system, transferring ownership and operating responsibility to a public entity
3. **PPP:** Contracting out the operation and maintenance of a public water system to a private company
4. **Asset sale:** Selling the assets of a publicly owned water system, transferring ownership and operating responsibility to a private company

Our framework takes into account the economic, policy, social, legal, and environmental considerations of such decisions. The framework is intended to promote systematic evaluation of ownership and management alternatives for local governments seeking to provide efficient, high-quality water service in California and across the country.

Management objectives

To identify the key considerations and trade-offs associated with each decision scenario, we established a set of ten management objectives that decision-makers may wish to consider in determining which ownership/management model best addresses local priorities. The management objectives considered in our decision-making framework are: operational efficiency, system reliability, water quality, customer satisfaction, local control, local accountability, rate affordability, water conservation, supply reliability, and public acceptance.

Our framework assesses the performance of each decision scenario – CIP, municipalization, PPP, or asset sale – in addressing each of the ten management objectives. Where applicable, the framework recommends actions that can be taken to improve attainment of a given management objective under the respective decision scenario.

Research components

Our decision-making framework is informed by four primary research elements: 1) A comparative analysis of the public and privately owned water systems operating in the City of Thousand Oaks, California; 2) Legal research conducted by students at the University of California Los Angeles School of Law in two policy areas potentially affected by water system privatization; 3) Interviews with water sector experts; and 4) A review of relevant literature.

RESULTS

Thousand Oaks case study

Our research identified two primary differences between the public and privately owned water utilities in Thousand Oaks: 1) the privately owned water providers operate with greater efficiency than the public utility on four of the five indices of operational efficiency we evaluated; 2) the publicly owned water provider charged significantly lower rates than the privately owned water provider for the 15-year period we examined. There was no significant difference between the providers on the basis of infrastructure investment and condition, water quality, water conservation, or customer satisfaction.

Legal research

The research conducted by our partners at the UCLA School of Law indicates that though there is limited potential for foreign-owned water companies to file suit against domestic regulations under the General Agreement on Trade in Services (GATS) or the North American Free Trade Agreement (NAFTA), it is unlikely that such suits would prevail, particularly if the regulations in question apply equally to U.S.-owned and foreign-owned companies.

Foreign or domestic corporations that do not trade on the New York Stock Exchange or file reports with the Securities and Exchange Commission (SEC) are exempt from the financial accountability protections afforded by regulations such as the Public Company Accounting Reform and Investor Protection Act of 2002 (Sarbanes-Oxley). For municipalities entering into public-private partnerships with such companies, there may be limited opportunity to include financial accountability and transparency requirements in contractual provisions.

Literature review and interviews

Three of the ownership/management alternatives – CIP, PPP, and asset sale – have a significant potential to increase operational efficiency, system reliability, water quality, and customer satisfaction, depending on local conditions prior to the decision point, and how the ownership/management change is implemented. With municipalization, transaction costs and the potential for decreasing economies of scale creates particular difficulties for attaining these management objectives.

Local control and accountability are highest under public ownership (CIP, municipalization, and PPP). The advantages of increased local control and accountability under municipalization may create sufficient incentives to counter potential disadvantages in terms of transaction costs and decreasing economies of scale.

Our research supports the conclusion that private utilities' advantages in terms of operational efficiency do not necessarily correspond to lower retail water rates. In addition, public utilities have the added advantage of being able to customize rate structures that meet the demographic needs of their communities.

Public acceptance is most problematic with the two privatization alternatives, PPP and asset sale, due to ideological considerations, reductions in local control and accountability, and the potential for rate increases and staffing reductions.

RECOMMENDATIONS

The results of our Thousand Oaks case study, legal research, expert interviews, and literature review informed our conclusions for the management objectives considered in our decision-making framework as summarized below:

- **Operational efficiency:** There is a significant potential for public utilities to increase operational efficiency, creating additional benefits for their customers
- **System reliability:** Public utilities can increase support for adequate infrastructure investment through increased financial transparency and public outreach to increase support for infrastructure investment
- **Water quality:** Regionalization may benefit small public utilities with insufficient resources to address water quality standards compliance
- **Customer satisfaction:** Customer satisfaction is most affected by service, rates, service, rates, billing, the customer's experience with their provider's telephone call center
- **Local control:** It appears unlikely that international trade agreements can be used to circumvent domestic regulations governing water service provision
- **Local accountability:** Domestic and foreign-owned water providers not subject to Sarbanes-Oxley may be held to different standards of financial transparency and accountability
- **Rate affordability:** Publicly owned utilities have several advantages that may allow them to charge lower rates for water service
- **Water conservation:** Water conservation should be promoted at the regional or state level, due to lack of incentive at the local level
- **Supply reliability:** Publicly owned utilities may have greater opportunities with other public agencies to address water supply
- **Public acceptance:** Our public opinion research in Thousand Oaks indicates no strong preference for public or private water utility ownership. Strong sentiment against foreign ownership of water utilities should be addressed through public outreach in cases where privatization involves a foreign-owned water company

The decision-making framework included in Appendix H provides an overview of potential tradeoffs between different ownership and management alternatives for retail water distribution systems.

Arlene Tavani

From: Joseph J. von Schwind [jjvons@msn.com]

Sent: Tuesday, July 19, 2005 7:11 AM

To: Arlene Tavani

Subject: Let us vote

If Michelle Knight supports the public's right to vote on investigating the takeover of Cal Am why did she switch her vote?

She is not being asked to "take the second step." Let the voters decide about all of the steps.

J. J. von Schwind
jjvons@msn.com



MARINA COAST WATER DISTRICT

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DAVID W. BROWN
Vice-President

CHARLES H. SCHOLL
KENNETH K. NISHI
HOWARD GUSTAFSON

July 19, 2005

RECEIVED

JUL 21 2005

MPWMD

Mr. David A. Berger
General Manager
Monterey Peninsula Water Management District
5 Harris Court, Bldg. G
Post Office Box 85
Monterey, CA 93942-0085

Subject: Marina Coast Water District (MCWD) Water Augmentation Project
Re: MPWMD Letter dated June 30, 2005

Dear Dave:

Thank you for informing our District about the planned MPWMD Town Hall meeting scheduled for August 25, 2005 and inviting the MCWD to participate in this event.

At the direction of the Fort Ord Reuse Authority Board of Directors and the MCWD Board of Directors, we recently began scoping a project we call the Regional Urban Water Augmentation Project (RUWAP). This project combines a recycled water component and a desalination component. The recycled water project is proposed to be a joint project with the Monterey Regional Water Pollution Control Agency (MRWPCA) and could provide recycled water on the Peninsula. The desalination project is proposed to expand the MCWD's current plant. The primary purpose of the RUWAP is to provide additional water supplies to MCWD customers on the former Fort Ord.

Based our telephone conversation on July 14, 2005, we understand that the question posed in your letter asking if the MCWD would be interested in expanding our desalination project to help meet the water supply needs of the entire Peninsula should be interpreted as asking if the MCWD was interested in including capacity in our desalination project to provide *all* the water that may be required to fulfill SWRCB Order 95-10, as well as additional water for planned growth.

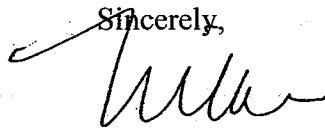
While we believe we may be able to assist in making some amount of recycled water available to the Peninsula with the RUWAP, we do not now plan to expand the size of our proposed desalination project to address all the water supply needs of the entire Peninsula. However, there may be some interest on the Board in supplying some as yet to be determined fraction of the Peninsula's needs via desalination.

Mr. David A. Berger
July 19, 2005
Page 2

We look forward to continuing to work the other districts and land use jurisdictions in our region, including the MPWMD, collaboratively seeking solutions to our water supply challenges. And, we look forward to working with the MRWPCA and your district to plan our participation in the August 25, 2005 Town Hall meeting where we will present information about the recycled water component of the RUWAP.

Thanks, Dave, for seeking our response to the Peninsula water supply question. We look forward to continuing to build a mutually beneficial relationship with your agency.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Armstrong", with a long horizontal flourish extending to the left.

Michael D. Armstrong
General Manager

cc: MCWD Board of Directors



HAND
DELIVERED
35
California
American Water

July 20, 2005

Mr. David Berger
General Manager
Monterey Peninsula Water Management District
P.O. BOX 85
Monterey, CA 93942-0085

RECEIVED

JUL 20 2005

MPWMD

Dear Dave:

Thank you for considering earlier changes to the wording of the proposed ballot initiative for voters within the Monterey Peninsula Water Management District (MPWMD).

To clarify, our objection to the words "Shall be directed to" was not over whether the measure was binding or advisory, we understand the proposed measure is intended to be binding. We simply believe the words "be directed to" add nothing to the sentence and dilute the impact of the statement. Instead we suggest that the language be revised to read, "Shall the Monterey Peninsula Water Management District investigate..." We believe that this would be clearer and more direct to voters. While this may be viewed as a minor point, we would appreciate you taking it into consideration. After further reflection, and some amount of legal research, I would like to bring to your attention some additional concerns. I apologize I could not get these to you sooner:

1) As some of the other speakers and board members voiced Monday night, I would very much like the initiative to include some indication of the total cost, even a "not to exceed" amount. As Chairman Foy pointed out, studies like this often end up costing multiples of their expected or budgeted cost, and including a not to exceed amount protects our ratepayers and the District in the long run. No doubt your staff has done research on this issue and has a better idea of what the right number is than we do. I think this may also address some concerns aired by the General Counsel and other directors that this is more than a "beauty contest."

2) One alternate suggestion that I believe meets both the desire the board to pursue public ownership and the desire of the community for a water supply solution is to instead spend dollars studying public ownership and governance of the Coastal Water Project. This is something we could work with the MPWMD on, and something that would not threaten a water supply solution. In that instance, the language would read something like "Shall the Monterey Peninsula Water Management District investigate the cost and process for public ownership and/or governance of the desalination plant and aquifer storage and recovery project known as Coastal Water Project as proposed by California American Water at a cost not to exceed \$xxx,xxx, and recover the cost on a surcharge on the bills of California American Water's customers?"

3) Some speakers at both the June and July meetings also mentioned the MPWMD should adhere to its mission statement. To that end, I also want to raise another potentially thorny issue for the district board. It is our understanding that the board may only expend funds in furtherance of its specifically delegated legislative function. The California Supreme Court stated in the leading case of *Stanson v. Mott*:

“We start with the general principle that expenditures by an administrative official are proper only insofar as they are authorized, explicitly or implicitly, by legislative enactment. Contrary to defendant's contention below, such executive officials are not free to spend public funds for any 'public purpose' they may choose, but must utilize appropriated funds in accordance with the legislatively designated purpose.”

The *Stanson* Court also held public officials who authorize an improper expenditure of public funds may be personally liable for failure to exercise due care in authorizing the expenditure. The Board's enabling legislation provides that the district “shall have the power: (a) to acquire public or private water systems **necessary or proper to carry out the purposes of this law.**” (Emphasis added.)

The Legislative Findings in the bill that created the district in 1977 states that:

“The Legislature further finds and declares that, within the Monterey Peninsula area which will be served by the public district created by this law, the water service is principally supplied by a privately owned water supplier which does not have the facilities nor the ability to perform functions which are normally performed by public agencies, including the ability to raise sufficient capital for necessary public works, contract with, or provide necessary assurances to, federal and state agencies for financing of water projects and supplying of water, and the regulation of the distribution of water developed within or brought into such service area. Therefore, the Legislature finds and declares that it is necessary to create a public agency to carry out such functions which only can be effectively performed by government, including, but not limited to, management and regulation of the use, reuse, reclamation, conservation of water and bond financing of public works projects.”

Thus, the Legislature recognized that the district was needed to **supplement and enhance** services already being provided by the existing private water supplier. If it wanted to *replace* that supplier with a public agency, it easily could have expressed that objective.

The district itself has summarized its legislative purposes on its website as:



LEGISLATIVE FUNCTIONS
 (West's Water Code -- Appendix, Chapter 118)

- (1) Augment the water supply through integrated management of surface and ground water resources;
- (2) Promote water conservation (includes rationing, if needed);
- (3) Promote water reuse and reclamation of storm and waste water; and
- (4) Foster the environmental quality, native vegetation, fish and wildlife, scenic values and recreation on the Monterey Peninsula and in the Carmel River basin.

There is no evidence that research on the cost and process to acquire our property against our will is "necessary or proper" to carry out the above stated purposes. Each one can be accomplished within the existing framework of a "public/private" partnership. Therefore, any expenditure of public funds on this exercise could be ruled to be improper by a reviewing court.

In closing, California American Water is committed to protecting its right to do business and provide service to our customers. Our system is not for sale, and we believe any group interested in condemnation will face a tough challenge convincing a judge and jury that the public interest is served by condemnation. This proposed ballot measure may actually damage the public interest because it complicates finding a solution to the Monterey Peninsula's water supply problem. I would appeal to you and your board again to consider an alternative ballot measure that addresses public ownership of the Coastal Water Project, which would fall squarely under MPWMD's existing Legislative Function and further our common goal of securing a sustainable water supply for our customers and constituents. If there is anything California American Water can do to help you avoid the expense of a study, election and possible future condemnation litigation, I remain available to meet and confer at any time.

Thank you for your consideration.

Sincerely,

Steven Leonard
 Vice President/Manager
 Coastal Division

California American Water
 Coastal Division

50 Ragsdale Dr., Suite 100
 P.O. Box 951
 Monterey, CA 93942-0951

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Cc. MPWMD Directors
 Paul Townsley, Managing Director American Water
 Kevin Tilden, Director of External Affairs, CAW



SANDRA SHEWRY
Director

State of California—Health and Human Services Agency
Department of Health Services
Northern California Drinking Water Field Operations Branch
Monterey District



ARNOLD SCHWARZENEGGER
Governor

July 20, 2005

System No. 2710004

RECEIVED

JUL 25 2005

MPWMD

Mr. John Klein
California-American Water-Monterey
P.O. Box 951
Monterey, CA 93940-5758

Dear Mr. Klein:

RE: Summary of Discussions Regarding Desalination Pilot Study

This letter is intended to identify the process for acceptance of the pilot study protocol, identify issues of concern, and outline the Department's overall procedure for assigning treatment credit to desalination treatment for drinking water systems, per our discussions on June 7, 2005, related to the planned desalination pilot study.

Pilot Study Protocol

California-American (CalAm) must submit a pilot study protocol to the Department's Monterey District office that outlines the length of time of the study, treatment alternatives and chemical processes to be evaluated, and monitoring to be conducted. The objectives of the pilot study should be clearly stated, including design objectives and water quality objectives.

This demonstration must be able to show that the treatment process train will comply with the Surface Water Treatment Rule (SWTR) turbidity performance requirements and reliably provide water meeting drinking water standards. Compliance with the Interim Enhanced SWTR as well as the proposed Long Term 2 ESWTR must be evaluated. An evaluation of disinfection by-product formation issues, depending on the type of disinfection treatment to be provided, should be included to ensure compliance with the Stage 2 Disinfection By-Products Regulation.

The Pilot Study should consider the impacts of seasonal water quality on system performance. The study should look at variations in source water quality and, based on the magnitude and frequency of water quality excursions, stratify sampling and pilot system to more intensively study water quality impacts on system performance during these periods of time.

The Pilot Study should provide sufficient information to allow the water utility to develop an Operations Plan for the full-scale treatment plant, including estimated filter run length, backwash frequency, membrane cleaning frequency, chemical dosages, and other treatment and operational parameters.

It is recommended that the protocol be submitted well in advance of commencement of the study, to allow the Department time to circulate the protocol internally for review and comment. Both hard copy (2) and electronic copies of the protocol would be appreciated.

Removal and Inactivation Requirements

A Watershed Sanitary Survey (WSS) will be required for the Coastal Water Project, as specified in the California Code of Regulations, Section 64665, prior to the approval of the new source for use to provide domestic water. The WSS should identify and describe all sources of actual or potential contamination, including biotoxins, affecting the water quality at the intake. Additional details on the expectations for the WSS can be obtained from the Department on request.

If a utility is willing to base the treatment plant design on a worst-case scenario (2 logs additional removal and inactivation above the SWTR minimum of 2 log *Cryptosporidium*, 3 log *Giardia* and 4 log virus - or 4, 5, and 6 log removal and inactivation, respectively), and the source is deemed acceptable for domestic water supply, then further characterization of the watershed from the standpoint of pathogen control is not necessary at this time. The Pilot Study Protocol must specify the log removal and inactivation goals to be provided through the combination of pretreatment, reverse osmosis treatment and disinfection inactivation.

Alternative Technology Approval

Reverse osmosis treatment is deemed to be an alternative filtration technology under the SWTR, which requires that a demonstration to establish pathogen removal credit must be conducted. The Pilot Study can provide a full demonstration of pathogen removal through the RO membranes using appropriate microorganisms (MS phage) or surrogates (e.g., 5-15 um particles) seeded into the source water or alternatively, the utility can accept an assigned log removal based on a demonstration of TDS reduction up to 2 log removal credit for *Cryptosporidium*, *Giardia* and virus.

Please note that the turbidity performance standard that will be assigned to the desalination treatment facility will be equal to or less than 0.1 NTU in 95% of the measurements taken each month and should not exceed 1.0 NTU at any time.

Special Considerations for the Pilot Study

All chemicals added directly to the water, including the chemicals used to clean or maintain the RO membranes, must have NSF/ANSI Standard 60 certification for direct additives to drinking water. All desalination components, including the RO membranes, must be NSF/ANSI standard 61 certified for indirect additives to drinking water.

The pilot study should establish the relationship between conductivity and TDS for the purpose of using conductivity to monitor membrane performance (TDS reduction). The correlation should be validated across seasons as the composition of the source water may change seasonally due to changes in current patterns.

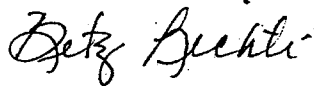
The pilot study should identify issues of concern in the source water. For example, the Department is concerned about the presence of biotoxins present in the source water and the impact they may have on the removal capabilities of the treatment plant. It should be noted that not all red tides contain algal toxins, nevertheless, the presence of high concentrations of algae can also affect the maintenance and cleaning of membranes. Also, during the period of the pilot study, the source water quality should be evaluated and compared to water quality in prior years to establish the design factors for the full-scale treatment plant. The study should be able to

identify periods of water quality when the desalination facility should not be operated either because of the public health concerns or operation and maintenance limitations.

The Pilot Study should identify, inventory, and evaluate any chemicals used in the cooling water at the Duke power plant, which will be the source water for the pilot. It is recommended that the pilot study operate to demonstrate the proposed process train's response to a failure at Duke where excess chemicals were discharged into the cooling water.

We look forward to working with you and your consultants on the Coastal Water Project. If you have any questions regarding these comments, please contact me at (831) 655-6939.

Sincerely,



Betsy S. Lichti, P.E.
District Engineer, Monterey District
DRINKING WATER FIELD OPERATIONS BRANCH

cc: Monterey County Environmental Health Department

Monterey Peninsula Water Management District

Monterey County Water Resources Agency

California Public Utilities Commission

Mr. James Brezack
RBF Consulting
3180 Imjin Road, Suite 104
Marina, CA 93933

John Glenn
P.O. Box 249
Pebble Beach, CA 93953
July 28, 2005

RECEIVED

AUG - 1 2005

MPWMD

Alvin Edwards
Board Director
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 95942

Re: Takeover of Cal-Am

Dear Mr. Edwards:

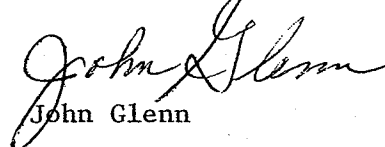
In the 1970's I resided in northern Fremont, California. Our water company at that time, which included Union City and part of Hayward, was Citizen's Utilities of Connecticut. The water service was deplorable.

The residents of the area voted for the Alameda County Water District to issue bonds to purchase the Water Company. The Bonds were paid off by the users without an increase in the rates which had been charged by Citizen's Utilities.

Cal-Am is only interested in profits for their stock holders not good service and the profits should go to the residents.

Good luck on your Measure.

Very truly yours,


John Glenn

JG:bg

RECEIVED

JUL 28 2005

MPWMD

Thomas and Cate Andrew
2086 Paralta
Seaside CA 93955
831-899-1976

Steven Leonard, General Mgr.
California American Water Co.
PO Box 951
Monterey CA 93942

Dear Sir,

My wife and I have lived at the Paralta address since 1983, and have put up with a situation that we feel needs to be resolved. Every time there is a power outage in our area of Seaside, the pump that supplies our house and a number of neighboring houses, stops pumping, and we have no water. When the tap is opened during the pump's down time, a suction noise is heard as the water makes it's way by gravity to the bottom of the hill.

During the Loma Prieta earthquake, we were without water for more than three days. It's bad enough being without power, but when one is denied both water and power, the situation becomes much more grave. Our area of Seaside had a power outage last Friday evening, July 22, 2005, that lasted for about four hours, and we were again without water during that period. Last night, Sunday, July 24, 2005 at about 9 p.m., my wife and I went to do dishes, and the water was out again, even though we had power.

After each of these pump shut down events, we are forced to run water for sometimes up to forty-five minutes before it runs clear and the air has been bleed from the system. You see, Paralta is at the top of the hill, and so the highest point for air to escape. The taste of the water is objectionable for hours at times after the pump is turned back on.

As you can see from the date of our purchasing the Paralta address, we aren't exactly whiners. I feel that the problem needs to be solved having lived with it for twenty-three years, and look forward to your suggestions as to how Cal-Am water plans to resolve the situation.

Sincerely,



Thomas L Andrew

Cc Monterey Peninsula Water Management District



RECEIVED

August 3, 2005

Clark and Gudrun Beck
23765 Spectacular Bid Lane
Monterey, CA 93940

AUG - 5 2005

MPWMD

RE: Account Number 233203-9 at 23765 Spectacular Bid Lane, Monterey

Dear Mr. & Mrs. Beck,

We are in receipt of your letter dated July 13, 2005. I have attached a copy of the letter for your records. As you are aware, we built two new tanks above your property to better serve the needs of customers in the Bishop- Pasadera area. These tanks were installed in early 2002 to replace the redwood tank on York Road.

If you will recollect, I shared your concerns following the July 2004 incident and set up an appointment with you at your home. We met in early August and discussed the operating characteristics of the tanks. We also discussed measures we were taking to eliminate spill risk exposure. This included rerouting a drain line to reroute drainage in the event of a spill or inclement weather. At that time, I left three local numbers with you.

Since the July 22, 2004 incident, I'm not aware of any further incidences with the Spectacular Bid tanks. However, I would like to fully answer your letter and address your concerns.

Technical improvements to the facilities:

We have installed a new SCADA monitoring system including an RTU and PLC controller. The tank levels are now monitored through an automated system. Additionally, we have an auto-dialer setup so we can respond to the site quickly if there is a problem. An auto dialer is an automated device that calls our supervisor and technicians telephone/cell phone directly if any alarm point goes off.

The controller includes both a high level control and a high-high level alarm point that will open circuits to the pumps in the event of level failure. (This is a redundant feature.) The controls are housed in a rainproof cabinet to protect all electronics from weather. We have technicians at the site several times a week to inspect the site, and take water quality samples. We also do scheduled preventive maintenance on the controls and pumping station. Part of that preventive maintenance activity includes alarm testing through the new SCADA system.

The system has continued to run trouble free over a year. Nonetheless, if you have additional suggestions that can improve the tank reliability further, I'd be interested in ideas.



Local Numbers:

Here are a list of local numbers you can call during the weekday when the office is open. They can immediately address your concerns if they are in the office.

1. 831-646-3268 – Charles Kemp, Network Operations Manager
2. 831-646-3216 – Rose Little, Administrative Assistant
3. 831-646-3287 – Pattie Walton, Teller

We have a 24 hour/7 day call center that you can call anytime night or day, and they will immediately contact the on-call supervisor to address your needs. That number is 1-888-237-1333.

I'm also going to give you my cell phone number. Please feel free to call me anytime for any problem, and I will try my best to address your needs. My cell number is 831-236-7336.

I appreciate your letter and thank you for your interest in helping us improve customer service.

Sincerely,

A handwritten signature in black ink that reads "Charles W. Kemp".

Charles W. Kemp, MPA
Network Operations Manager

Cc: Larry Foy, Chair, and Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Enclosure

California American Water
Coastal Division

50 Ragsdale Dr., Suite 100
P.O. Box 951
Monterey, CA 93942-0951

T 831 646 3201
F 831 375 4367

I www.calamwater.com

Clark & Gudrun Beck
23765 Spectacular Bid Lane
Monterey, CA 93940

July 13, 2005

Steve Leonard
Vice President, California American Water
General Manager, Monterey Division
50 Ragsdale Drive, Suite 100
Monterey, CA 93940

Dear Mr. Leonard:

We are the owners of property located at 23765 Spectacular Bid Lane, Monterey, California. California American Water ("Cal Am") owns and operates a water storage facility uphill from our property. That storage facility was acquired by Cal Am several years ago.

In 2004 Cal Am installed two new metal tanks to replace the old redwood tank at this location. After the new tanks were installed, on July 22, 2004 there was a release of water that rushed onto our property and caused damage. This was the result of a malfunctioning piece of equipment owned and operated by Cal Am at the facility. At that time, we found that it was essentially impossible to contact Cal Am to alert you to the situation. We are concerned about what steps Cal Am has taken to prevent future events of this type.

We ask that Cal Am provide us with documentation to show the following:

(1) Efforts taken by Cal Am to make sure that the water is not released again in the future, including technical improvements to the facility, changes in the inspection regimen for the Cal Am site, and installation of additional equipment both to prevent the release of water and to alert Cal Am to releases when they occur;

(2) The technical specifications for the water storage facility, showing the reliability of the system.

In addition, we request that you provide us with at least three LOCAL phone numbers that we could call in an emergency (including nights and weekends) in order to reach Cal Am.

We understand that Cal Am is required to exercise reasonable care in its storage of water, and that Cal Am is strictly responsible for the release of water that flows onto our land. Our primary goal here is to verify that Cal Am has taken the steps necessary under the law to protect against future damaging releases of water onto our property.

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JUL 13 2005

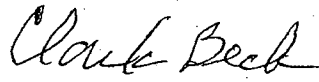
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CAL-AM WATER CO.

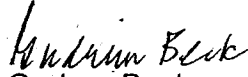
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We look forward to hearing from Cal Am no later than August 15, 2005.

Very truly yours,



Clark Beck



Gudrun Beck

cc: Larry Foy, Chair, and Members of the Board of Directors
Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942

Office of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA. 94102