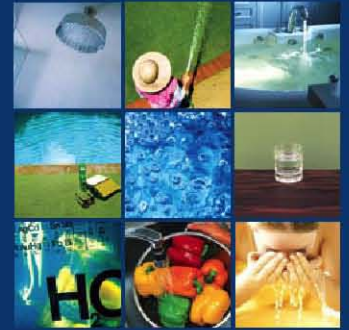


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The Weekly Wrap



October 26, 2012

No. 2012-43

TO: CWA Member Companies
FROM: Jack Hawks, Executive Director
SUBJECT: Highlights for the Week Ending October 26, 2012

Commission Preempts Monterey County Desalination Ordinance—At its October 25th Open Meeting, the California PUC approved Decision 12-10-030, which determined that the Commission’s authority preempts a Monterey County ordinance to prevent California American Water (CAW), or any private entity, from owning desalination facilities in the County. Adopted in 1989, the Code of Ordinance (Title 10, Chap. 10.72) deals with construction, operation and ownership of desalination plants, and it was this latter provision that directly conflicted with CAW’s application (A.12-04-19) for its proposed desalination, groundwater replenishment, and aquifer storage and recovery facilities.

As you know, under the State Water Resources Control Board’s October 2009 Cease and Desist Order, CAW will lose 70 percent of its current water supply from the Carmel River at the end of 2016. As D.12-10-030 notes, “failure to be on line with a replenishment water supply by that date could result in serious social, economic, environmental, and public health consequences.” CAW’s Monterey Peninsula Water Supply Project (MPWSP) is its solution to achieve the state-mandated shift away from relying on the Carmel River. Because the application is under the CPUC’s jurisdiction, a ruling had to be made because of the conflict with the local desalination ordinance.

The latest in the saga began five days before CAW filed its application on April 23rd when Commission General Counsel Frank Lindh sent a letter to Monterey County Counsel Charles McKee, stating among other things: “It is our view that, to the extent this ordinance purports to limit sponsorship of a desalination project only to governmentally-owned enterprises, and more particularly to prohibit such sponsorship by a private, for-profit, investor-owned utility company regulated by our Commission—such as Cal Am—the ordinance would be preempted and of no legal validity under settled principles of California law.”

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While the parties were briefing the legal issues in A.12-04-019, Monterey County filed suit June 26th in the Superior Court of the County of San Francisco against CAW seeking a declaration that the Desalination Ordinance is not preempted by Commission authority as it pertains to the proposed MPWSP. Because the same preemption issue was now pending before the CPUC and the Superior Court, the Commission moved ahead with D.12-10-019 and concluded in the first two Ordering Paragraphs that the Commission's authority in A.12-04-019 preempts the Monterey County Desal Ordinance and that the Commission has paramount jurisdiction relative to the Superior Court. Here, the CPUC stated that under Sec. 1759 of the Public Utility Code, the Superior Court has no "jurisdiction to review, reverse, correct, or annul" the instant decision or "to suspend or delay the execution or operation" of this decision.

Gratifyingly, the CPUC directed CAW to seek ("expeditiously") a dismissal, summary judgment or other favorable disposition in *County of Monterey vs. California-American Water Company* based on the Commission's authority through General Order 103-A that it preempts the Monterey County Desalination Ordinance. Interestingly, GO 103-A speaks directly to the issue in Sec. 1.9: "Local agencies acting pursuant to local authority are preempted from regulating water production, storage, treatment, transmission, distribution, or other facilities (including the location of such facilities) constructed or installed by water or wastewater utilities subject to the Commission's jurisdiction."

Congratulations to California American Water on this decision. In other action at the Oct. 26th Open Meeting, the Commission:

- **Approved Resolution W-4933**, which authorizes Del Oro Water to collect a surcharge of \$0.041 per 100 cubic feet over a period of 12 months for its River Island District, as well as a surcharge of \$0.300 per 100 cubic feet over a period of 36 months for its Strawberry District.
- **Item 35 – A09-09-001; Conference with Legal Counsel - Application for Rehearing.** Disposition of the Application for Rehearing of Decision (D) 10-11-034 filed by Great Oaks Water Company. D10-11-

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034 resolved the general rate case for Great Oaks for test year July 1, 2010 to June 30, 2011 and the following two escalation years.

- **Item 42 – A.10-01-012; Conference with Legal Counsel - Application for Rehearing.** Disposition of the application for rehearing of Decision (D) 11-03-035 (Decision) filed by the Monterey Peninsula Water Management District (the District). In D11-03-035, the Commission considered a California-American Water Company (CAW) application, and subsequent proposed settlement agreement between CAW, the District, and the Division of Ratepayer Advocates (DRA). Both the application and proposed settlement recommended approval of a District User Fee set at 8.325% of CAW's total revenue. CAW would collect the User Fee in its Monterey customer rates and remit those costs to the District for its cost to implement the Carmel River Mitigation and Aquifer Storage and Recovery Programs. The Decision rejected the proposed settlement and authorized CAW to amend its application with additional information to support the proposal.

DWA Hosts Constructive Final Workshop in Recycled Water OIR—The last of five workshops in the California PUC's Order Instituting Rulemaking (OIR) on recycled water policy (R.10-11-014) was hosted by the Division of Water & Audits (DWA) Oct. 23-24, and the two-day agenda consisted of panels on ratemaking, cost allocation, customer outreach and education, and integrated resource planning (Day 1), and then review of DWA's drafts on policy guidelines, criteria for recycled-water project applications, and a proposed Tier 3 Advice Letter template (Day 2).

CWA President and California Water Service Corporate Counsel John Tootle participated in the customer outreach with Joe Walters of West Basin MWD. John's principal points were:

- The reason recycled water projects must be considered on a case-by-case basis is that the different types of customers involved in such projects have different paybacks and incentives, thereby creating different economic parameters that must be addressed individually.

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- Retail water utilities will always be their customers' primary water provider and will always be the primary supplier of reliability for fire flow (i.e., water on demand for safety), which explains why recycled water is priced the way it is. He used BP as an example, saying refineries are willing to pay more for recycled water because of their reliability needs.

DWA's Moises Chavez moderated the second panel, addressing these questions:

- Should recycled water projects require different ratemaking treatment than other capital projects? *(No, despite the need to address customer preferences and needs on a case-by-case basis, the projects will still be part of the utility's total revenue requirement.)*
- What criteria should be considered in designing/setting recycled water rates? *(The main one, of course, is cost: the required payback for the utility and its customers and the difference between the utility's current cost of water and the proposed discount to the customer that will incent participation).*
- Where and how should stranded costs be determined and addressed? *(A lot of discussion here, ranging from duplication of distribution mains with purple pipe to aspects of the service duplication law to sizing facilities for fire flow requirements – and using those facilities for fire protection – precludes the possibility of stranded costs)*
- How should incremental costs associated with recycled water projects that are not recovered through recycled water rates be allocated? *(Incremental costs are covered in the respective ratemaking area's or district's revenue requirement and are allocated accordingly)*

State Water Resources Control Board (SWRCB) Vice-Chair Fran Spivey-Weber attended the first day of the workshop, and I was glad she was in attendance because she provided some balance to former Division of Ratepayer Advocates (DRA) employee and current SWRCB analyst Max Gomberg, who participated on the third panel, but who sounded more like DRA and less like the State Board. Other panelists were Rich Mills of the Dept. of Water Resources, and Chari Worster of DRA, who is now DRA's point person on this rulemaking.

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The second day of the workshop was devoted to discussion and wordsmithing of three draft documents from DWA: (1) Recycled Water Policy Guidelines; (2) Minimum Criteria Requirements for a Proposed Recycled Water Project; and (3) Tier 3 Advice Letter Template for Recycled Water Projects. This exercise, which was reasonably constructive, was, I think, helpful to Administrative Law Judge Gary Weatherford.

CWA Regulatory Attorney Mari Lane noted numerous policy issues that surfaced for discussion in her report to CWA's Regulatory Committee. Among them are:

1. Whether an appropriate cap on the Tier 3 Advice Letter request process would be a set dollar amount, percentage of revenue requirement (to take into account the different sizes of the Class A water companies), address a new project or only existing system extensions, or other.
2. Whether a set of minimum criteria for a recycled water project requested as part of a GRC would require a modification of the Rate Case Plan;
3. How to consider conservation/demand-side management efforts as part of the "need" for the proposed project;
4. Cost-benefit of the proposed project versus "cost-effectiveness" of the proposed project;
5. Avoiding duplicative due diligence where an IOU is working with a public agency partner;
6. Strengthening the CPUC's policy statement with respect to service duplication.

The second bullet has quickly become the critical issue for CWA members, and it will be the one on which we respond most forcefully. Specifically, CWA will argue that no set of recycled water criteria should be applicable in the context of a GRC because there is no justification for treating recycled water projects differently than other capital projects in a GRC.

By the close of the workshop, it became clear that the draft documents need to be restructured in order to provide a more workable basis upon which to comment. Accordingly, it was agreed that Mari would restructure the documents for recirculation to the parties. Comments on the revised documents are due on Nov. 14th.

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Water Education Foundation Celebrates 35th Anniversary—I was pleased to join CWA member company representatives Denise Kruger of Golden State Water and Kevin Tilden and Evan Jacobs of California American Water in Sacramento the evening of October 25th for the 35th Anniversary Dinner Celebration of the Water Education Foundation (WEF), of which CWA has been a long-time supporter. Also joining us was Nossaman LLP Senior Policy Advisor Jennifer Capitolo.

As you may know, WEF is a nonprofit, nonpolitical, tax-exempt educational organization and has managed to stay so for 35 years. It was significant that so many people attending, almost 250 attendees, came together from all political sides of water. Executive Director Rita Schmidt Sudman commented on this phenomenon in her remarks, emphasizing how the Foundation continues to be “a vital source of nonpartisan, in-depth information about water resource issues in California and the West,” providing an impressive repertoire of educational materials, products and services.

A reception prior to the dinner recognized those who have served as President of the Foundation's Board of Directors over the course of its history. The after-dinner program included presentations by Foundation President Bill Mills and Vice President Scott Morris, who recognized the dinner sponsors (of which there were many) and current and former Board Members.

Rita presented and narrated a special video tribute to WEF and the notable figures in water that have passed away. California PUC Administrative Law Judge Gary Weatherford, who is also a WEF Board Member and Foundation Secretary, presented a special gift to Attorney Ed Tiedemann of Kronick Moskowitz Tidemann and Girard, who served on the Foundation's Board from 1984 to 2004. Additionally, the following special guests made brief remarks:

- U.S. Rep. John Garamendi (D-Walnut Grove), who presented a commendation on the Foundation for “bringing together all types of stakeholders for a firsthand look and dialogue that has been and will be critical in forming the consensus and partnerships need for a comprehensive approach to meeting the water resource challenges in California.”

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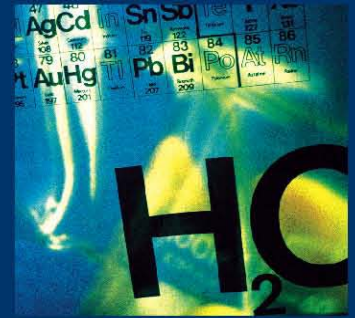
- ACWA Executive Director Tim Quinn, who discussed the early history of the Foundation and how it was first established by ACWA as a nonpartisan educational organization, subsequently becoming its own independent entity.
- Alf Brandt, longtime Assembly water consultant, who presented a California Senate Resolution signed by Senate Pro Tem Darrell Steinberg that “recognizes the considerable contribution [the Foundation] has made in educating and informing the residents of the State and the Members of the Legislature on water-related issues that often lead to resolution of these issues.”
- Celeste Cantú, executive director of the Santa Ana Watershed Project Authority, who recognized the Foundation's “exemplary leadership and for their valuable contributions in water resources education.”

Foundation Program Director Sue McClurg closed the evening by providing an overview of some of the Foundation's major programs to train future policymakers: the William R. Gianelli Water Leaders Program and Project WET - Water Education for Teachers. She also discussed the informational age of the future and demonstrated the interactive features of the new digital version of Western Water and announced the Spring arrival of the Foundation's new online water encyclopedia, Aquapedia.

Upcoming Industry Meetings/Conferences/Events:

- October 29, 2012 – CPUC Low-Income Oversight Board Meeting (9:00a – 4:00p; Sacramento New City Hall; Council Chambers; 915 I Street-First Floor; Sacramento, CA 95814); CWA's presentation on customer information data-sharing program with energy utilities will begin at 9:30)
- October 30-31, 2012 – CWA 71st Annual Conference (8:45a-4:45p; Monterey Plaza Hotel - 400 Cannery Row, Monterey, CA 93940); J. Hawks will attend.
- November 1, 2012 - CWA Annual Directors Meeting (8:00a – 11:00a; Monterey Plaza Hotel - 400 Cannery Row, Monterey, CA 93940); J. Hawks will attend.

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- November 8, 2012 – California PUC Open Meeting (9: 00a–12 :00p; 505 Van Ness Ave., San Francisco 94102)
- November 9, 2012 – California Utility Diversity Council Meeting (CWA is hosting; 10: 30a – 2:00p; Los Angeles location TBD);
- November 11-14, 2012 – National Association of Regulatory Utility Commissioners Annual Meeting (Hilton Hotel; 401 West Pratt St., Baltimore, MD 21201); J. Hawks will attend.
- November 14-15, 2012 – California Urban Water Conservation Council Board of Directors Meeting and Workshop (9:00a – 3:30p both days; San Diego County Water Authority; 4677 Overland Avenue, San Diego, CA 92123); J. Hawks will attend the second day.
- November 29, 2012 – California PUC Open Meeting (9: 00a–12 :00p; 505 Van Ness Ave., San Francisco 94102)
- December 4-7, 2012 – Association of California Water Agencies Fall Conference (Manchester Grand Hyatt; One Market Place San Diego, California 92101); J. Hawks plans to attend.
- December 11, 2012 – CWA Executive Committee Meeting (10:00a – 2:00p; Golden State Water Company; 2143 Convention Center Way, Suite 110, Ontario, CA 91764); J. Hawks will attend.
- December 12, 2012 – California Urban Water Conservation Council Plenary Meeting (9:30a – 3:00p; Metropolitan Water District of Southern California; 700 North Alameda St., Los Angeles, CA 90012); J. Hawks will attend.
- December 13, 2012 – California Dept. of Water Resources – California Water Plan Update 2013 Advisory Committee Meeting (9:00a – 4:30p; Cal EPA, 1001 I St., Sacramento, CA 95814); J. Hawks will attend.
- December 20, 2012 – California PUC Open Meeting (9: 00a–12 :00p; 505 Van Ness Ave., San Francisco 94102)
- January 11, 2013 – CWA Directors and Executive Committee Meeting (9:30a – 2:30p; Park Water Company - 9750 Washburn Road; Downey, CA 90241-7002); J. Hawks will attend.

—CWA—