

Nov. 11, 2022

Donne Brownsey, Chair
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

RE: California American Water Company's ("CalAm") CDP Application #9-20-0603 – OPPOSE

Dear Chair Brownsey and Members of the Commission,

I write on behalf of LandWatch Monterey County, and our board of directors chaired by longtime environmental leader Ann Notthoff. LandWatch is a regional group working to combat climate change through sensible land use, transportation and water policy.

CalAm's dogged pursuit of a desalination plant in Marina, despite the availability of a quicker, reliable, less environmentally damaging alternative water supply project, remains perplexing. The desalination plant water is exorbitantly costly. Its high cost discriminates against low-income customers. The water is unneeded given the approved and operating PureWater advanced wastewater recycling plant and its soon to be approved extension. The plant's economic and environmental impacts are socially unjust, with benefits accruing to privately owned CalAm and costs imposed on the citizens of Marina and CalAm ratepayers in general. CalAm's proposal benefits its private investors since its goal is to maximize asset value and shareholder returns prior to a public condemnation. However, the California Coastal Act prioritizes public benefits over private interests. In the case of CalAm's desalination plant consistency with the Coastal Act, this isn't even a close call.

Available Information Does Not Support Action at This Time. The Coastal Commission should not take action on a Coastal Development Permit (CDP) for the CalAm desalination facility at this time because it lacks critical information about the project and its feasible alternative, the Pure Water Monterey Expansion. If the Commission decides it cannot delay action, it must deny the CDP because it does not have the information the Coastal Act requires to make findings under Section 30260 and 30013 of the Act, which require the Commission to determine the feasibility, public welfare, and environmental justice effects of the alternatives.

Critical Decision by the California Public Utilities Commission is Unfinished. The California Public Utilities Commission (CPUC) has jurisdiction over CalAm as a privately regulated utility. The CPUC supported Pure Water Monterey's Expansion, but has not yet adjudicated critical water supply and demand assumptions needed for the Coastal Commission to take action. Last month, a CPUC

Administrative Law Judge issued a Proposed Decision that would direct CalAm to purchase 2,250 AFY from the Pure Water Monterey Expansion. Under the CPUC's 2018 decision, this increase in water supply requires the CPUC to reassess operating restrictions for any desalination facility to protect ratepayers. Changes in supply and demand should also require the CPUC to reassess the need, timing, and size of a desalination facility. The Coastal Commission will lack essential information to make required findings until the CPUC completes its reassessment.

New “Phased” Approach Has Already Been Rejected. CalAm *admits* that the project must be changed by proposing a new “phased” approach that starts with a 4.8 MGD facility.¹ However, in 2018, *the CPUC specifically rejected both the 4.8 MGD facility and the phased approach as more costly and more environmentally damaging*, based on submissions and argument from CalAm. Also based on CalAm's submissions and arguments, the CPUC rejected a proposal to reduce the number of wells and well pads for a 4.8 MGD facility, which is precisely what CalAm now proposes to do.

The Coastal Commission is not in position to evaluate CalAm's changing stories and, in any event, it lacks authority to direct or permit CalAm to construct any facility other than the one approved by the CPUC. If the project must be changed, the Coastal Commission must wait for the CPUC to evaluate and approve the changed project before making required Section 30260 findings about the availability of a feasible alternative and the relative effects of the desalination project and its alternative on public welfare and environmental justice.

Commission Cannot Make Findings Because Rate Effects Are Unknown. The Coastal Commission is also not in position to adjudicate competing claims about supply and demand, which are now being litigated before the CPUC with a decision not expected before March 2023. Nor can the Commission determine how changes in supply and demand affect the need, timing, size, or operating restrictions for a desalination facility or how changes will affect previously assumed water rates. Yet the Coastal Commission must draw conclusions about all of these matters in order to make its required Section 30260 findings about feasibility, public welfare, and environmental justice. In light of the missing information, that's an impossible task, inconsistent with the letter and intent of the Coastal Act.

LandWatch identifies here three key issues that would substantially increase water rates or substantially decrease the desalination project's economic feasibility. The Coastal Commission staff report does not evaluate these issues and only the CPUC can resolve them.

First, as the Staff Report acknowledges, based on what it characterizes as an independent assessment of supply and demand, **there will likely be no demand for water in excess of expected supply until at least 2040**, and the growth in demand from 2040 to 2050 is likely to be about 800 acre-feet per year (AFY). CalAm's proposal to construct a 4.8 MGD facility by 2026 would provide 5,280 AFY of additional capacity, none of which would be needed before 2040 and only 16% of which would be needed by 2050. As discussed below, analysis by David Stoldt, the General Manager of the Monterey Peninsula Water Management District, demonstrates that *running a*

¹ MGD stands for a million gallons per day.

desalination facility at 20% of its full capacity would quadruple the unit costs for water, from at least \$7,981 to \$32,398 per acre-foot. It is inequitable to expect ratepayers to pay these excess capacity costs. It is equally burdensome to allow CalAm to source water from its desalination facility when water is available from the Pure Water Monterey Expansion at a fraction of the unit cost, only \$2,808 per acre-foot. But unless CalAm is permitted to run its desalination facility at full capacity and to make ratepayers absorb unit water costs much higher than necessary, the desalination project would not be viable for shareholders. Staff and CalAm have not evaluated the issue of premature and excess capacity. The Coastal Commission should not act until the CPUC does so.

Second, as the Staff Report acknowledges, **changes in sea level rise assumptions and new modeling of dune recession show that there may be no place to relocate CalAm's wells at the end of their 25 year lives.** Because CalAm does not control the necessary inland sites to continue operating its project, it may need to amortize the project over a 25-year period instead of a 60-year period. Either ratepayers would be on the hook for this accelerated cost recovery or the project would not be economically feasible for CalAm's shareholders. Although the Staff Report acknowledges that Cal-Am may seek to recover its costs in a much shorter time than the anticipated 60 years, the Staff Report does not estimate the rate effects. The Coastal Commission should not act until the CPUC does so.

Third, as the staff Report acknowledges, **CalAm's new proposal to build only a 4.8 MGD facility initially will result in the loss of economies of scale, forcing CalAm to recover its fixed costs over a smaller volume of water.** Again, the Staff Report admits this rate impact, but fails to estimate it. The Coastal Commission should not act until the CPUC does so.

To move forward now, without information about potential water charges, would mean giving CalAm a blank check for an undefined future desalination project that could harm the public welfare, thwart environmental justice, and violate the Coastal Act.

The Coastal Commission should not proceed without the CPUC's adjudication of supply and demand and its reassessment of the desalination facility. And there is no *reason* for the Coastal Commission to act prematurely. The CPUC's imminent approval of the Pure Water Monterey Expansion will result in new water availability well before a desalination facility could provide new water, and it will allow the State Water Resources Control Board (SWRCB) to lift its Cease and Desist Order (CDO).

Special Conditions Are Insufficient Protection. If the Coastal Commission nonetheless decides to issue a conditional CDP before the CPUC completes its reassessment, it should clarify the proposed conditions and add new conditions to address the changed project and water rates increases.

- Special Condition 1 should be revised to clarify that at the conclusion of the current proceedings adjudicating supply and demand, CalAm must apply to the CPUC for permission to modify the previously approved project and that the CDP will not issue unless and until the CPUC reconsiders the need, timing, rates, and operating restrictions for the desalination facility.

- Additional conditions should provide that the CDP will not issue unless and until the CPUC adds enforceable conditions that
 - rates be set on the assumption that the desalination facility is operating at full capacity and that CalAm must source less expensive available water before sourcing desalinated water so that shareholders, not ratepayers, absorb the cost of premature or excess capacity;
 - rates be based on the assumption that CalAm will amortize the project over 60 years so that shareholders, not ratepayers, absorb the cost of a shorter project life in case dune recession and sea level rise preclude relocation of source water wells; and
 - rates not exceed the rates assumed in the 2018 CPUC approval. Any excess costs must be borne by CalAm shareholders.

For these reasons, and as explained further in the detailed comments below, LandWatch Monterey County respectfully requests a “no” vote on the decision to approve a CDP for CalAm’s desalination plant application #9-20-0603. Thank you for your careful consideration of our views.

Sincerely,



Michael Delapa, Executive Director
LandWatch Monterey County

**LandWatch Comments Opposing California American Water
Company's CDP Application #9-20-0603**

A. The Coastal Commission should not permit a 4.8 MGD project or a phased implementation of a 6.4 MGD project because the CPUC expressly denied authorization for these alternatives.

1. The CPUC expressly rejected the project CalAm now proposes because the CPUC found that it would be more costly and environmentally damaging.

The CPUC has broad constitutional and statutory authority to regulate investor-owned utilities and the Coastal Commission does not have authority to override that authority. Yet the proposed CDP would permit the very project alternatives that the CPUC rejected in 2018.

Special Condition 2 would authorize CalAm to proceed with a 4.8 MGD project but to build a 6.4 MGD project as a second phase at some future date. Special Condition 2 purports to condition the second phase on CalAm getting “authorization from the CPUC for the 6.4 MGD facility.” In fact, CalAm has that authorization already. *What CalAm does not have is any authorization for a smaller facility or for the phased approach assumed in the Staff Report.*

The CPUC’s 2018 approval of the desalination project was for a 6.4 MGD facility, i.e., Alternative 5a.² The 2018 decision directs CalAm to implement the 6.4 MGD facility.³ The CPUC specifically found that the 6.4 MGD facility is the “environmentally superior alternative” and that “no other alternatives are feasible, are capable of meeting project objectives, or would reduce significant impacts of the project.”

The CPUC specifically rejected a 4.8 MGD facility based on its findings that there would be “little or no cost differential.”⁴

Decision D.18-09-017 found that “a 4.8 MGD desalination plant would not avoid or substantially lessen any significant impacts of the project: the significant impacts that would result from construction would be the same as the plant would have the same footprint, and require the same pipelines, and while one fewer well would be drilled, it would still require five well pads at the CEMEX site.”⁵ Indeed, the CPUC found that a phased implementation of a 4.8 MGD facility followed

² CPUC Decision D.18-09-017, pp. 72, 79, 206, 207.

³ *Id.*, p. 207.

⁴ *Id.*, p. 69.

⁵ *Id.*, pp. 69-70.

by a 6.4 MGD facility would “increase environmental impacts, face additional scrutiny in the permitting review process, and increase costs to ratepayers.”⁶

Environmental impacts would be increased by the phased approach because construction impacts would occur twice; for example, “[d]rilling all wells at once will likely result in fewer environmental effects than drilling six wells now and returning in the future to disturb the area to drill the seventh well.”⁷ These findings were based on argument and data submitted by CalAm.

The CPUC found that the “reduction in the size of the desalination plant from 6.4 MGD to 4.8 MGD would *increase* the annual Operations and Maintenance (O&M) costs by \$340,000”(in 2018 dollars) and that these increased O&M costs would “would offset the increased one-time capital costs for the larger 6.4 MGD plant within only a few years.”⁸ The Commission found “we cannot identify significant, if any, cost savings to ratepayers associated with construction of a 4.8 MGD size plant compared with the construction of a 6.4 MGD size plant.”⁹ Again, these findings were based on argument and data submitted by CalAm.

Also based on CalAm’s arguments and data, the CPUC found that the smaller plant would still require six slant wells, four for source water and two “for back-up and peaking capacity,” so only one well could be deferred.¹⁰ The CPUC found that

the cost savings for deferring one slant well to initially operate the facility at 4.8 MGD is small in comparison to the risks associated with eliminating the well. [footnote omitted] For example, drilling all seven wells at once reduces overall costs spent on each well (due to economies of scale) while the cost to drill only one well in the future is significantly higher. Drilling all wells at once will likely result in fewer environmental effects than drilling six wells now and returning in the future to disturb the area to drill the seventh well. Also, delay in drilling just one well increases overall project risks.”¹¹

The CPUC concluded “[w]e therefore do not find a benefit to ratepayers in deffering [sic] the drilling of one well.”¹² Again, these findings were based on argument and data submitted by CalAm.

⁶ *Id.*

⁷ *Id.*, pp. 129-130.

⁸ *Id.*, pp. 128-129.

⁹ *Id.*, p. 129.

¹⁰ *Id.*, pp. 129-130, quoting CalAm.

¹¹ *Id.*, p. 130.

¹² *Id.*

In sum, based on cost and environmental considerations, the CPUC's 2018 decision rejected both the 4.8 MGD alternative and the alternative that would commence with a 4.8 MGD facility and subsequently phase in the 6.4 MGD facility.

Despite the 2018 CPUC decision and CalAm's 2018 position that the 4.8 MGD plant would require six slant wells to ensure back-up and peaking capacity, the Staff Report reports that, "[i]n October 2022, Cal-Am modified its Project" to include only four slant wells and, potentially, only two well pads. (SR, p. 39.) This proposal is flatly inconsistent with the CPUC's 2018 findings, which were based on CalAm's submissions and arguments.

Furthermore, the new project description is uncertain. The Staff Reports admits that the smaller footprint may not actually occur because it may turn out that the well pads cannot eventually accommodate three wells, necessitating construction of the five well pads originally proposed. (SR, p. 39.)

The Coastal Commission cannot simply override the CPUC's previous findings that the project CalAm now proposes would be infeasible, more costly, and more environmentally damaging and its express decision *not* to approve this alternative.

2. The Coastal Commission has not complied with CEQA's requirements for a subsequent EIR to address more severe significant impacts from changes to the project.

The CPUC's CEQA findings that there would be overriding considerations that justify approving a project with unmitigated significant impacts were based on its finding that the 6.4 MGD facility is the environmentally superior project and that its benefits "outweigh the benefits of any of the other alternatives examined, including the alternatives deemed infeasible. . ."¹³

CalAm's proposed 4.8 MGD phased project is a change to the project that the CPUC approved, and the CPUC found that it would have more severe significant impacts. CEQA requires that if there are more severe significant impacts due to changes in the project or changes in circumstances, or based on significant new information becoming available after the lead agency certified the EIR for the project, the responsible agency must prepare a subsequent or supplemental EIR before making a new discretionary approval like issuing a CDP.¹⁴

The Coast Commissions' proposed findings in the Staff Report do not provide facts and analysis to justify a complete reversal of the CPUC's CEQA findings that 4.8 MGD project or the phased implementation of a 6.4 MGD project would not result in more severe significant impacts. The Staff Report simply takes CalAm's word for the proposition that fewer wells and well pads would be required than CalAm previously argued, and the CPUC found, would be required in 2018. The Staff Report does not justify a reversal of the CPUC's findings that six wells would be required for a 4.8

¹³ *Id.*, p. 207.

¹⁴ CEQA, § 21166; 14 Cal Code Regs §§ 15052(a)(2), 15096(e)(3), 15162.

MGD project. Nor does the Staff Report justify the reversal of the CPUC's findings that two construction periods for a phased project would increase the severity of significant impacts to habitat. The Staff Report simply fails to address the direct conflicts in CalAm's current position regarding the footprint and impacts of a smaller or phased project and the CPUC's findings regarding CEQA and project feasibility in its 2018 Decision D.18-09-017.

Furthermore, the Staff Report identifies new information and/or a changed circumstances that the CPUC's CEQA document did not assess. For example, the Staff Report discloses greater and more rapid projected sea level rises leading to an ocean hazard, groundwater impacts to local aquifers, and impacts to a vernal pool. These, too, require subsequent environmental review.

Where a project has significant unmitigated impacts, CEQA requires that the approving agency adopt a feasible alternative that reduces that impact.¹⁵ Here, the record does not support adoption of a phased project as a reduced impact alternative. To the contrary, the CPUC found that it would increase significant construction-related environmental impacts and that it was not feasible.

The Coastal Commission should deny the CDP because it lacks authority to alter the project and has not provided an adequate subsequent environmental review of the changes to the project and its circumstances.

3. Special Condition 1 should be revised to require CalAm to reapply to the CPUC to obtain authorization for the changed 4.8 MGD project and for the proposed phasing plan.

Because the CPUC must review and approve changes to the project and the associated effects on rates and project feasibility, and the CPUC may decide not to approve the proposed changes or to approve different changes, no purpose is served by the Coastal Commission's "conditional" approval of a project that may very likely not be approved as conditioned.

However, if the Coastal Commission decides to approve some form of conditional CDP, it should at least revise Special Condition 1 to clarify what constitutes "final CPUC approval" to proceed with the 4.8 MGD facility. As drafted, Special Condition 1 requires CalAm to obtain

final CPUC approval for construction of the Project, including but not limited to a final and binding CPUC determination in the pending proceeding (A.21-024) of water supply and demand estimates for the Monterey Peninsula Water Supply Project (MPWSP) that there is projected demand for additional water supply beyond the Pure Water Market [sic, Monterey] Project Expansion (i.e., the project that would increase the capacity of the previously CPUC-approved Pure Water Market [sic] project from 3,500 AFY to 5,750 AFY) by or before 2050.

(SR, p. 13.) But Special Condition 1 references only the current CPUC proceeding to determine water supply and demand. As the Staff Report admits, the CPUC has not decided to conduct any

¹⁵ CEQA, § 21002.

further proceedings to reconsider the size and timing of the desalination project. (SR, p. 51.) Thus, it is unclear what would constitute the “final CPUC approval” referenced by Condition 1. In particular, it is not clear if Special Condition 1 would be satisfied if the CPUC made findings with regard to supply and demand in the current proceedings but did not hold a Phase 3 and CalAm did not initiate proceedings to reconsider the need, sizing, timing, and operating restrictions for a desalination facility.

Special Condition 1 should be revised to condition the CDP on the CPUC approval of each substantive change to the project that affects rates or environmental impacts in light of the results of the CPUC findings regarding supply and demand in its proceedings for A.21-11-024.

For example, the CPUC should review all of the proposed changes to the project that affect rates, including a shorter amortization period, the loss of scale economies due to a smaller facility, and the allocation of the costs of excess capacity to shareholders rather than ratepayers, each of which is discussed below. Or, for example, the CPUC should review and approve Special Condition 11 to extend project wells to increase the volume of seawater and decrease the volume of inland water. Or, for example, the CPUC should review and address the substance of Special Condition 13, which acknowledges a previously unanalyzed impact to wetlands and a vernal pond. The proposed mitigation for this newly disclosed significant impact in Special Condition 13 does not meet CEQA’s requirements for deferred mitigation because (1) no reason is given for deferral; (2) Special Condition 13 contains no performance standards for the a future “Wetlands Resiliency, Enhancement, Restoration, and Monitoring Plan”; (3) there is no evidence that mitigation is feasible.

B. The Commission cannot make required findings because it lacks any analysis of the increased costs for desalinated water due to substantial excess capacity.

SECTION 30260 FINDINGS OBLIGATION: Because the project is inconsistent with policies for protection of biological resources, Coastal Act Section 30260 requires specific findings in order to issue a CDP for a coastal-dependent industrial facility. The Coastal Commission must make findings that (1) there is no feasible alternative with lesser environmental impacts; (2) denial of the permit would adversely affect public welfare; and (3) environmental impacts are mitigated to the maximum extent feasible.

To find there is no feasible alternative, the Coastal Commission must have accurate information about supply and demand to assess the actual need for the project and the feasibility of the alternative.

To assess public welfare effects of the project, the Coastal Commission must have accurate and stable information about the desalination project size, its timing in relation to water supply and demand, its utilization and costs, and the resulting water rates for the project and its alternative.

ENVIRONMENTAL JUSTICE OBLIGATIONS: The Coastal Act also requires the Commission to take environmental justice impacts into account. Coastal Act Section 30013 requires the Coastal Commission to “advance the principles of environmental justice and equality.” Applicable

environmental justice considerations include ensuring “availability of a healthy environment for all people” and ensuring that “the effects of the pollution are not disproportionately borne” by communities already experiencing such impacts.¹⁶ The Coastal Commission’s stated policy is “to integrate the principles of environmental justice, equality, and social equity into all aspects of the Commission’s program and operations.”¹⁷

To assess environmental justice effects of the project and its alternative, the Coastal Commission must have the same information it needs to assess the public welfare effects: accurate and stable information about the project size, its timing in relation to demand, its capacity utilization, its costs, and the resulting water rates for the project and its alternative.

NO ANALYSIS OF EXCESS CAPACITY EFFECT ON RATES: The Staff Report repeatedly cites the supply and demand projection prepared by the California Public Advocates (Cal Advocates) as the basis for its conclusion that the desalination facility is needed, characterizing the Cal Advocates projections as “independent,” as if the supply and demand projects by local public agencies like MPWMD and MCWD were somehow not independent. (SR, pp. 144-147; see pp. 4, 136, 139, 147 [additional water supply needed in “next 20 years”].)

In particular, the Staff Report uses the Cal Advocates projections as the basis of its conclusion that “there would be a demand for *the* additional supply by 2040.” (SR, p.144, italics added.) But the Cal Advocates projection does not show that there is a demand for “the” additional supply by 2040, if “the” supply is CalAm’s proposed 4.8 MGD desalination facility. Cal Advocates’ projections show only that supply and demand projections intersect in 2040, i.e., there would be demand for *some* amount of additional water *after* 2040. How much? Not that much. *Cal Advocates projects that demand would exceed supply by only 819 AFY by 2050, yet CalAm proposes a 4.8 MGD facility to meet that demand, i.e., a facility that would provide 5,280 AFY.*¹⁸ That is, CalAm proposes to provide more than six times the purportedly unmet demand. Under the Cal Advocates projections adopted by the Staff Report, the 4.8 MGD desalination facility would need to operate at only 16% of capacity in 2050 to meet foreseeable demand.

Given the mismatch in the foreseeable water demand over the next 30 years and the size of the project CalAm wants to build, two key questions determine the rate impacts. First, will CalAm be permitted to source and recover in its rates the desalination water instead of the much less expensive alternative water supplies? Second, if not, will CalAm be permitted to recover in its rates the unproductive fixed costs for its idle desalination capacity simply to earn its expected return on an oversized facility? In short, who would pay the enormous fixed costs associated with the excess desalination capacity for decades to come, ratepayers of shareholders?

¹⁶ Coastal Act, § 30107.3(b)(1), (2); see also Coastal Act, § 30604(h).

¹⁷ Coastal Commission Environmental Justice Policy, March 8, 2019, available at https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf.

¹⁸ A million gallons per day is 1,100 AFY. (SR, p. 38.)

Unfortunately, the CPUC's 2018 Decision D.18-09-017 does not resolve these questions. The decision contemplated that the desalination facility would run at full capacity¹⁹ based on expected demand levels that have not materialized. Thus, the 2018 decision does not clarify the lower bound of the operating capacity level at which the CPUC would allow CalAm to recover all of its costs from ratepayers.²⁰ For example, it is unclear whether CalAm would be permitted to recover all of its costs if the desalination facility operated at only 60% or 40%, or even just 16%, of its capacity. Nor is it clear whether CalAm would be required to source the least expensive water even if that meant operating the desalination plant at less than full capacity. However, if the CPUC does not permit premature capacity and excess capacity costs to be passed on to ratepayers, and does not permit CalAm to source desalinated water when less expensive supplies are available, the desalination project could not be a viable investment for CalAm's shareholders. So, who pays for excess capacity, shareholders or ratepayers? Instead of resolving this question, the CPUC's 2018 decision punts. The 2018 decision states that the CPUC would somehow act to protect ratepayers from "excessive costs" if the Pure Water Monterey Expansion supplies water to CalAm customers, as is now almost certain to occur with the CPUC's Proposed Decision:

If . . . Cal-Am seeks approval of a WPA for water from an expanded PWM project to serve customers in Cal-Am's Monterey service territory, *the Commission will consider, and would likely, impose as enforceable conditions additional operational restrictions on the desalination project approved by this decision.* These restrictions, if adopted, would avoid excessive costs being charged to Cal-Am ratepayers by ensuring that the total water supply available to Cal-Am customers from the desalination plant plus the PWM expansion WPA would not exceed the water that would be available by virtue of operating the desalination project alone, absent further Commission discretionary action. In any application for a PWM expansion WPA, *Cal-Am shall include information concerning such water amounts and potential operational restrictions to meet this operational parameter.*²¹

These to-be-determined-later "operational restriction" *should* include requirements that (1) CalAm not substitute much higher cost desalinated water for less expensive available alternative water supplies and (2) shareholders rather than the ratepayers absorb the fixed costs of the unused desalination facility capacity.

¹⁹ Full capacity was assumed to be about 86% of the nominal 6.4 MGD, based on CalAm's testimony regarding the need for periodic routine maintenance, etc.

²⁰ Ordering Paragraph 36 provides: "Three cost factors will be considered by the Commission when reviewing the advice letters submitted pursuant to this decision. These cost factors are: 1) costs are for facilities that are used and useful; 2) costs must be reasonable; and 3) costs are for facilities that operate at an appropriate capacity to minimize costs for ratepayers." (CPUC Decision 18-09-017, p. 214.) The Decision does not clarify how these factors, which may pull in different directions, would be balanced or how the Commission would determine what operating capacity is "appropriate" or would "minimize costs for ratepayers." (CPUC Decision 18-09-017.)

²¹ CPUC Decision 18-09-017, p. 44, emphasis added.

Critically, CalAm's application for the Water Purchase Agreement failed to propose operating restrictions despite the requirement in the 2018 Decision that it do so. Participants in the current CPUC proceedings A.21-11-024 asked that the CPUC address excess capacity concerns, requesting that the CPUC reconsider the need, size, timing, and operating restrictions for the desalination facility as part of the second phase of the current proceedings.²² Despite this, the CPUC has limited Phase 2 to reassessment of supply and demand. As the Staff Report acknowledges, at the conclusion of Phase 2, the CPUC *might* decide on additional proceedings, or a Phase 3 to the current proceedings, to consider these issues. However, the CPUC has neither scoped nor considered operational restrictions to protect ratepayers from excessive capacity. And the Coastal Commission cannot resolve the issue because it lacks authority over rates and because its Staff Report does not even *identify* the issue of excess capacity and who would pay for it.

Meanwhile, CalAm appears to be planning to substitute more expensive desalination water for less expensive alternative supplies and/or to make ratepayers pay for excess capacity. For example, CalAm has most recently proposed to the Coastal Commission that it would construct and put the 4.8 MGD facility into operation by December 2026.²³ Not even CalAm's supply and demand projections require this capacity in 2026. Presumably the desalination facility would either sit idle until 2040 when demand materializes or, alternatively, displace the use of lower cost water, substantially increasing rates.

Even if Special Condition 1 is intended to prevent premature construction of the desalination facility, nothing in that condition addresses the ongoing and fundamental problem that a 4.8 MGD facility is six times larger than the additional demand that might materialize between 2040 and 2050.

As the rate-setting authority, the CPUC, not the Coastal Commission, must address this critical ratepayer impact issue. The CPUC must clarify that shareholders, not ratepayers, would be responsible for the costs of premature capacity and excess capacity, including the enormous fixed

²² See, e.g., CPUC, Prehearing Conference Reporter's Transcript, Vol. 1, January 25, 2022, pp. 27-40, available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M444/K124/444124005.PDF>; Motion Of The Monterey Peninsula Water Management District For Party Status, Jan. 3, 2022, p. 4 [proceeding should consider "whether Cal-Am's MPWSP is needed, when it is needed, at what size, and at what cost"]; [Response Of The City Of Marina To Application 21-11-024, Jan. 3, 2022, pp. 14-16](#) [proceedings should include, inter alia, rate impacts, operating restrictions, updated costs, construction timeline, and whether desalination facility is still needed and consistent with community values and environmental justice]; [Response Of Marina Coast Water District In Support Of Approval Of Amended And Restated Water Purchase Agreement For The Pure Water Monterey Groundwater Replenishment Project](#), Jan. 3, 2022, pp. 8-9 [proceedings should consider modifications to desalination facility to ensure ratepayers are not overburdened by oversized or unnecessary facilities]; [LandWatch Monterey County's Motion For Party Status](#), Jan. 14, 2022, p. 2, [proceedings should include assessment of continuing need for and appropriate sizing of desalination facility].

²³ Ian Crooks, letter to Tom Luster, Oct. 27, 2022, available at <https://documents.coastal.ca.gov/reports/2022/11/Th7a8a/Th7a8a-11-2022-exhibits.pdf>.

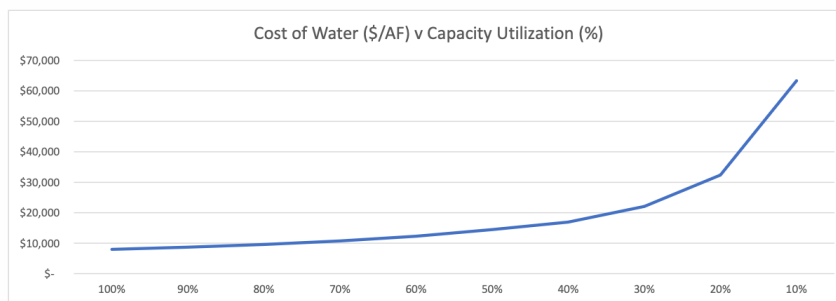
costs that will be incurred to build even the 4.8 MGD capital facility. Variable O&M costs are a very small portion of the total cost of desalinated water; the bulk of the water costs are the fixed costs for equity, depreciation & amortization, taxes, and the fixed cost portion of O&M. Yet those fixed costs must be covered, regardless of the volume of water produced, either by ratepayers or shareholders.

The excess capacity costs are significant. David Stoldt, General Manager of the Monterey Peninsula Water Management District, has evaluated the construction and financing cost increases since 2018 for the originally proposed 6.4 MGD facility, demonstrating that the unit water cost at full capacity would now be \$7,981 per acre-foot.²⁴ This figure is itself a substantial increase over the \$6,100 per acre-foot cost cited by the Staff Report, which is based on a now-dated 2018 CalAm estimate.²⁵ Critically, Stoldt has also evaluated the unit water cost if the 6.4 MGD facility is operated at less than 100% capacity. For example, if the facility were operated at 20% (producing 1,250 AFY), the unit cost would quadruple, going from \$7,981 per acre-foot to \$32,398 per acre-foot.

Stoldt’s analysis is set out below.

Cost of Cal-Am Desalination Water (\$ per AF) Based on Capacity Utilization; Excludes Return Water Sales Revenue												
Plant Output (AF)	6,252	5,627	5,002	4,376	3,751	3,126	2,501	1,876	1,250	625	0	
Capacity %	100%	90%	80%	70%	60%	50%	40%	30%	20%	10%	0%	
Equity, Depreciation & Amortization, Taxes	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	\$ 21.7	
Operations & Maintenance - Fixed	\$ 3.9	\$ 3.9	\$ 3.9	\$ 3.9	\$ 3.9	\$ 3.9	\$ 3.9	\$ 2.0	\$ 2.0	\$ 2.0	\$ 2.0	
Operations & Maintenance - Variable	\$ 9.3	\$ 8.4	\$ 7.4	\$ 6.5	\$ 5.6	\$ 4.7	\$ 3.7	\$ 2.8	\$ 1.9	\$ 0.9	\$ 0.0	
Debt	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	\$ 15.0	
Total Annual Revenue Required	\$ 49.9	\$ 49.0	\$ 48.0	\$ 47.1	\$ 46.2	\$ 45.3	\$ 42.4	\$ 41.4	\$ 40.5	\$ 39.6	\$ 36.7	
Cost of Water (\$/AF)	\$ 7,981	\$ 8,703	\$ 9,605	\$ 10,765	\$ 12,311	\$ 14,475	\$ 16,943	\$ 22,094	\$ 32,398	\$ 63,308	infinity	

Notes: Assumes Fixed O&M is cut in half after 50% utilization via layoffs other reductions.
Assumes Fixed and Variable O&M is cut to zero at 0% utilization.



²⁴ David Stoldt, Monterey County Herald Guest Opinion, When Did the Cost of New Water Become a Secret, Nov. 4, 2022, available at <https://www.montereyherald.com/2022/11/04/guest-commentary-the-cost-of-new-water/>.

²⁵ See Staff Report at 111, citing CPUC Proposed Decision in Proceeding No. A-21-11-024 (modified October 31, 2022), in turn citing City of Marina Exhibit MARINA-01 at 9, in turn citing CCC Staff Report (dated August 2020), in turn citing Cal-Am’s Advice Letter 1220, Attachment C-3, December 31, 2018.

CalAm has not provided cost data for its newly proposed 4.8 MGD facility. As discussed below, the unit water cost at full capacity would be higher for the 4.8 MGD plant than the 6.4 MGD plant due to lost economies of scale. But even if the increase in unit water cost for the smaller plant running at full capacity were small, the increase in unit costs from running *any* desalination plant at less than full capacity would be large, because fixed costs represent the great majority of unit water costs. Again, running the 6.4 MGD facility at 20% quadruples the unit water cost; and there is no reason to expect that running a 4.8 MGD facility at 20% would not also quadruple its unit water cost.

In sum, it is patently unreasonable to expect ratepayers to absorb the unit cost of at least \$7,681 for desalinated water when water is available from the Pure Water Monterey Expansion at \$2,808 per acre-foot. (SR, p. 141.) It is equally unreasonable to expect ratepayers to absorb the excess capacity costs of running a desalination facility at the 16% capacity that Cal Advocates' supply and demand projections indicate is all that would be needed by 2050.

The Coastal Commission is neither competent nor authorized to restrict operations of a desalination facility, or to assess the rate impacts from such changes, which will substantially affect the validity of the public welfare and environmental justice findings the Commission must make. Because CalAm is likely understating the cost of water and the rate increases by a factor of four, the Coastal Commission should defer consideration of a CDP until the CPUC addresses these issues.

If the Coastal Commission is unwilling to defer its consideration of the CDP, it should impose an additional condition that requires CalAm to reapply to the CPUC for the smaller desalination facility with operating restrictions that ensure that no excess capacity costs are passed on to ratepayers. It is no longer reasonable to expect that a desalination facility, even the smaller 4.8 MGD facility now proposed, would operate at anywhere near full capacity for at least its first ten years, and likely not for many years thereafter.

C. The Commission cannot make required findings because it lacks any analysis of the increased costs for desalinated water due to (1) a shorter amortization period in light of expected dune recession and (2) lost scale economies due to a smaller facility.

The Coastal Commission cannot make findings regarding environmental justice, public welfare, or project feasibility without reasonable project cost and rate information. Not only does the Commission lack any analysis of the effect of excess capacity on rates, it also lacks analysis of the effects of a shorter amortization period and a smaller project.

AMORTIZATION PERIOD LIMITED BY DUNE RECESSION: As the Staff report admits, CalAm may not be able to relocate its wells inland to avoid sea level rise and dune recession after the initial term because it lacks any legal interest in inland property. (SR, pp. 8, 92-97.) Current policy requires planning for a greater sea level rise than was assessed by the CPUC. (SR, p. 94.) Current modeling projects the need to relocate wells inland within about 25 years. (SR, p. 97.) CalAm does not own or control the necessary land. Thus, the Staff Report's discussion of Special Condition 6, limiting the

CDP term to 25 years or 2050, admits that the shorter amortization period may substantially increase water rates:

Special Condition 6 is based on Cal-Am's characterization that the wells have an approximately 20- to 25-year economic life and limits the term of this permit for 25 years after installation or until January 1, 2050. This latter date is in recognition of the increased uncertainty about our current projections of sea level rise and climate change after 2050. Special Condition 6 also requires Cal-Am to apply for a new or amended CDP to remove or relocate the wells at least two years before the end of this permit term. While this Special Condition removes the project's inconsistency with the LCP provision that specifies a 50-year economic life, it creates a different concern that *Cal-Am's desalination facility may not be able to operate for its overall expected 60-year operating life since Cal-Am does not currently have a legal interest in locations further inland where Cal-Am might be able to relocate its wells.* Additionally, much of that inland area is expected to be restored as a result of the above-referenced Settlement Agreement. ***A shorter operating life of the desalination facility may also create substantial changes in the Project's financing and water rates, since Cal-Am may seek to recover its costs in a much shorter time than the anticipated 60 years.*** These issues are described in more detail below and in Section IV.I – Assessment of Alternatives and in Section IV.O – Environmental Justice.

(SR, p. 95.)

LOSS OF SCALE ECONOMIES: The Staff Report also admits that water rates would be affected by the loss of scale economics from forgoing or deferring the larger 6.4 MGD facility. All of the publicly available previous rate analysis was predicated on the assumption that the fixed costs would be spread over a 6.4 MGD facility. As the CPUC found in 2018, there are few fixed cost savings in the 4.8 MGD facility, and these savings are offset by increased O&M costs for the smaller facility.²⁶ With the proposed 4.8 MGD facility, CalAm would need to spread essentially the same fixed costs over a smaller water volume. (SR, p. 142.) The Staff Report admits that this would increase unit water costs. (*Id.*)

NO ANALYSIS: The Staff Report admits that neither staff nor CalAm have evaluated the rate effects of the shorter amortization period and the loss of scale economies in the smaller project:

Cal-Am has not provided an assessment of how its recently proposed Project phasing might affect the expected costs. Although the first phase would involve reduced initial capital costs for construction and some reduction in operations and maintenance costs, the overall cost per unit of water could be higher than expected, especially when it is not certain if and when additional water from the second phase might be made available to spread costs over a larger volume of water to be produced. As noted above, Cal-Am will also likely need to either account for recouping its Project costs over a shorter Project operating life - i.e., the 25 years it expects its wells to operate - or account for the additional costs to relocate or rehabilitate those wells if they are to continue operating beyond that period.

²⁶ CPUC Decision D.18-09-017, pp. 69, 128-129

(SR, p. 142.)

The Coastal Commission cannot make informed decisions about economic feasibility, public welfare, or environmental justice without knowing how the changes to the previously proposed project will affect rates. The Coastal Commission should defer consideration of a CDP until the CPUC addresses these issues.

If the Coastal Commission is unwilling to defer its consideration of the CDP, it should impose an additional condition that requires CalAm to reapply to the CPUC for the smaller desalination facility and to demonstrate in that application that water rates will not be higher than the rates assumed in the CPUC's 2018 decision.

D. The Commission cannot make required findings because CalAm's plan to address environmental justice is not enforceable and fails to address long term rate impacts.

Environmental justice communities of concern include limited English proficiency households, communities of color, low-income households and households in poverty, and housing-burdened households. The Staff Report admits that rate impacts to these communities of concern constitute an environmental justice issue that has not been resolved and that remains "contentious." (SR, pp. 99-115.)

The Staff Report does not and cannot disclose the magnitude of the environmental justice issue because it does not evaluate changes to the rates assumed in the 2018 Decision. The Staff Report uncritically accepts CalAm's estimate that the desalination project would raise average single family household rates by \$47 to \$50 per month without disclosing the "current modeling"²⁷ on which CalAm bases this claim. (SR, pp. 107, 111, 141.) As discussed above, there is no evidence that this analysis takes into account the substantial costs of excess capacity, the loss of scale economies, or the shortened amortization period, because neither Commission staff nor CalAm have provided any analysis of these factors.²⁸

The Staff Report admits that "without updated cost and rate increase estimates" it is impossible to determine if CalAm's proposals for rate relief "will be enough to assist ratepayers who may experience financial hardship." (SR, p. 110.)

CalAm admits that its Customer Assistance Program (CAP) for low-income households cannot assist all low-income ratepayers due to barriers to eligibility such as lack of individual meters or failure to meet the strict income requirements. However, CalAm's various proposals to rectify the defects

²⁷ Ian Crooks, letter to Tom Luster, Oct. 27, 2022.

²⁸ The Staff Report does not even try to describe a consistent or complete economic model. It provides unit water costs of \$6,100 per acre-foot assuming a 6.4 MGD facility, but, based on CalAm's undisclosed "current modeling," purports to provide average rate increases assuming a 4.8 MGD facility. The Staff Report does not provide any analysis of the capacity utilization assumptions for either alternative.

in its CAP and to address environmental justice suffer from two key defects. First, they are not enforceable by the Coastal Commission, which has no jurisdiction over CalAm rates and subsidy proposals. Only the CPUC can approve and enforce these. Second, CalAm's proposal would not address long-term environmental justice concerns because CalAm only proposes to cap rate increases at \$10 per month for five years.

Special Condition 16 cannot address these two defects because it merely requires CalAm to *report* its efforts to address rate impacts to the Coastal Commission each year. The Coastal Commission would have no authority to act on this information. Mere reporting is meaningless.

The Coastal Commission cannot make informed decisions about environmental justice without knowing how the changes to the previously proposed project will affect rates to lower-income households. The Coastal Commission should defer consideration of a CDP until the CPUC addresses these issues and requires CalAm to provide substantive, long-term rate protections for lower-income households.

If the Coastal Commission is unwilling to defer its consideration of the CDP, it should impose an additional condition that requires CalAm to reapply to the CPUC for the smaller desalination facility and to demonstrate in that application that water rates to lower income households will not increase more than \$10 per month over the life of the desalination project.