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April 25, 2013

Paul Murphey  
Division of Water Rights  
State Water Resources Control Board  
P.O. Box 2000  
Sacramento, CA 95812-2000

Subject: Draft Review of California American Water Company Monterey Peninsula Water Supply Project (MPWSP)

Dear Mr. Murphey:

LandWatch Monterey County has reviewed the referenced document (the "Draft Review") and has the following comments:

1. We concur with the recommendation for additional studies to determine the extent of the Dune Sand Aquifer, the water quality and quantity of the Dune Sand Aquifer, the extent and thickness of the Salinas Valley Aquitard and the extent of the 180-Foot Aquifer and the effects of the proposed Monterey Peninsula Water Supply Project (MPWSP) on the Basin.

In particular, we believe it is critical that the additional studies recommended by Mr. Timothy Durbin in testimony before the CPUC be conducted, including the following:

- a hydrogeologic investigation to determine subsurface formations in the vicinity of the site, including adequate boreholes and geophysical studies;
- a geochemical investigation to determine mechanisms of seawater intrusion in the vicinity of the site;
- a large-scale aquifer test through a test well; and

- groundwater modeling, including consideration of density-drive effects and long-term effects after the end of the project.<sup>1</sup>

As Mr. Durbin explains, it is critical that the investigation proceed in this sequence because the results of the hydrogeologic investigation, the geochemical investigation, and the aquifer testing are essential to informing the groundwater modeling.<sup>2</sup>

Unfortunately, under the current schedule, the groundwater modeling, which is to be provided through the CEQA process, will predate the aquifer testing, which will not occur until after the CPUC is scheduled to decide whether to issue a Certificate of Public Convenience and Necessity (“CPCN”) for the MPWSP.<sup>3</sup> The SWRCB should encourage the CPUC to make provision for additional modeling work and decision points on the MPWSP source water intake method and location after the aquifer test, because the actual impacts may not be understood with sufficient certainty at the time the CPUC issues the CPCN.

2. In addition, Cal-Am has proposed groundwater wells at the Potrero Road site as an alternative source water intake. Since this site is also within the Salinas Valley Groundwater Basin (SVGB), the SWRCB should encourage the CPUC to require Cal-Am to undertake at least a preliminary hydrogeologic investigation of the adequacy of this site concurrently with its consideration of its preferred intake site at the Cemex site. Cal-Am is constrained by SWRCB Order 95-10 and the Cease and Desist Order to limit its use of Carmel River water expeditiously. Cal-Am already projects that it will not meet the CDO deadline due to problems with permitting a test well at the Cemex site. Serial investigations of infeasible intake options will only further delay compliance.
3. The Draft Review’s legal analysis does not directly address the prohibition against exporting groundwater from the SVGB per the Monterey County Water Resources Agency Act. The sole reference to this prohibition is contained in footnote 32 at page 28. We believe that this prohibition constitutes an independent statutory constraint on the MPWSP, which the SWRCB should acknowledge.
4. The Draft Review acknowledges that Cal-Am has the burden to demonstrate that the MPWSP will not result in injury to any groundwater user. The draft review identifies two

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<sup>1</sup> A12-04-019, Evidentiary Hearing Transcript, April 9, 2013, pp. 1067-1073 (cross-examination of Timothy Durbin) and Direct Testimony of Timothy Durbin on Behalf of the Salinas Valley Water Coalition, Exhibit SV-3, Technical Memorandum No. 2 by Timothy Durbin, February 21, 2013, pp. 6-7.

<sup>2</sup> A12-04-019, Evidentiary Hearing Transcript, April 9, 2013, p. 1073 (cross-examination of Timothy Durbin).

<sup>3</sup> A12-04-019, Administrative Law Judge’s Directives To Applicant And Ruling On Motions Concerning Scope, Schedule And Official Notice, August 29, 2012, pp. 8-9.

types of potential impacts: reduction of groundwater levels in wells and reduction in the quantity of fresh water available for future use. The Draft Review acknowledges that the magnitude and geographic extent of the reduction in fresh water is indeterminate at this point because the fresh water capture zone is not delineated and there has been no determination whether the source water aquifer is confined or unconfined.

The Draft Review proposes, apparently by way of example, that injury might be avoided or adequately compensated through the return of pumped fresh water to the Basin via the Castroville Seawater Intrusion Project (“CSIP”) or via injection wells, or through monetary compensation for groundwater users who must deepen wells and/or incur higher pumping costs. It is not clear without further analysis that these methods of avoiding or compensating injury would suffice for all impaired groundwater users. For example, users not benefitting from the CSIP project and who are upgradient from injection well sites may not benefit from the proposed methods to return pumped freshwater. And users in marginal pumping locations whose wells run dry may not be made whole by monetary compensation.

We are particularly concerned that Cal-Am be required to evaluate potential impacts to groundwater users in the North County area who do not receive CSIP water. As LandWatch has previously explained, the Coastal Water Project (“CWP”) EIR for the previously proposed Regional Water Project and its alternatives failed to evaluate the effects of project pumping on the upgradient North County aquifer.<sup>4</sup> LandWatch identified the following defects in the previous CWP EIR’s analysis and proposed mitigation of groundwater impacts to North County:

- The North Monterey County Hydrogeologic Study (Fugro West, Inc., 1995) establishes that
  - North County groundwater is hydrologically connected and interdependent with the Salinas Valley Groundwater Basin (“SVGB”),
  - North County groundwater is up-gradient from the SVGB,
  - Increased pumping in the SVGB depletes available groundwater in North County
- None of the wells upon which projected groundwater elevations were modeled in the CWP EIR are located in the up-gradient subareas of North County. Thus the projected groundwater contours in the CWP EIR are not well founded.

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<sup>4</sup> Amy White, LandWatch, letter to Andrew Barnsdale, CPUC, Nov. 24, 2009; Amy White, LandWatch, letter to California Coastal Commission, August 4, 2011. Both documents are available at <http://www.coastal.ca.gov/meetings/mtg-mm11-8.html>, see link to additional correspondence under August 12, 2011 item 6a, Application No. E-11-019 (Monterey County Water Resources Agency, Marina Coast Water District, California-American Water Company, Monterey Co.)

- The CWP EIR admits that monitoring wells are inadequate to support its conclusions, but proposes that this defect can be remedied after the project is constructed by augmenting the monitoring network in North County. This will not establish baseline conditions.
- No meaningful, measureable, or enforceable mitigation was proposed in the CWP EIR if future monitoring identified impacts.<sup>5</sup>

Given the history of inadequate analysis in the CWP EIR, the SWRCB should urge the CPUC to ensure adequate analysis of North County groundwater users. If additional monitoring wells are required to establish baseline conditions before the MPWSP commences, the CPUC should require Cal-Am to make provision for them now.

5. The Draft Review acknowledges that future impacts must be evaluated, in part because it is critical to protect foreseeable uses of the SVGB. A central consideration in this evaluation is whether current and future efforts to halt and/or reverse sea water intrusion will be successful. LandWatch is concerned that the Draft Report provides little clarity on this topic.

Although it mentions the CSIP program and the MCWRA Ordinance No. 3709 as efforts to address sea water intrusion, the Draft Review unaccountably fails to mention the Salinas Valley Water Project (“SVWP”), which is the latest and most comprehensive effort to address sea water intrusion in the SVGB. Opinions differ significantly regarding the efficacy of the SVWP as planned, the likelihood of its complete implementation, and the prospects of a second phase of the project.<sup>6</sup> However, the SVWP must be considered in the evaluation of future impacts from the MPWSP.

Previous modeling of groundwater impacts from coastal wells for desalination source water in the Coastal Water Project EIR projected a reversal of sea water intrusion due to the assumed

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<sup>5</sup> A 12-04-019 Reply Brief of LandWatch Monterey County regarding Groundwater Rights, July 25, 2012, pp. 8-9.

<sup>6</sup> LandWatch has consistently advocated a more careful evaluation of the adequacy of efforts to address overdrafting and sea water intrusion than has occurred to date. In this regard, LandWatch has presented evidence in connection with the adoption of the Monterey County 2010 General Plan and in connection with environmental review of various development projects that the SVWP may have been oversold as a solution to overdraft and sea water intrusion conditions in the SVGB. For example, although the SVWP EIR concluded that seawater intrusion would be halted based on the assumption that irrigated agricultural acreage and agricultural water use would decline from 1995 to 2030, the Monterey County 2010 General Plan EIR admitted that irrigated acreage actually increased substantially between 1995 and 2008 and projected that irrigated acreage will increase even more by 2030. LandWatch has identified a number of additional problems with analyses of the efficacy of the SVWP and is currently pursuing litigation seeking adequate analysis of SVGB water resource impacts through Monterey County Superior Court Case No. M109434. Regardless whether the SVWP has been oversold, the CPUC should not assume that the County will not eventually address sea water intrusion.

success of the SVWP and CSIP, but projected that this reversal would be slower with the Regional Project than without it.<sup>7</sup> Increased duration of degraded groundwater conditions may constitute injury to groundwater users and should be evaluated by Cal-Am.

Notwithstanding the previous modeling that projected reversal of sea water intrusion and even though it admits that “the extent of the impact on fresh water supply or wells is unknown in this situation,” the Draft Review appears to dismiss the possibility that the MPWSP would draw an increased percent of freshwater as “highly unlikely.”<sup>8</sup> Again without any reference to the SVWP, the Draft Review also states that “there is no evidence to suggest that Basin conditions will improve independent of the MPWSP without a comprehensive solution to the overdraft conditions.”<sup>9</sup>

The Draft Review does acknowledge that success in reversing sea water intrusion would result in a higher percentage of fresh water pumping by the MPWSP. The Draft Review considers two possible causal scenarios for the possible reversal of sea water intrusion. First it suggests that Cal-Am may be able to show that the MPWSP is the “but-for” cause of this improvement, in which case Cal-Am might be entitled to a portion of the new water supply.<sup>10</sup> Alternatively, the Draft Review acknowledges that SVGB conditions might improve independent of the MPWSP, in which case Cal-Am may have to limit its export diversions.

Because these two different outcomes have diametrically opposite consequences with respect to the viability of the MPWSP itself, it is critical that the CPUC decision be informed by the best assessment of the likely future success of efforts to halt or reverse sea water intrusion and the effect of the MPWSP on those efforts. However, the Draft Review appears to suggest that the issue can be deferred simply because “[t]here is expected to be minimal impact to freshwater sources at start-up and for the first several years of operation as water will certainly be sourced from the intruded portion of the aquifer.”<sup>11</sup> The Draft Review suggests that measures can be taken “[if] and when impacts to freshwater resources in the Basin are observed . . .”<sup>12</sup> However, if Cal-Am were required to limit export diversions because the MPWSP were pumping more freshwater than may legally be exported, the MPWSP may not remain viable for its projected life. LandWatch submits that the CPUC cannot prudently defer analysis of this possibility in approving a long-lived capital project.

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<sup>7</sup> Id., p. 9.

<sup>8</sup> Draft Review, p. 36.

<sup>9</sup> Id., p. 37.

<sup>10</sup> Id., p. 36.

<sup>11</sup> Id., p. 37.

<sup>12</sup> Id.

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Thus, analysis and modeling should be required that would determine the probable success of efforts to halt or reverse sea water intrusion, including MCWRA Ordinance 3709, the CSIP, and the SVWP. This analysis and modeling should project future outcomes both with and without the MPWSP.

Thank you for the opportunity to comment on the Draft report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amy L. White', written in a cursive style.

Amy L. White  
Executive Director