
State Water Resources Control Board

November 29, 2022

Administrative Hearings Office’s Public Hearing in Court Reference to State Water Board in *City of Marina v. RMC Lonestar*, Monterey County Superior Court No. 20CV001387: Hearing Officer’s Ruling on California-American Water Company’s Request for Confirmation of its Right to Submit Rebuttal Testimony

Background

On May 6, 2022, the State Water Board’s Administrative Hearings Office (“AHO”) issued its Notice of Public Hearing and Pre-Hearing Conference in this proceeding. The purpose of this proceeding, background, hearing issues and related information are discussed in that notice and are not repeated here. Except as expressly stated in this order, that notice and all subsequent AHO notices and orders remain in effect.

California-American Water Company’s Request

On November 18, 2022, the California-American Water Company (“Cal-Am”) filed a document titled “California-American Water Company’s Request for Confirmation of its Right to Submit Rebuttal Testimony Limited to Addressing the City of Marina and Marina Coast Water District’s Criticism of the 2022 Update of the North Marina Groundwater Model” (“Cal-Am Request”). In that request, Cal-Am seeks “permission to respond to the rebuttal testimony of the City [of Marina’s] and MCWD’s witnesses regarding the [2022 North Marina Groundwater] model.” (Cal-Am Request, p. 3:6-7.)

On November 21, 2022, the Marina Coast Water District (“MCWD”) and the City of Marina (“City”) filed their joint opposition to the Cal-Am Request (“MCWD-City Opp.”). Their opposition refers to a statement I made during the September 2, 2022 status conference in this proceeding, when I stated that, if anyone asked to submit evidence rebutting previously submitted sur-rebuttal evidence, then my plan was to ask for an offer of proof and to require the party seeking to introduce the additional evidence to spell out specifically what the party thinks it needs to do for additional testimony. (MCWD-City Opp., p. 4:5-7.) The City and MCWD also argue that Cal-Am should have anticipated that MCWD’s and the City’s witnesses would critique Cal-Am’s experts’ calibration of the 2022 North Marina Groundwater Model, and Cal-Am’s attorneys should have asked these witnesses to address this issue through re-direct questions during the October 26-28, 2022 hearing. (*Id.*, p. 4:18 – 6:3.) Finally, MCWD and the City argue that Cal-Am may address these issues through cross-examination of MCWD’s and the City’s expert witnesses and during the additional hearing days the AHO has scheduled to allow the AHO to further question the parties’ expert witnesses. (*Id.*, p. 6:23-27.)

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Ruling

I deny Cal-Am's request without prejudice to Cal-Am's right to make, immediately after the conclusion of the hearings that are scheduled for December 7-15, 2022, an offer of proof regarding proposed new testimony and exhibits that Cal-Am would submit to specifically respond to the sur-rebuttal testimony that MCWD's and the City's witnesses will be presenting during those hearing days. During the hearing, I will specify the deadline for Cal-Am to make this offer of proof. If Cal-Am makes such an offer of proof, then I will evaluate it and decide how to proceed.

Nov. 29, 2022

/s/ ALAN B. LILLY

Alan B. Lilly

Presiding Hearing Officer

Administrative Hearings Office

Enclosure: Service List (copies sent by e-mail only)

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City of Marina v. RMC Lonestar Court Reference

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