

**LAW OFFICES OF
MICHAEL W. STAMP**

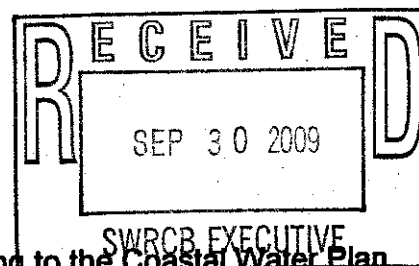
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July 14, 2009

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102



Subject: Public Comment on Issues Relating to the Coastal Water Plan
(Application of California-American Water Company)

Dear Commissioners:

We present these comments and provide this information on behalf of the Monterey County Agricultural and Historical Lands Conservancy (referred to herein as "The Ag Land Trust" or "The Conservancy"). This information relates to the CPUC consideration of the environmental factors for the Coastal Water Plan (as proposed by the California American Water Company – Cal-Am) and the alternatives proposed by the Marina Coast Water District (MCWD) and the Monterey County Water Resources Agency, Monterey County Board of Supervisors, and County of Monterey. Issues identified in this letter also relate to the plan's costs, community values, historical and aesthetic values, and the influence on the environment.

The Monterey County Agricultural and Historic Lands Conservancy is a farmland preservation trust located in Monterey County, California. The Conservancy, which was formed in 1984 with the assistance of funds from the California Department of Conservation, owns over 21,000 acres of prime farmlands and agricultural conservation easements, including overlying groundwater rights, in the Salinas Valley. The Conservancy has large holdings in the Moss Landing/Castroville/Marina areas which are directly affected by the various proposals and alternatives of the proposed projects. Many of these acres of land and easements, and their attendant overlying groundwater rights, have been acquired with grant funds from the State of California as part of the State's long-term program to permanently preserve our state's productive agricultural lands.

We do not repeat here the information, references and documents included in the materials attached to this letter. Those materials are instead incorporated by reference. Nor do we repeat information and documents previously submitted to the CPUC, including those made by or on behalf of the Ag Land Trust, and instead incorporate them by reference. We wish to focus on the issues identified below and in the attached materials.

The environmental analysis and other material submitted to the CPUC to date have failed to adequately address the issues of the proposed violations and takings of private overlying percolated groundwater rights by the proposed alternatives that have

been selected or evaluated. Other critical defects to date include the discussions of the implications of violations of water storage rights and the absence of authority by the CPUC to grant any water rights under existing California law to any appropriator, including Cal-Am or MCWD, in an overdrafted basin. Similarly, there has been a failure to address the issues of water quality and present Federal and State directives related to future prohibitions on "once through cooling" systems at the Moss Landing Power Plant; issues of illegal takings of "prime" farmland; wrongful "marginalization" of the significant mitigations required to mitigate proposed inconsistencies with, and violations of, the adopted North Monterey County Local Coastal Plan and 1982 Monterey County General Plan policies related to loss and contamination of water resources and groundwater quality protection and loss of farmland preservation; failure to address issues related to conflicts between adopted State water quality plans and mandatory water quality policies and regulations, and illegal contamination of potable water supplies and the taking of water rights.

Similarly, the proposals and information to date fail to adequately address issues related to the failure to specify and mitigate significant and grave adverse impacts on State mandated farmland preservation programs and preserved lands; the failure to address the ways in that water rights affect the impacts of the outfall from the discharge of brine; the failure to provide mandated individual public notices to potentially affected land owners and percolated water rights holders whose property is proposed to be taken as a result of the proposed actions; the failure to identify and adequately discuss the circumstances and implications, including the associated water rights, of the fact that the Salinas Valley Groundwater basin has been in severe overdraft for over 60 years and, pursuant to California groundwater law, there is no water available for junior appropriators, such as Cal-Am or MCWD; failure to conduct water well pump tests to determine the extent of adverse and unmitigable impacts on aquifers; and failure to address or provide either mitigation or compensation for the proposed illegal takings of private property rights and water rights as anticipated in the preferred alternatives. The water rights analysis to date has not adequately identified, analyzed, and considered the effects on any proposed project that derive from the proper application of the water rights of all affected persons. The CPUC should determine whether the proposals and alternatives would merely substitute one illegal overdraft for the existing illegal overdraft.

All of these factors, when properly considered, will relate to the decision-making process on the following issues: (1) effective and feasible projects and alternatives; (2) significant environmental impacts of projects and alternatives; (3) the selection of environmentally superior options; (4) whether projects and/or alternatives are infeasible; (5) significant and unavoidable impacts, costs, and community values; and (6) compliance with CEQA.

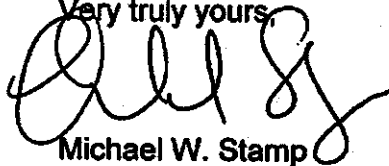
The Ag Land Trust believes that the analysis to date has erroneously considered "ultra-vires" projects (those that the CPUC has no authority or jurisdiction to approve)

and alternatives that are intended to advance a water project (for the benefit of a privately held multinational corporation) that would result in uncompensated and wrongful takings of percolated groundwater rights of The Ag Land Trust and of other parties, private groundwater storage rights, and land and property rights in our 192 acre ranch located near Neponset Road and CA. Highway 1, north of Marina.

This 192 acre ranch is generally referred to as the West Armstrong Ranch. It is farmed, it is very productive, and it has operational groundwater wells that The Ag Land Trust relies upon for the agricultural productivity and uses. It is owned in fee by The Ag Land Trust, is designated by local ordinance and state and federal regulations, by adopted State and local land use and water policies and plans, and by State and local guidelines as "prime farmland" by the County of Monterey, the California Department of Conservation, the California Coastal Commission, the California Department of Food and Agriculture, and the United States Department of Agriculture. Further, its rare and significant productivity, which includes its overlying groundwater rights, storage, and supplies in the definition of "prime farmland", was recognized by the State of California and, as a result, the State awarded cash grants to the Trust for the purposes of acquiring ownership of this ranch for its permanent preservation in the late 1990's.

Each of these issues deserves a thorough and realistic analysis at the earliest possible time. Thank you for providing us with this opportunity to present this information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael W. Stamp". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael W. Stamp

AG LAND TRUST

Monterey County Agricultural and Historic Land Conservancy

P.O. Box 1731, Salinas CA 93902

www.aglandconservancy.org

Phone: 831-422-5868 Fax: 831-758-0460

April 25, 2009

TO: Monterey County Board of Supervisors

FROM: Monterey County Ag Land Trust

RE: Opposition to proposed MOU's for Monterey Regional Supply Planning and Coastal Water Project

By this letter, the Board of Directors of the Ag Land Trust unanimously and vehemently objects to the proposed MOUs and the Coastal Water Project that are recommended for your approval by the staff of the MCWRA. These proposed MOUs and the project that they expressly advance are wrongful, illegal acts that propose to take and convert our water and water rights for the benefit of a private company. We hereby incorporate by reference into this letter (as our own) each, every, and all facts, objections, statements, references, legal citations, and assertions located within each and every Attachment herewith attached to this correspondence. **Before your Board takes any action on these matters that will expose you to significant litigation from landowners with senior overlying percolated groundwater rights, you need to ask the question and receive a written answer from your staff, "If the Salinas Valley percolated groundwater basin has been in overdraft for sixty years, whose percolated groundwater and overlying percolated groundwater rights are you proposing that we take without compensation to benefit Cal-Am?"**

1. The proposed MOUs, and the projects which they include, violate and will result in an illegal, wrongful, "ultra vires", and unlawful "taking" of our percolated overlying groundwater rights. Our Trust owns (in fee) the large ranch (on which we grow artichokes and row crops) that lies between the ocean and the proposed "well field" that the California-American Water Company (a private, for profit appropriator) proposes to use to illegally divert percolated groundwater from the overdrafted Salinas groundwater basin. The so-called "environmentally superior alternative" in the Coastal Water Project EIR is based upon the illegal taking of our water rights and pumping of our percolated groundwater for the economic benefit of Cal-Am. The Salinas basin has been in overdraft for over 60 years and California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies, (Katz v. Walkinshaw 141 Cal. 116). In an over-drafted basin, there is no surplus water available for new "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. This is the situation in the over-drafted Salinas percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Moreover, no legal claim or relationship asserting that water from a distant water project (over 6 miles from the proposed Cal-Am well field to the rubber dam) may be credited for the over-drafted Salinas percolated

Illegal takings

groundwater basin can be justified or sustained. California groundwater law refutes such "voodoo hydrology" by holding that "Waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are part of any definite underground stream, are percolating waters" (Vineland I.R. v. Azusa I.C. 126 Cal. 486). Not only does Cal-Am have no right to take ground water from under our lands, but neither does the MCWRA. MCWRA HAS NO PERCOLATED OVERLYING GROUNDWATER RIGHTS THAT IT MAY USE TO GIVE TO CAL-AM FOR EXPORT OUT OF THE BASIN. Our first objection to this illegal project and conduct was filed with the CPUC and MCWRA on November 6, 2006 (see herein incorporated Attachment 1). Your staff has not responded to our concerns have been ignored.

Percolated water belongs to the overlying land owners

2. The recommended MOUs before the Board of Supervisors is a project under CEQA and the MCWRA staff recommendations to the Board violate the California Environmental Quality Act and the California Supreme Court decision in the "Tara" case. The California Supreme Court's decision in Save Tara v. City of West Hollywood, Case No. S151402 (October 30, 2008), * provides specific direction to public agencies entering into contingent agreements. In this opinion, the Supreme Court held that the City of West Hollywood ("City") had violated CEQA by entering into a conditional agreement to sell land and provide financing to a developer before undertaking and completing environmental (CEQA) review. This is exactly what the MCWRA staff is asking the Board to do. They want you to approve their project without a certified EIR from the CPUC. One of the proposed MOUs even references the fact that it is contingent on the certification of the FEIR by the CPUC. Monterey County abdicated its role as the "lead" agency under CEQA years ago when it agreed to allow the CPUC to prepare the EIR on the Coastal Water Project. Monterey County is now a "responsible agency" and must wait while the CPUC staff deals with the fact that its draft EIR is woefully inadequate because of its failure to address that fact that none of the public agencies in Monterey County have the rights to pump groundwater from an overdrafted basin for the economic benefit of Cal-Am (see Attachment 2). Further, the Draft EIR acknowledges that the proposed MOUs and Coastal Water Project violate MULTIPLE provisions of the Monterey County General Plan, and the North County Local Coastal Plan, and contradicts the express purpose (ELIMINATION OF SEAWATER INTRUSION) of every water development project for which land owners have been assessed and charged (and continue to be charged) by Monterey County and the MCWRA for the past 50 years, including the Salinas Valley Water Project.

NEEDS ADD EIR

3. It is clear that the MOUs and the Coastal Water Project are being advanced by MCWRA staff and Cal-Am jointly as if they are already one entity. In fact, the proposed MOUs advanced by MCWRA staff advocate a governmental structure (JPA) that would be completely immune for the voters' constitutional rights of initiative, recall, and referendum. Moreover, this plan to deny the Monterey County public's right to public ownership of any new water project was also secretly advanced this month in Assembly Bill AB 419 (Caballero) wherein Ca-Am lobbyists got the Assemblywoman to try to change one hundred years of state law by "redefining a JPA with a private, for-profit utility (Cal-Am) member" as a "public agency". (See Attachment 3). These actions by MCWRA staff and Cal-Am to circumvent and "short-circuit" the mandatory CEQA process for the MOUs and the Coastal Water Project are further reflected in Attachment 4 wherein counsel for MCWRA requested an extension of time from the SWRCB (on permits issued to address water shortages in the Salinas Valley) to develop "alternative plans". Although the letter says that "there will be no export of groundwater outside of the Salinas basin", that is exactly what the MOUs and the Coastal water Project proposes... to pump and export thousands of acre feet of groundwater out of the Salinas basin for the benefit of Cal-Am.

4. Our wells and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. MCWRA has never contacted our Board of Directors that includes farmers (including past presidents of the

Grower-Shippers Assn.), bankers, attorneys, and agricultural professionals to get our input on this proposed taking of our water rights. As a result of this lack of concern for our property rights, we must assume that the County has now assumed an adversary position toward our Land Trust and our groundwater rights. In 2001-2002, MCWRA staff recommended that you include the Gonzales area in the assessment district for the SVWP. The Gonzales farmers objected, your MCWRA staff ignored them, you got sued and the taxpayers ended up paying the bill. From 1999 - 2005, the owner of Water World objected to the conduct of MCWRA staff and was ignored by your staff. Thirty (30) million dollars later, you lost the lawsuit and the taxpayers paid the bill. When will the taxpayers stop having to pay for poorly conceived ideas from MCWRA?

5. The draft CPUC EIR marginalizes the grave and significant environmental impacts on groundwater and groundwater rights, violations of the General Plan and Local Coastal Plan policies, and the illegal violations and takings of privately owned, usufructory water rights upon which the Coastal water Project depends. **These and the illegal appropriation of thousands of acre feet of groundwater from under privately owned land in an overdrafted basin ARE NOT A LESS THAN SIGNIFICANT IMPACTS! This is the project that the staff of the MCWRA staff wants the Board to approve without a certified EIR.** (see Attachment 5). Further, the Marina Coast Water Agency has used up all of its full allocation of groundwater from the Salinas Valley groundwater basin, and as an appropriator is not entitled to any more water from the overdrafted basin, contrary to the information presented to the Growers-Shippers Association by Mr. Curtis Weeks of MCWRA (see Attachment 6).

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. It has gone on for decades. That shortage does not justify the illegal taking of our water rights for the economic benefit of Cal-Am. We ask that the Board not approve the MOUs or the Coastal Water Project for the reasons stated herein.

Respectfully,

The Board of Directors of the Monterey County Ag Land Trust

Monterey County Agricultural and Historic Land Conservancy
P.O. Box 1731, Salinas, CA 93902

To: California Public Utilities Commission
C/O CPUC Public Advisor
505 Van Ness Avenue, Room 2103,
San Francisco, CA 94102
Fax: 415.703.1758
Email: public.advisor@cpuc.ca.gov.

April 15, 2009

Comments on Coastal Water Project Draft EIR

Dear Commissioners:

On behalf of the Monterey County Ag Land Trust, we hereby submit this comment letter and criticisms of the draft EIR that your staff has prepared for the Coastal Water Project located in Monterey County. Herewith attached is our letter to your commission dated November 6th, 2006. We hereby reiterate all of our comments and assertions found in that letter as comments on the Draft Environmental Impact Report.

The Draft EIR is fatally flawed because of your staff's intentional failure to address the significant environmental and legal issues raised in our November 6th 2006 letter. The project as proposed violates and will result in a taking of our Trust's groundwater rights. Further, although we have requested that these issues be addressed, it appears that they have been ignored and it further appears that the CPUC is now advancing a project (preferred alternative) that constitutes an illegal taking of groundwater rights as well as violations of existing Monterey County General Plan policies, existing certified Local Coastal Plan policies and Monterey County Environmental Health code.

The EIR must be amended to fully address these issues that have been intentionally excluded from the draft. Further, the EIR must state that the preferred alternative as proposed violates numerous Monterey County ordinances, and California State Groundwater law. Failure to include these comments in the EIR will result in a successful challenge to the document.

Respectfully,

Virginia Jameson
Ag Land Trust

Attachment 1

MONTEREY COUNTY AGRICULTURAL AND HISTORICAL
LAND CONSERVANCY
P.O. Box 1731, Salinas CA 93902

November 6, 2006

Jensen Uchida
c/o California Public Utilities Commission
Energy and Water Division
505 Van Ness Avenue, Room 4A
San Francisco, Ca. 94102
FAX 415-703-2200
jensen@cpuc.org

SUBJECT: California-American Water Company's Coastal Water Project EIR

Dear Mr. Uchida:

I am writing to you on behalf of the Monterey County Agricultural and Historic Lands Conservancy (MCAHLC), a farmland preservation trust located in Monterey County, California. Our Conservancy, which was formed in 1984 with the assistance of funds from the California Department of Conservation, owns over 15,000 acres of prime farmlands and agricultural conservation easements, including our overlying groundwater rights, in the Salinas Valley. We have large holdings in the Moss Landing/Castroville/Marina areas. Many of these acres of land and easements, and their attendant overlying groundwater rights, have been acquired with grant funds from the State of California as part of the state's long-term program to permanently preserve our state's productive agricultural lands.

We understand that the California-American Water Company is proposing to build a desalination plant somewhere (the location is unclear) in the vicinity of Moss Landing or Marina as a proposed remedy for their illegal over-drafting of the Carmel River. On behalf of our Conservancy and the farmers and agricultural interests that we represent, I wish to express our grave concerns and objections regarding the proposal by the California-American Water Company to install and pump beach wells for the purposes of exporting groundwater from our Salinas Valley groundwater aquifers to the Monterey Peninsula, which is outside our over-drafted groundwater basin. This proposal will adversely affect and damage our groundwater rights and supplies, and worsen seawater intrusion beneath our protected farmlands. We object to any action by the California Public Utilities Commission (CPUC) to allow, authorize, or approve the use of such beach wells to take groundwater from beneath our lands and out of our basin, as this

would be an "ultra-vires" act by the CPUC because the CPUC is not authorized by any law or statute to grant water rights, and because this would constitute the wrongful approval and authorization of the illegal taking of our groundwater and overlying groundwater rights. Further, we are distressed that, since this project directly and adversely affects our property rights, the CPUC failed to mail actual notice to us, and all other superior water rights holders in the Salinas Valley that will be affected, as is required by the California Environmental Quality Act (CEQA). The CPUC must provide such actual mailed notice of the project and the preparation of the EIR to all affected water rights holders because California-American has no water rights in our basin.

Any EIR that is prepared by the CPUC on the proposed Cal-Am project must include a full analysis of the legal rights to Salinas Valley groundwater that Cal-Am claims. The Salinas Valley percolated groundwater basin has been in overdraft for over five decades according to the U.S. Army Corps of Engineers and the California Department of Water Resources. Cal-Am, by definition in California law, is an appropriator of water. No water is available to new appropriators from overdrafted groundwater basins. The law on this issue in California was established over 100 years ago in the case of Katz v. Walkinshaw (141 Calif. 116), it was repeated in Pasadena v. Albambra (33 Calif.2nd 908), and reaffirmed in the Barstow v. Mojave Water Agency case in 2000. Cal-Am has no groundwater rights in our basin and the CPUC has no authority to grant approval of a project that relies on water that belongs to the overlying landowners of the Marina/Castroville/Moss Landing areas.

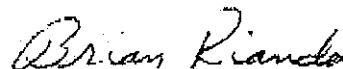
Further, the EIR must fully and completely evaluate in detail each of the following issues, or it will be flawed and subject to successful challenge:

1. Complete and detailed hydrology and hydrogeologic analyses of the impacts of "beach well" pumping on groundwater wells on adjacent farmlands and properties. This must include the installation of monitoring wells on the potentially affected lands to evaluate well "drawdown", loss of groundwater storage capacity, loss of groundwater quality, loss of farmland and coastal agricultural resources that are protected by the California Coastal Act, and the potential for increased and potentially irreversible seawater intrusion.
2. A full analysis of potential land subsidence on adjacent properties due to increased (365 days per year) pumping of groundwater for Cal-Am's desalination plant.
3. A full, detailed, and complete environmental analysis of all other proposed desalination projects in Moss Landing.

On behalf of MCAHLC, I request that the CPUC include and fully address in detail all of the issues and adverse impacts raised in this letter in the proposed Cal-Am EIR. Moreover, I request that before the EIR process is initiated that the CPUC mail actual notice to all of the potentially overlying groundwater rights holders and property owners in the areas that will be affected by Cal-Am's proposed pumping and the cones of depression that will be permanently created by Cal-Am's wells. **The CPUC has an absolute obligation to property owners and the public to fully evaluate every**

reasonable alternative to identify the environmentally superior alternative that does not result in an illegal taking of third party groundwater rights. We ask that the CPUC satisfy its obligation.

Respectfully,



Brian Rianda, Managing Director

cc: MCWRA