

EXHIBIT 2-B

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates.

Application 04-09-019
(Filed September 20, 2004;
Amended July 14, 2005)

**JOINT SCOPING MEMO RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE SETTING FORTH
SCOPE AND SCHEDULE FOR PHASE 2**

1. Summary

This ruling sets forth the procedural schedule, establishes the scope of the issues, confirms the categorization, establishes a procedure for requesting oral argument, and assigns the presiding officer for Phase 2 of this proceeding. This Scoping Memo Ruling follows the prehearing conference held on March 13, 2009. Pursuant to Pub. Util. Code § 1701.5, we intend to resolve Phase 2 of this proceeding with all deliberate speed and it will be resolved within 18 months of the date of this Scoping Memo Ruling (or no later than September 25, 2010), although we certainly hope to resolve Phase 2 well before that date. We will issue a separate Scoping Memo Ruling for Phase 3, if needed, which will address cost allocation issues.

2. Background

On September 20, 2004, California-American Water Company (Cal-Am) filed this application which, among other things, seeks a Certificate of Public Convenience and Necessity (CPCN) to build its proposed Coastal Water Project and seeks authority to increase rates to fund the project. As proposed, the Coastal Water Project includes a desalination facility located at Moss Landing, associated infrastructure to transport the water produced at Moss Landing to Cal-Am's Monterey service territory, and an aquifer storage reinjection component. Because the application did not include a Proponent's Environmental Assessment (PEA), a necessary precursor to evaluating the merits of the proposed project and associated proposed rate increase, the assigned Administrative Law Judge (ALJ) suspended the procedural process for this case until such time as the PEA was filed.

On July 14, 2005, Cal-Am filed an amended application, its PEA, and a Motion for Interim Rate Relief. Cal-Am concurrently began the Public Notice process required by Rule 24¹ of the Commission's Rules of Practice and Procedure. On July 29, 2005, the Office of Ratepayer Advocates (ORA)² and the Monterey County Water Resources Agency (MCWRA) filed responses to the motion. On August 8, 2005, Cal-Am filed a reply to the responses, which was supplemented on August 10, 2005. On August 15, 2005, several parties filed

¹ The Rules of Practice and Procedure were revised in September 2006. Rule 3.2 now supersedes Rule 24.

² ORA is now known as the Division of Ratepayer Advocates (DRA).

protests to the amended application.³ On August 25, 2005, Cal-Am filed a reply to the protests.

On September 6, 2005, the assigned ALJ determined that there should be two distinct phases to this proceeding. Phase 1 addressed interim rate relief and the Commission has issued Decision (D.) 06-12-040, which authorized Cal-Am to implement the proposed Special Request 1 Surcharge commencing January 1, 2007, to collect authorized preconstruction costs. That decision also authorized Cal-Am to implement the proposed Special Request 2 Surcharge after the Commission issues a CPCN for the Coastal Water Project, or alternative long-term supply solution, in Phase 2 of this proceeding. The Commission has also issued D.08-01-007, which adopted a settlement between Cal-Am and DRA, whereby Cal-Am was authorized to recover \$9.31 million as compensation in full for all Coastal Water Project preconstruction costs incurred through December 31, 2006. Cal-Am continues to track preconstruction costs and will file annual applications to request recovery of these costs. For example, Cal-Am filed Application (A.) 08-04-019 to recover preconstruction costs incurred in 2007, and the Commission approved a settlement in D.08-12-034 that allows Cal-Am to recover \$3.74 million for those costs.

On March 29, 2006, the ALJ issued a ruling indicating that when more information was available about the schedule for the environmental review documents, a PHC would be held, and a Scoping Memo would be issued to establish a schedule for Phase 2. The Draft Environmental Impact Report (DEIR)

³ Protests were filed by the following parties: DRA, MCWRA, Monterey Peninsula Water Management District, Pajaro/Sunny Mesa Community Services District, Public Citizen, and Independent Reclaimed Water Users Group.

was issued for comment on January 30, 2009. On February 11, 2009, ALJ Minkin issued a ruling that set a prehearing conference (PHC) for March 13, 2009 and proposed the scope and schedule for this phase of the proceeding. Parties actively discussed the issues to be included in the scope and schedule for Phase 2 at the PHC.

3. Scope of Issues in Phase 2

Pursuant to Pub. Util. Code § 1001 et seq., Cal-Am may not proceed with its proposed project absent certification by the Commission that the present or future public convenience and necessity require it. As a basis for granting such certification, the Commission must consider community values, recreational and park areas, historical and aesthetic values, and the influence on the environment. (Pub. Util. Code § 1002(a).)

The review process established by the California Environmental Quality Act (CEQA) is the primary focus for the environmental review. CEQA requires the lead agency (the Commission in this case, as determined in D.03-09-022) to conduct a review to identify environmental impacts of the project, and ways to avoid or reduce environmental damage, for consideration in the determination of whether to approve the project or project alternative. CEQA precludes the lead agency from approving a proposed project or project alternative unless that agency requires the project proponent to eliminate or substantially lessen all significant effects on the environment where feasible, and determines that any unavoidable remaining significant effects are acceptable due to overriding considerations.

An environmental impact report (EIR) is an informational document to inform the Commission, and the public in general, of the environmental impacts of the proposed project and alternatives, design a recommended mitigation

program to reduce any potentially significant impacts, and identify, from an environmental perspective, the preferred alternative. CEQA requires that, prior to approving the project or a project alternative, the lead agency must certify that the EIR was completed in compliance with CEQA, that it reviewed and considered the EIR prior to approving the project or a project alternative, and that the EIR reflects our independent judgment. (Pub. Res. Code § 21082.1(c)(3), CEQA Guidelines § 15090.)

The focus of Phase 2 is the selection of a long-term water supply solution to address the water shortfall in this district and to explore a regional alternative to Cal-Am's Coastal Water Project, as directed in D.03-09-022.⁴ At the PHC, parties confirmed that there is a need to find an alternative to replace Cal-Am's existing water supplies that are constrained by legal decisions that impact the Carmel River and the Seaside Groundwater Basin. Phase 2 will assess the most effective solution to replacing Cal-Am's considerably constrained water supply and determine the specific costs to ratepayers. In other words, Phase 2 will consider how the widely recognized need may best be met by various water supply alternatives, as evaluated according to the framework established by Pub. Util. Code § 1001 et seq. As discussed at the PHC, the issues to be considered in Phase 2 include the following:

- a. Which project or alternative most effectively or feasibly meets the established need and serves the present or future public convenience and necessity?
- b. What are the significant environmental impacts of the proposed project or project alternatives?

⁴ 2003, D.03-09-022, p. 12.

- c. Are there feasible mitigation measures that will eliminate or lessen the significant environmental impacts to an insignificant level?
- d. As between the proposed project and the project alternatives, which is environmentally superior?
- e. Are the mitigation measures or project alternatives infeasible? (CEQA Guideline 15091(a)(3).)
- f. To the extent that the proposed project and/or project alternatives result in significant and unavoidable impacts, are there overriding considerations pursuant to CEQA Guidelines § 15093 that merit approval of the proposed project or a project alternative? This issue includes consideration of the cost of the proposed and alternate projects, and the proposed and alternative projects' impact on community values pursuant to Pub. Util. Code § 1002(a)(1).
- g. Was the EIR completed in compliance with CEQA, did the Commission review and consider the EIR prior to approving the project or a project alternative, and does the EIR reflect our independent judgment?
- h. If a certificate is granted, what is the cost of the approved project pursuant to Pub. Util. Code § 1005(b)?

Issues A, E, F, and H will be considered in the formal proceeding for Phase 2, as will the issues associated with financing^①, ownership^②, and ratemaking^③. To expand on the overview of issues provided above, the record for Phase 2 must include an analysis of the project scope and the area to be served (e.g., Cal-Am's district only, or a wider region); the amount of water needed to meet the projected demand, and how and whether to plan for growth^④; whether the Project and alternatives adequately address plans for drought^⑤; the role of conservation and recycling^⑥; the impact of the financial crisis, if any, on the Project and alternatives^⑦; the technical specifications and environmental impacts of solution components, including location of proposed desalination plants^⑧; the necessary coordination with water management districts and other relevant agencies^⑨; the

(16) costs associated with the project and proposed alternatives, including expected total costs of (17) reasonableness of cost estimates; and (18) the need for future reasonableness reviews.

Cal-Am has suggested that costs must be considered conceptual until we have a better understanding of the mitigation measures that will be required. While mindful of resolving this proceeding expeditiously, we would like to have as thorough an understanding as possible with regard to the cost implications for each project, and look to Pub. Util. Code §§ 1005(b) and 1005.5 for guidance.

As DRA and Cal-Am both suggest, Phase 2 will also address ratemaking issues associated with Construction Work in Progress and Allowance for Funds Used During Construction, as well as a review of the Special Request 2 Surcharge described in D.06-12-040.⁵ We direct both Cal-Am and DRA to submit testimony on these accounting and ratemaking matters under a scenario where Cal-Am owns the Project and under a scenario where a Regional Project is in place. We concur with DRA that it is reasonable to consider cost allocation issues in a separate phase of this proceeding.

The record must contain well-developed information on financing and ownership of the Project and alternatives. For example, (19) if the Regional Alternative is determined to be the best approach both for Cal-Am's ratepayers and the Monterey Peninsula as a whole, how would Marina Coast Water District obtain financing to build the North Marina desalination plant? Could Cal-Am finance the construction of the Project and then deed the Project (or parts of the Project) to other regional entities? We are also interested in understanding the (20) →

⁵ We recognize that D.06-12-040 may be modified as a result of this review. This Scoping Memo Ruling provides notice to the parties of this possibility.

²⁰ timeline for the Project and the alternatives. Since Cal-Am must comply both with the State Water Resources Control Board Order 95-10 and the Seaside Groundwater Adjudication guidelines, it is important to understand the timing for permitting and construction of the Project and alternatives, as well as how water will be supplied during the interim period between authorization and construction of a project. MCWRA has raised concerns that Phase 2 must also consider issues associated with water rights, and the jurisdiction of the various agencies that address water on the Monterey Peninsula. The Commission does not have jurisdiction over water rights, and we certainly do not intend to interfere with the various agencies' jurisdiction. To the extent that information on water rights and jurisdiction can inform our understanding of the proposed Project and alternatives, and how ownership and financing might be implemented, then it is appropriate to consider these issues. However, any other consideration of water rights and jurisdictional issues is outside the scope of Phase 2.

As parties are aware, the DEIR was issued on January 30, 2009. The Commission's Energy Division Staff (Staff) is managing the environmental review process and has extended the public comment period on the DEIR. Public meetings were held in early March and comments must be submitted to Staff by April 15, 2009.⁶

⁶ At the PHC held on March 13, 2009, parties requested an extension to the comment period on the DEIR. On March 16, by e-mail, Staff notified the mailing list to the DEIR that the comment period would be extended from April 1 to April 15. The ALJ also notified the service list to A.04-09-019 of the extension by e-mail on March 16, 2009. Any interested person who has concerns about the proposed alternatives and the assessment of the environmental impacts of the proposed projects and alternatives should submit comments on the DEIR, as directed in the introduction to that document (www.cwp-eir.com/notify.html). As noted in the ALJ's

Footnote continued on next page

The environmental review process and the consideration of need, economics, and other issues associated with the CPCN essentially occur on parallel tracks. Issues B, C, D, and G, described above, will be considered in the CEQA review process and will not be considered in the formal proceeding for Phase 2. We understand that parties have some concerns about this, but in order to ensure this proceeding can move forward expeditiously, it is important that the CEQA issues move forward on a parallel track to the formal proceeding.

Thus, testimony, ⁽²⁴⁾ evidentiary hearings, and briefs in Phase 2 of this proceeding will consider the economics and costs of the various ⁽²⁵⁾ alternatives identified in the DEIR in meeting the identified need, as well as community values and other issues required by Pub. Util. Code § 1001 et seq., as described above. While the alternatives described in the DEIR will provide constraints as to the project and alternatives to be considered, the formal proceeding will not address the environmental assessment of the project and alternatives. As discussed at the PHC, parties will, of course, be able to cite to the DEIR in developing their cost scenarios and recommendations. The CEQA process and the formal proceeding converge when the DEIR and FEIR are received into evidence as reference exhibits.

When the proceeding is submitted, the ALJ will prepare a proposed decision for the Commission's consideration that makes a recommendation regarding the CPCN request and, if appropriate, proposes to certify the FEIR. To

February 11, 2009 Ruling, in order for comments to be incorporated into the administrative record, those individuals and entities must follow the instructions included in the DEIR. Comments on environmental documents should not be sent to the ALJ, the assigned Commissioner or other Commissioners, or filed with the Commission's Docket Office, nor should comments in the environmental review process be served on other parties.

the extent that the FEIR recommends mitigation measures that require additional analysis and testimony, we will allow parties to submit supplemental testimony and we will hold update hearings, if necessary.

As Commissioner Bohn stated at the PHC, we encourage the parties to continue to discuss these complex issues:

It's in our interest as a Commission to try to get the broadest solution that makes sense for all of the participants. There are real needs. There are real costs that have been referred to. But the overall objective is to get a solution that makes the most sense to the people involved . . . We are sensitive to all of the various issues in this case. And this one of those times I suggest . . . when the community and its parts get together and continue to talk in the interests of a mutual solution. I hope that's the spirit that you all in this room take from our comments today and that will continue to do that. (Reporters' Transcript, p. 77.)

We believe that holding facilitated workshops on cost issues will be helpful to the parties and to decision-makers. If the ALJ Division's Alternative Dispute Resolution (ADR) program can be helpful in assisting parties to come to terms or to narrow other issues in this proceeding, please contact ALJ Minkin to request assignment of an ADR ALJ. Information about this program can be found on our website at www.cpuc.ca.gov/PUC/ADR.

4. Schedule for Phase 2

After consideration of the prehearing conference statements and the discussion at the prehearing conference, we set the following schedule for Phase 2:

Schedule

Event	Date
Prehearing Conference	March 13, 2009
Comments due on DEIR	April 15, 2009
Comments on DEIR posted on website	May 1, 2009
Updated Prepared Testimony served by Cal-Am	May 22, 2009
Regional Project Cost Testimony served by Marina Coast Water District	June 19, 2009
Facilitated Workshops on Cost Issues	July 7-9, 2009
Public Participation Hearings (PPHs) to be held in Monterey Peninsula	July 27-29 , 2009 13-14
Prepared Testimony served by DRA and Other Parties	August 14, 2009
Concurrent Rebuttal Testimony served by all Parties	August 28, 2009
Evidentiary Hearings	September 8 - 18, 2009, Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102
Target date for release of FEIR	September 30, 2009
Concurrent Opening Briefs filed and served by Parties (including any requests for Final Oral Argument before the Commission)	October 16, 2009
Concurrent Reply Briefs filed and served by Parties and Projected Submission Date	November 13, 2009
Proposed Decision re: CPCN and certifying FEIR	February 2010
Decision on Commission Agenda	March 2010

The ALJ will issue a separate ruling setting forth the details of the July PPHs. Some parties suggested that we hold PPHs after the FEIR is issued. We

can assess the need for additional PPHs at that time. If additional PPHs are held, we anticipate that these would be convened the week of October 19, 2009. In addition, if we determine that supplemental testimony and update hearings are required after the FEIR is issued, we anticipate that Cal-Am would submit supplemental testimony on October 23, 2009; DRA and other parties would submit supplemental testimony on November 6, 2009; and rebuttal testimony would be submitted on November 20, 2009. If update hearings are required, these would be held the week of November 30, 2009. The concurrent opening and reply briefing dates would then be extended to December 18, 2009 and January 22, 2010, respectively. The proposed decision would be issued in April 2010 and placed on the Commission's agenda in May 2010. The ALJ will notify parties by ruling of these or any other changes to the schedule for Phase 2.

5. Consultant for DRA

DRA has requested that Cal-Am pay for a reimbursable contract with an outside consultant, the Bureau of Reclamation. DRA has been able to fund this contract up to this point, but state budget constraints now make that funding difficult. DRA states that the cost of the consultant will not exceed \$100,000. Cal-Am has no objection to this request and we approve it.

6. Service List

ALJ Minkin updated and established a new service list for Phase 2 at the prehearing conference. The official service list can be accessed at www.cpuc.ca.gov, under Proceedings. (To access the most updated service list for this proceeding, simply click the Online documents button, select Service Lists from the menu bar at the left of the screen and scroll to A.04-04-019.)

7. Filing and Service of Documents

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.⁷

Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Resolution ALJ-188 sets forth the interim rules for electronic filing, which replaces only the filing requirements, not the service requirements. Parties are encouraged to file electronically whenever possible as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/PUC/efiling>.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, I require concurrent e-mail service to ALL persons on the service list for A.04-09-019, for whom an email address is

⁷ As noted in Section 3, there is a separate process for submitting comments on the DEIR.

available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: A.04-09-019. In addition, the party sending the e-mail should briefly describe the attached communication; for example, Brief. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

The official service list for this proceeding is available on the Commission's web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list for A.04-09-019. The list on the Commission's website meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

We urge parties to work cooperatively to resolve any discovery issues. We expect parties to respond to data requests and other information requests in a timely fashion. Appendix A outlines the procedures to be followed for preparation of testimony and in the hearing room.

8. Intervenor Compensation

The PHC in Phase 2 was held on March 13, 2009. Pursuant to § 1804(a)(1), a customer who intends to seek an award of compensation should file and serve a notice of intent to claim compensation not later than 30 days after that date, or

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April 13, 2009. We urge parties to coordinate so that resources may be used efficiently and to avoid duplication. A separate ruling will address eligibility.

9. Categorization and *Ex Parte* Communications

This ruling confirms that Phase 2 of this proceeding has been categorized as ratesetting and evidentiary hearings will be held. Therefore, the *ex parte* provisions of Pub. Util. Code § 1701.3 and Rule 8.2(c) and Rule 8.3 are applicable and must be followed.

10. Presiding Officer and Final Oral Argument

Pursuant to Pub. Util. Code § 1701.3, ALJ Minkin is designated as the presiding officer in this proceeding. As noted above, if parties wish to have final oral argument held before a quorum of the Commission, they must so indicate in their concurring opening briefs.

Therefore, **IT IS RULED** that:

1. The scope of Phase 2 of Application (A.) 04-09-019 is set forth in Section 3 of this ruling.

2. The schedule for A.04-09-019 is set forth in Section 4 of this ruling.

Pursuant to Pub. Util. Code § 1701.5, Phase 2 will be resolved within 18 months of the date of this Scoping Memo Ruling, or no later than September 25, 2010, although we plan to resolve Phase 2 well before that date. Cost allocation issues, if required to be addressed, will be considered in Phase 3, and a separate Scoping Memo Ruling will be issued for Phase 3.

3. Division of Ratepayer Advocates is authorized to enter into a reimbursable contract, to be funded by California-American Water Company, to finance the consulting work provided by the United States Bureau of Reclamation's Technical Services Center.

4. Phase 2 of this proceeding is categorized as ratesetting and evidentiary hearings will be held.

5. Administrative Law Judge Minkin is the presiding officer.

6. Parties who wish to request Final Oral Argument before a quorum of the Commission shall so request in their concurrent opening briefs.

7. The service list for Phase 2 can be accessed on the Commission's website as described herein.

8. The electronic filing protocols delineated at ftp://ftp.cpuc.ca.gov/static/Efile_User_Guide_3-12-08.PDF and the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure shall govern this proceeding.

9. The *ex parte* provisions of Pub. Util. Code § 1701.3 and Rules 8.2(c) and 8.3 apply to this proceeding.

10. Pursuant to Pub. Util. Code § 1804(a), intervenors who plan to file and serve Notices of Intent to Claim Intervenor Compensation shall do so by April 13, 2009.

11. Parties shall respond to data requests and other information requests in a timely fashion and shall adhere to the procedures outlined in Appendix A for preparation of testimony and in the hearing room.

Dated March 26, 2009, at San Francisco, California.

/s/ JOHN A. BOHN
John A. Bohn
Assigned Commissioner

/s/ ANGELA K. MINKIN
Angela K. Minkin
Administrative Law Judge