

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



April 18, 2012

Charles J. McKee
County Counsel
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, California 93901

Re: Monterey County Ordinance 10.72.030(B)

Dear Mr. McKee:

On behalf of the Public Utilities Commission of the State of California ("Commission"), I am writing to inform you of our views regarding the lawfulness of the above-referenced ordinance, as applied to a Commission-regulated, investor-owned utility company such as California American Water Company ("CalAm").

The subject ordinance purports to impose a requirement that the sponsor of any desalination project in Monterey County "[p]rovide assurances that each facility will be owned and operated by a public entity." (Ordinance Sec. 10.72.030(B).)

It is our view that, to the extent this ordinance purports to limit sponsorship of a desalination project only to governmentally-owned enterprises, and more particularly to prohibit such sponsorship by a private, for-profit, investor-owned utility company regulated by our Commission – such as CalAm – the ordinance would be preempted and of no legal validity under settled principles of California law.

Regulation of water utilities like CalAm has been declared to be a matter of statewide concern in California. Under the Constitution and the Public Utilities Code, jurisdiction over such utilities has been vested exclusively with our Commission. Local ordinances such as Section 10.72.030(B) are preempted to the extent they interfere with this Commission's statewide regulation of water utilities. (*See, e.g.*, California Constitution, Article XII, §§ 1, 3-4 and 8; Public Utilities Code §§ 216(a); 1001, 2701-2714, 1718-2720, and 2725-2726; *California Water & Telephone Co. v. County of Los Angeles* (1967), 253 Cal.App. 2d 16, at 31; *Harbor Carriers, Inc. v. City of Sausalito* (1975) 46 Cal.App.3d 773, at 775-776; *Southern California Gas Co. v. City of Vernon* (1995), 41 Cal.App.4th 209, at 217.)

We note that a memorandum dated April 1, 2003, authored by your predecessor, then-Acting County Counsel David Nawi, and addressed to the Monterey County Board of Supervisors, contained essentially this same analysis and conclusion, relying on many of the same authorities. Mr. Nawi's memorandum found that, to the extent the above-quoted provisions of Section 10.72.030(B) were interpreted to prohibit sponsorship of a desalination facility by a

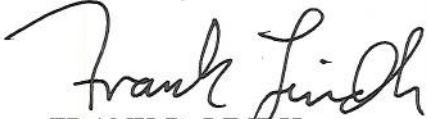
Charles J. McKee
County Counsel, Monterey County
April 18, 2012
Page 2

private company like CalAm, “the County might be preempted from using a ‘public entity’ requirement to deny Cal-Am a permit to operate the facility.” (Nawi Memorandum, p. 5.)

We agree with Mr. Nawi’s analysis. We would only add that, in our opinion, the ordinance, as so construed, certainly would be preempted, not merely that it “might” be preempted.

We appreciate your attention to this opinion, and ask that you please share it with the Members of the Monterey County Board of Supervisors.

Yours truly,



FRANK R. LINDH
General Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

cc: Anthony J. Cerasuolo, General Counsel
California American Water Company