

EXHIBIT 4-B

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates	Application 12-04-019 (Filed April 23, 2012)
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OPENING BRIEF ON VARIOUS LEGAL ISSUES OF MONTEREY COUNTY FARM BUREAU

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July 10, 2012

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I. Introduction

Pursuant to Administrative Law Judge Weatherford's ruling dated June 1st, 2012, Monterey County Farm Bureau (MCFB) files this Opening Brief on selected water rights and legal issues that warrant early consideration and resolution before the California Public Utilities Commission.

II. Water Rights for Salinas Valley Groundwater Not Identified

Cal-Am proposes to drill slant wells for the source water to supply their desalination plant, on a site north of the City of Marina. These wells are purported to draw salt water, but by their own admission, Cal-Am projects that approximately 3% of the water drawn by these wells may be freshwater. Due to the location of the well site, this would indicate that the freshwater drawn would come from the Salinas Valley Groundwater Basin.

When created, the Monterey County Water Resources Agency Legislative Act, Section 21, included the following statement relating to the Salinas Valley Groundwater Basin: "... for the purpose of preserving that balance, no groundwater from that basin may be exported for any use outside the basin, except that use of water from the basin on any part of Fort Ord shall not be deemed such an export. If any export of water from the basin is attempted, the Agency may obtain from the superior court, and the court shall grant, injunctive relief prohibiting that exportation of groundwater."

To date, Cal-Am has not identified any water rights that will allow for withdrawal of freshwater from the Salinas Valley Groundwater Basin using the proposed slant well system. Further, should Cal-Am pursue an appropriative right for freshwater withdrawals from the Salinas Valley Groundwater Basin, a costly adjudication for total water rights would be required basin-wide. This would present a lengthy and expensive process for Salinas Valley landowners, who have no potential benefit from the Cal-Am project.

Cal-Am proposes to return the freshwater pumped by the slant well system to the Salinas Valley Groundwater Basin, using desalinated water as the return water. The quality of the return water will need to be quantified before it can be replaced into the basin, and the constituents of that water may be cause

for concern by Salinas Valley landowners. The legality of this replacement water needs to be examined to determine if this is indeed a replacement or merely a substitution for the source freshwater.

At a meeting of the Monterey County Water Resources Agency Board of Directors (held on June 25, 2012), Cal-Am stated that the location for the slant well system site was determined by the availability of coastal area land. Placing the well site as currently proposed potentially infringes on the water rights of Salinas Valley landowners; an alternative site along the coast could be secured that does not have the same issue with Salinas Valley Groundwater Basin rights and would alleviate the issue of appropriative water rights.

A proposed test well, drilled by Cal-Am on or near the slant well site, seeks to determine what water rights will be needed to operate their project. Cal-Am should first be required to identify all water rights, both short-term and potential long-term, associated with their project before proceeding with a test well pilot project. Without the proper identification of water rights for the specific project site, the project is flawed and should not move forward.

In determining water rights for this project, the California Public Utilities Commission has no authority over water rights and cannot approve or grant any water rights for a proposed project.

MCFB asserts that Cal-Am does not have an appropriative water right which allows for the withdrawal of freshwater from the Salinas Valley Groundwater Basin.

III. Public / Private Partnership Requirement In Dispute

The project proposed by Cal-Am does not have a public partner, as required by Monterey County Code of Ordinance, Title 10, Chapter 10.72, which limits ownership and operation of any desalination facility in Monterey County to public agencies. In recent forums, Cal-Am has stated that they consider themselves exempt from this ordinance, and intend to prove so to the California Public Utilities Commission. While Cal-Am is regulated publicly and provides water to the consuming public, their legal entity status is not that of a public agency.

While the debate over the assertion of Cal-Am regarding the Monterey County Ordinance will be decided legally, the ordinance states clearly that any desalination facility shall "... provide assurances that each facility will be owned and operated by a public entity" (Monterey County Code of Ordinance, Title 10, Chapter 10.72.030). If this assertion by Cal-Am is validated, the public will be left out of an important decision making process except for issues that come before the California Public Utilities Commission. Without this public forum for input, Salinas Valley landowners would not have any input into the proposed operations of a Cal-Am desalination facility.

MCFB asserts that Cal-Am should be required to obtain a public agency as a partner on the proposed desalination project.

IV. Groundwater Replenishment Component Fails to Clarify Water Rights

As part of their proposal, Cal-Am is including a component that relies on groundwater replenishment from the Monterey Regional Pollution Control Agency's reclaimed water plant. There are many water rights agreements that control the wastewater flows into and out of the reclamation plant. The exact

determination of the water rights for this flow cannot be determined due to overlapping contracts and the commitments for water currently being exercised.

As first step, Monterey County Pollution Control Agency should be queried to provide documentation on the existing water rights and how any new water allocation to a Cal-Am project component will infringe on those water rights. Salinas Valley water ratepayers are currently paying for the existing tertiary treatment plant and distribution system; if treated water from this system is to be utilized in the Cal-Am project, there appears to be no direct benefit to Salinas Valley ratepayers, nor will there be contributions from Cal-Am to ease the portion of the debt load the rate payers will carry for the water supplied.

This component of the Cal-Am project has broader implications to the Salinas Valley landowners, as well as the City of Salinas and Marina Coast Water District; all are potentially impacted by the proposed use of reclaimed water for the Cal-Am groundwater recharge project.

MCFB asserts that a complete study of all water rights relating to the groundwater replenishment proposal be undertaken prior to approval of this portion of the project.

V. Conclusion

Resolution of the issues noted in this Opening Brief should come prior to the California Public Utilities Commission approval for Cal-Am to move forward with any portion of this project. Concerns over water rights and the public / private ownership of the project should be resolved early in the decision making process, leading to an open and transparent process. The impacts to the landowners of the Salinas Valley, as well as other public agencies, could cause wide-spread turmoil within the community and further delay any solution for the water supply problem of the Monterey County Peninsula area.

Dated: July 10, 2012

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'N. C. Groot', written in a cursive style.

Norman C. Groot
Executive Director,
Monterey County Farm Bureau