



Supplement to 7/16/18 MPWMD Board Packet

Attached are copies of letters received between June 11, 2018 and July 10, 2018. These letters are listed in the July 16, 2018 Board packet under Letters Received.

Author	Addressee	Date	Topic
Mark Fogelman	Eileen Sobeck – copy to David Stoldt	6/29/18	May 9, 2018 Petition to Modify Board Resolution 2016-0040
Mary L. Adams	Larry Hampson	6/15/18	Nomination of Gary Briant to the Carmel River Advisory Committee
John Moore	Arlene Tavani – to MPWMD Board	6/13/18	Comment Letter-Proposed Recycled Water Amendment

U:\staff\Boardpacket\2018\20180716\LettersRecd\LettersRecd.docx

MONTEREY COUNTY



1

BOARD OF SUPERVISORS

MARY L. ADAMS, SUPERVISOR – FIFTH DISTRICT

1200 Aguajito Road, Suite #1, Monterey, CA 93940

E-mail: District5@co.monterey.ca.us

Phone: (831) 647-7755

RECEIVED

JUN 1 2018

MPWMD

June 15, 2018

Larry Hampson, District Engineer
Monterey Peninsula Water Management District
Post Office Box 85
Monterey, CA 93942

Dear Mr. Hampson:

It is my pleasure to nominate Mr. Gary Briant for 2-year re-appointment as my representative on the Monterey Peninsula Water Management District's Carmel River Advisory Committee.

Mr. Briant was born and raised in Carmel and currently lives at 37 Paso Hondo in Carmel Valley. Since moving to Paso Hondo, Mr. Briant has become active in the community, starting an unofficial neighborhood association through which he distributes information to over 40 households. Mr. Briant has a personal interest ensuring the health and safety of the Carmel River. This interest increased in 2017, when his family was unfortunate enough to be one of five households flooded when the river breached.

I am confident you will find Mr. Briant to be a positive addition to the committee. Gary can be reached at (831) 601-9215 or gsbriant@hotmail.com should you require additional background information.

Sincerely,

Mary L. Adams

Fifth District Supervisor, County of Monterey
Director, MPWMD Board of Directors

Arlene Tavani

From: John Moore <jmoore052@gmail.com>
Sent: Wednesday, June 13, 2018 8:47 AM
To: Arlene Tavani
Subject: Re: "Comment Letter-Proposed Recycled Water Amendment"

Please give this to the board and note that we are looking into obtaining our own in vivo bioassay analysis of the PWM final product.JMM

On Mon, Jun 11, 2018 at 6:26 PM, John Moore <jmoore052@gmail.com> wrote:

Attn: Jeanine Townsend, Clerk to the Board:

My name is John M. Moore. I reside at 836 2d st. Pacific Grove Ca. I am a resident within the California American Water Co, a customer and resident within the agencies that comprise Pure Water Monterey(PWM), a recycling project approved and under construction. A description of the project is attached as Scan 102. PWM is in the process of initiating an EIR for an expansion in the size of the project.

I have reviewed the Proposed Recycled Water Amendment in detail and have several criticisms:

1. The proposal is unrelated to the politics that demonize the characterization of a real Ca. Recycling project and it does not require verification of the truthfulness of the sponsoring agencies. As a result, PWM, for just one example represented to the Regional Board and the Dept. of Drinking Water(DDW), that the PWM project was/is an Indirect Potable Reuse (IPR), but nothing could be further from the truth.

The only evidence about whether the project was/is an IDP or a Direct Potable Reuse (DPR) is Letter M from the EIR, attachment 101, a letter by the Technical Program Manager of the Seaside Basin Watermaster (an adjudicated basin). He is in charge of the day to day operations of the basin in accepting drinking water into the basin and permitting owners of the water to extract their share. The letter proves that the PWM project is a DPR project and it did not qualify for a permit as an IDP.

So what was the misrepresentation by PWM? It claimed that because the water was required to sit in the Basin for two months, that constituted a Barrier that qualified the project as IDP; in short, per PWM the final delivery of the treated water to a well or basin is also a barrier. While the water does obtain minimal dilution in the basin, there is no leeching thru sands, several aquifers, extreme dilution etc. for five years, like the Orange Water District IDP project. PWM says, well the two months will allow it to test the water for that time. But if it is not a barrier, the required tests are for a DPR, and those tests are a part of this process, i. e., under development.

In Exhibit M, the Technical operator, Bob Jaques, made some telling points: First, In para 1. he notes that all water injected into the basin will be extracted shortly thereafter. So it is not a cleansing barrier that could qualify as an IDP. Second, he noted in para. 8 that two of the new water sources, Blanco Drain and the Reclamation Ditch both have a high level of contamination, a broad spectrum of pesticides, as well as metals and bacterial organisms. He then said: "The design of the GWR Project Treatment Facilities should address this in order to ensure that the plant is reliably able to produce water of suitable quality for 'direct injection'(emphasis mine) into the SGWB, 'which serves as a potable water supply to the public'(emphasis mine)." But, there are no DPR tests; that is what this process is about. Mr. Jaques has just informed me that the tests required before treated water may be injected into the basin by PWM will be dictated by the DDW. But of course, as set forth above, PWM expects to apply the current tests for an IDR.

I note that the proposed definition of a Barrier set forth in the proposed regulations would prohibit the PWM project from qualifying as an IDR.

2. The proposed Regulations do not deal with a PWM situation where two highly toxic but different water sources are mixed before treatment(human sewage from the city of Salinas and highly toxic agriculture waste).

4 There is not even an IDR example of the recycling of agriculture waste for potable purposes, anywhere, let alone mixing it with sewage without any examination by trained toxicologists about the toxic effects of that mixing. Because PWM claims IDR status, there are no specific tests for this unique mix after treatment and before injection into the water supply. But there are several additional reasons (below) that comprehensive testing must be required before treated water from severely toxic sources (like PWM) is mixed with other drinking water.

3. Another criticism is that the proposed regulations imply that the Experts Report concluded that DPR can now be allowed on a case by case basis pursuant to the proposed regulations. A careful reading of that report implies that significant research and development must be concluded before DPR is permitted. The caveats by the experts are many and well founded.

4. If you are still reading this, you may be thinking, "yes, in fairness, the PWM project is quite challenging." Let me add to the drama and additional reasons that the project is unsafe. The Seaside Basin, the repository of the treated drinking water is located in Fort Ord a sandy, former U.S. Army base. The Basin sits below a Super Fund Toxic site that has decades of Infantry, tank and Artillery training, going back to pre WWII. I attach a few pages from Letter S (Scan 106) to the project EIR that details the toxic sources. After heavy rains, water on the two Ft. Ord golf courses disappears within a few hours. Where does it go?

The Basin is located in several earthquake faults, including the San Andreas fault. Because of the sandy soils, liquifaction of water-laden sediments (the soil turns into liquid) in the vadose zone (the soil from the basin to ground level) could contaminate the basin with Fort Ord debris, chemicals and whatnot. There is no alternate source of water.

I refer you to attachment 104, from the proposed regs. 5.2.4.8. "Peak Attenuation of Short Term Pulses of Chemicals Likely to Persist Through Advanced Treatment." The section has to do with unexpected events, like an industrial spill and questions how this might (or not) work. It concludes with: "How this would Work is a research Question?" In the case of the PWM DPR project, we bloody well better get on that, or babies will die!

5. I refer you to attachment 100. It is a 2016 comment letter from the three toxicology scientist that were on the 2010 Science Advisory Panel (SAP). The comment was because the proposed regs. did not adopt Bioassays as part of the safety tests for DPR and as set forth in the letter they made compelling arguments that in vivo bioassay testing is critical if DPR is to produce safe drinking water. In vivo is expensive, because it involves assaying live organisms from live animals. It actually assays a cell and identifies discrete parts for pathogens (in vitro tests dead samples and is not as helpful).

Now that you have been exposed to real life, the PWM project, you should reconsider the omission of in vivo bioassay tests. Could any sane adult allow treated wastewater from the PWM project to be injected into the drinking water of the Seaside Basin w/o in vivo bioassay testing? I am a rate payer and I say, get those tests. We will pay for them. BTW, the credentials of the three SAP members are very impressive. Listen to them.

6. I refer you to attachment 105. It is the face page of the DDW acceptance of the Final Engineering Report for the PWM project. para. 1. confirms that approval was granted on the assumption that the project was in fact an IPR project in fact, not one just based on a trick, claiming that a repository of treated drinking water was an IPR qualifying barrier.

7. The wealth of opinions from the experts that study the Toxicology of recycled wastewater is that neither IPR nor DPR is safe. I could attach dozens of examples, but will limit it to Scan 107, which is typical. Can you imagine how such experts would react to the PWM project. But of course the agencies pursuing such dangerous projects never hire honest qualified experts. The safety expert for the PWM EIR prepared a written report that based her opinion on asserted examples of projects and studies that she argued showed that the PWM process was safe. Not a single existing project had source water as toxic as the PWM sources. As for studies, she cited the Rand study which showed a 73% increase in liver cancer by those that drank recycled water as an article

positive to the PWM project. I checked her company out in Dun and Bradstreet: at the time of her EIR report 5 she had two employees, she and her mother.

8. There is a very critical factor missing from the proposed regs. The standards in the Regs must be so secure about the recycled water's safety for potable purposes that forced users like me do not need to worry about the safety of the water. They are not close. At this time very few of the forced users of the PWM mix are even faintly aware of the dangerous PWM project. Cal Am has informed me that there will not be a source of water free from the PWM mix. There was no vote and when the true nature of the project becomes public, chaos should result. What adds to the insult is the the human waste and agriculture wastewater sources come from areas out side the Cal Am water district, so their residents will not be forced to drink the worrisome mix. WE ARE ENTITLED TO KNOW THAT OUR DRINKING WATER IS SAFE !

As Dr. Oppenheimer stated, it may be years before the toxicity is discovered. A recent report about the Michigan contamination of the seventies, indicates that even three generations after actual exposure to the public in the seventies, the toxic effects continue to show in the subsequent generations, tho they were not actually exposed to the contaminants.

I have had this home for about twenty years. Unless the PWM project is made safe, I will be forced to move.
John M. Moore

RECEIVED

7

FRIEDMAN/
& SPRINGWATER LLP

JUL 03 2018

MPWMD

350 Sansome Street
Suite 210
San Francisco
California 94104

T 415.834.3800
F 415.834.1044

Mark Fogelman
mfogelman@friedmanspring.com
DD 415.834.3812

www.friedmanspring.com

June 29, 2018

BY OVERNIGHT DELIVERY

Ms. Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

Re: **May 9, 2018 Petition to Modify Board Resolution 2016-0040**

Dear Ms. Sobeck:

I write on behalf of this firm's client, the Marina Coast Water District ("MCWD") to address certain matters raised in a letter sent to you dated June 7, 2018 by Robert Donlan on behalf of the California-American Water Company ("Cal-Am"). Mr. Donlan's letter provided Cal-Am's response to the above-captioned Petition, which seeks modification of Resolution 2016-0040 to include a parallel set of milestones for Cal-Am's compliance with the requirements of the Board's operative Cease and Desist Order ("CDO") with respect to the Carmel River. MCWD is one of the ten petitioners in the above-captioned matter. Mr. Donlan's letter of June 7, 2018 first came to our client's attention by way of its attachment to a filing that was presented by Cal-Am to the California Public Utilities Commission ("CPUC") on June 19, 2018. His letter states that Cal-Am was not served with the Petition; however, Cal-Am and other interested parties were served with a report by the Planning and Conservation League Foundation to the CPUC, which attached a copy of the Petition, on May 9, 2018, the same day the Petition was filed.

As far as MCWD can discern, Cal-Am's letter is driven in large part by an unfounded fear that Cal-Am would somehow be "prejudiced" in its ability to effectively report on CDO compliance efforts if the Board were to accept the May 9, 2018 Petition for consideration, on the ground that the Board's acceptance of the Petition would bar *ex parte* communication concerning matters raised in the Petition. As far as MCWD is aware, Cal-Am's ongoing periodic public reports of its CDO compliance would not constitute "ex parte" communications in a new petition proceeding to consider alternate CDO compliance

FRIEDMAN/
& / SPRINGWATER LLP

Ms. Eileen Sobeck
June 29, 2018
Page 2

milestones.¹ Nor should the Board's consideration of the new Petition in any way impede Cal-Am's continued ability to comply with the existing requirements of the operative CDO.

Besides mischaracterizing the Petition, which speaks for itself and which does *not* seek to delay or influence the CPUC's processes in any way, Mr. Donlan's letter [at the top of page 2] admits that:

. . . Cal-Am does not oppose the concept of adding parallel milestones to the Amended CDO tied to alternative water supply projects that, like the MPWSP, are designed to reliably meet the near- and long-term water demands on the Monterey Peninsula.

Mr. Donlan's letter then rejects the proposal for an expanded Pure Water Monterey ("PWM") project, based solely upon Cal-Am's continued misrepresentation of its actual water demand. His letter argues that an expanded PWM project cannot bridge the gap between Cal-Am's legal supply and its severely inflated water demand numbers. As discussed below, and based upon evidence already received in the CPUC proceeding record, the expansion of PWM coupled with the PWM project currently under construction and Cal-Am's other post-December 31, 2021 water sources will reliably meet the near- and long-term water demands on the Monterey Peninsula.

As to demand and supply issues, the June 7th letter, similar to Cal-Am's arguments to the CPUC, proceeds on the false premise that maximum monthly water demand should drive demand estimates for Cal-Am's Monterey District.² Thus, the letter perpetuates the false assumption that a total supply of 14,275 acre-feet per year ("AFY") must be secured by Cal-Am, which would include Cal-Am's proposed desalination project. (June 7, 2018 letter, pp. 3-4 and fn. 7.) However, Cal-Am's actual monthly and annual demand data reveal a system demand of approximately 9,500 AFY.³ Cal-Am's contention that its system would

¹ Indeed, Cal-Am's response to the May 9, 2018 petition could itself be considered an impermissible *ex parte* communication, due to Cal-Am's apparent failure to promptly provide its response to seven of the ten petitioners (MCWD, Monterey One Water, LandWatch Monterey County, the Sierra Club, Citizens for Just Water, the Public Trust Alliance ("PTA") and Public Water Now ("PWN")). (See June 7, 2018 response letter, pp. 6-7.) As noted above, MCWD did not receive Mr. Donlan's letter until it was attached to a CPUC filing, twelve days after it was initially transmitted.

² *But see* Cal. Code Regs., tit. 22, § 64554, subds. (a), (b) (maximum monthly demand is to be utilized by systems that do not have daily demand data available, for purposes of calculating estimated peak hourly demand and sufficiency of supply sources).

³ See <https://www.watersupplyproject.org/system-delivery>.

FRIEDMAN/
& / SPRINGWATER LLP

Ms. Eileen Sobeck

June 29, 2018

Page 3

experience a shortfall in supply if its desalination project is not approved, especially in years when no Aquifer Storage and Recovery (“ASR”) supply is available, is not supported by its own data. The argument that there would be a shortfall of as much as 4,281 AFY – apparently based on assumed sources of supply other than ASR and desalination that total 9,994 AFY – is still premised on the false assumption that 14,275 AFY constitutes its customers’ actual demand volume. (June 7, 2018 letter, pp. 3-4.⁴)

In other words, Cal-Am is asking the Board to discount the validity and utility of parallel milestones for expansion of the PWM project based on the false claim that its annual demand is 14,275 AFY, which is over fifty percent higher than its Monterey District’s current average annual demand as revealed by its own data. ($9,500 \times 1.50 = 14,250$.)⁵ Cal-Am’s argument that it cannot satisfy its near- and long-term demand with available legal supply or even with an expanded PWM project is ironic, given its representations to the CPUC in its ratemaking proceedings that rate restructuring is required to offset a steep and likely permanent decline in customer demand over recent years. The Board and the CPUC should look to the past five years of uncontested updated monthly demand data as provided by Cal-Am itself for the most accurate picture of monthly and annual demand in Cal-Am’s Monterey District.⁶ The propriety of this approach is strongly reinforced by the recent enactment of Senate Bill No. 606 and Assembly Bill No. 1668, Water Management Planning, as well as the Governor’s Executive Orders B-40-17 (April 7, 2018) and B-37-16 (May 9, 2016), making conservation a permanent policy in California.

Moreover, Mr. Donlan’s June 7, 2018 letter asserts that the Petition does not establish that Petitioners are in any way aggrieved, so as to require the Board’s intervention. (June 7, 2018 letter, p. 4.) The letter asserts that the possibility of delay in CDO compliance raised in the Petition would simply be a self-perpetuating condition that is insufficient to support review by the Board. (*Ibid.*) To the contrary, several of the Petitioners long ago

⁴ The first page of Revised Att. A to the June 7, 2018 letter incorrectly sums the monthly volume of certain non-ASR, non-desalination sources at 552 acre-feet instead of 834 acre-feet ($834 \times 12 = 9,994$).

⁵ Cal-Am’s chart showing purported insufficient supply in summer months reflects demand at 14,275 AFY “long-term” and apparent present “system” demand at 12,270 AFY, a figure which is still inflated by nearly 30% beyond actual average annual system demand of 9,500 AFY. (June 7, 2018 letter, second page of Revised Att. A.) Cal-Am could have instead provided the Board with an accurate demand vs. supply analysis that utilizes its actual monthly demand numbers from recent years, available at <https://www.watersupplyproject.org/system-delivery>. Under such a scenario, even in a very dry winter without any Carmel River ASR and without any desalination supply, it appears there would still be sufficient winter surplus for ASR storage to provide adequate supply in higher-demand summer months.

⁶ See <https://www.watersupplyproject.org/system-delivery>.

FRIEDMAN/
& / SPRINGWATER LLP

Ms. Eileen Sobeck

June 29, 2018

Page 4

demonstrated their aggrieved status due to Cal-Am's decades of illegal withdrawals from the Carmel River, and they have been advocating before the Board in that regard for many years. (See Order WR 95-10, pp. 7-8 (complaints of Sierra Club and Monterey Peninsula Water Management District ("MPWMD")); Order WR 2009-0060, p. 4 (intervening parties include MPWMD, Planning and Conservation League Foundation ("PCLF"), PTA, Sierra Club).) Additionally, other petitioners are necessarily interested in Cal-Am's successful CDO compliance as evidenced by their participation in recent proceedings modifying the CDO. (Order WR 2016-016, p. 13 (Sierra Club and PCLF commenting) and p. 6 (link to record, which includes comments from MCWD, PCLF, Sierra Club, MPWMD, Monterey Peninsula Regional Water Authority, PTA and PWN).) Accordingly, most of the current Petitioners are aggrieved by any further delay in Cal-Am's compliance with the Board's operative Carmel River CDO, which Cal-Am asserts could arise from delay or denial of Cal-Am's request for a Certificate of Public Convenience and Necessity from the CPUC for its proposed desalination project. Therefore, Petitioners' grievances could be fully addressed by implementation of the parallel milestones suggested in the Petition, which would provide Cal-Am, the CPUC and the parties to the CPUC proceeding an opportunity to address the proposed expansion of the PWM project.

Not only would the expansion of PWM meet the near- *and* long-term water demands on the Monterey Peninsula, the capital costs for expanded PWM (Scenario B) would be about 25% of the capital costs for Cal-Am's desalination project, the expanded PWM's annual operating costs and greenhouse gas emissions would be substantially less mainly due to less electricity demand, adverse impacts to the City of Marina's beaches and to MCWD's groundwater supplies would be eliminated, and treated sewage effluent that is now being discharged to the Monterey Bay National Marine Sanctuary would be diverted for beneficial use.

The Board's Order WR 2016-016 and Resolution 2016-0040 extended the operative CDO deadline from December 31, 2016 to December 31, 2021 and provided interim compliance milestones for Cal-Am. (See Order WR 2016-016, p. 19.) Now, the Petitioners have suggested reasonable parallel milestones for Cal-Am to avoid missed MPWSP milestones for the final three years of the extended period to achieve full CDO compliance and to meet the new CDO deadline. The Petition is offered as a viable parallel path for compliance with the CDO, not for purposes of interfering with or influencing the CPUC's decisionmaking processes or procedures. In MCWD's view, this viable parallel path, should be explored by the Board, and it would be beneficial to Cal-Am and the Petitioners alike, as well as for Carmel River habitat and species, including steelhead.

FRIEDMAN /
 & / SPRINGWATER LLP

Ms. Eileen Sobeck

June 29, 2018

Page 5

Sincerely,



Mark Fogelman

cc (via U.S. Mail):

Felicia Marcus,

Chair of the Board

Steven Moore, Vice Chair of the Board

Tam M. Doduc, Board Member

Dorene D'Adamo, Board Member

E. Joaquin Esquivel, Board Member

Michael A.M. Lauffer,

Board Chief Counsel

Steven Westhoff, Board Counsel

Eric Oppenheimer, Chief Deputy Director

Erik Ekdahl, Deputy Director

Robert Donlan

Richard Svindland

Sarah Leeper

Kathryn Horning

Ian Crooks

David Stivers

Jonas Minton

Roger B. Moore

Bill Kampe

Russell McGlothlin

Dave Stoldt

David Laredo

Paul Sciuto

James McTarnaghan

John Farrow

Laurens Silver

Juli Hoffman

Michael Warburton

George T. Riley

Keith Van Der Maaten