

ITEM 8



David C. Laredo
Frances M. Farina
Michael D. Laredo

Paul R. De Lay
(1919 – 2018)

Pacific Grove Office:
606 Forest Avenue
Pacific Grove, CA 93950
Telephone: (831) 646-1502
Facsimile: (831) 646-0377

February 24, 2025

TO: Chair Riley, Members of the Board and General Manager Stoldt
FROM: David C. Laredo, Counsel
RE: General Report of Pending Litigation effective February 24, 2025

This memo presents a public summary of litigation matters that are deemed to be open and active. This is a recurring memo; the newly updated data is shown in **highlighted text**.

1 – Monterey Peninsula Taxpayers Association (MPTA) cases:

Cases brought by MPTA are part of a series of six (6) separate lawsuits. These six cases collectively challenge various aspects of the District's collection of the Water Supply Charge.

1.a MPTA I – MPTA v. MPWMD; M123512

The initial challenge brought by MPTA regarding District collection of the Water Supply Charge was resolved by order of Superior Court Judge Thomas Wills in favor of the District, and against the challenge brought by MPTA.

**1.b MPTA II – MPTA v. MPWMD; Monterey County Superior Court 21CV003066
6th Dist. Court of Appeal H0-51128**

1.c MPTA III – MPTA v. MPWMD; Monterey County Superior Court 22CV002113

1.d MPTA IV - MPTA v. MPWMD; Monterey County Superior Court 23CV002453

1.e MPTA V - MPTA v. MPWMD; Monterey County Superior Court 24CV002642

1.f MPTA VI - MPTA v. MPWMD; Monterey County Superior Court 24CV003408

Five separate challenges - noted above – are pending by MPTA against District collection of the Water Supply Charge. The second challenge, MPTA II, was resolved by Superior Court Judge Panetta against the District and in favor of MPTA. The Sixth District Court of Appeal affirmed the trial decision, and the matter has been remanded to the trial court for further action.

District Litigation counsel, Michael Colantuono and Matthew Slentz have led negotiation efforts under direction of General Manager Stoldt and with support of Counsel Dave Laredo. MPTA is represented in these discussions by Eric Benik and Prescott Littlefield.

The parties stipulated to resolve Petitioners' claims through a refund process and payment of attorney's fees incurred by MPTA. The court continued Case Management for the open cases pending implementation of the settlement.

2 – MPWMD v. Cal-Am; 23CV004102

This pending lawsuit embodies District efforts to fulfill the electoral mandate of Measure J to acquire ownership and operation of Cal-Am's Monterey Division water supply facilities. Cal-Am filed its Answer in this case on Dec. 16, 2024. Judge Vanessa Vallarta is the presiding judge for this case.

The Case Management Conference set for March 4, 2025 is likely to be continued to late May or early June as a later date allows the Court and parties to know whether the CA Supreme Court will review the January 15, 2025, 4th Appellate District published opinion in *Town of Apple Valley v. Apple Valley Ranchos Water* (Case No. E078348). That case reviews the Town of Apple Valley's effort to acquire by eminent domain a private water utility system. The Apple Valley case applied a favorable standard of review that may govern MPWMD efforts. Two published appellate decisions are now in direct conflict with one another on this issue. Parties must file for California Supreme Court no later than 2/24/2025, and the Court must then determine within 60 days whether it will accept the Apple Valley case for review. If the Supreme Court takes the matter, it is expected a final ruling will not be published for another 18 months.

The next steps in the District's Measure J effort are likely to see Cal-Am request an early decision from the Superior Court regarding LAFCO issues. This review may take the form of a Motion for Summary Judgment by Cal-Am, and perhaps cross motions for Summary Adjudication. It is likely that Cal-Am will file its Motion for Summary Judgment in March or April; a hearing on that motion would likely be set in the July/August/September timeframe (depending on the Court's schedule).

3 – MPWMD v. Local Agency Formation Commission (LAFCO); Cal-Am; 22CV000925 6th Dist. Court of Appeal H051849

The District brought this lawsuit to challenge LAFCO's conduct and administrative decisions regarding exercise of District powers to acquire Cal-Am water system facilities in accord with the voter mandate in Measure J. On December 7, 2023 Judge Thomas Wills ruled in favor of the District, and against LAFCO. The matter is now on appeal before the Sixth District Court of Appeal.

Cal-Am and LAFCO jointly requested extensions of time to file opening briefs by 03/20/2025.

4 – City of Marina; MPWMD, et al, v. California Coastal Commission (CCC); Cal-Am; 22CV004063

This pending lawsuit incorporates multiple actions by Petitioners City of Marina, the Marina Coast Water District (MCWD), the MCWD Groundwater Sustainability Agency and MPWMD that collectively challenge CCC issuance of a Coastal Development Permit to Cal-Am to grant conditioned approval of Cal-Am's proposed Desalination Project. Cal-Am is a direct party as a real party in interest to this proceeding.

After two full days of trial on the merits, (December 9, 2024 & January 6, 2025) Judge Wills took the matter under submission.

5 – Matters Pending before the California Public Utilities Commission (CPUC) Actions pertaining to the Cal-Am Water System

The following actions are separate pending proceedings in which MPWMD is involved due to their impact on the Monterey area or upon the Cal-Am water system.

5.a A.21-11-024 Cal-Am Amended Water Purchase Agreement

This action deals with Cal-Am’s request to purchase water from the Pure Water Replenishment Project and its expansion.

Earlier phases of this case dealt primarily with Cal-Am’s request that the CPUC authorize the Company to enter into the Amended and Restated Water Purchase Agreement for Pure Water Expansion. The most recent phase has addressed the need to update water supply and water demand calculations related to the Cal-Am system.

Phase 2 briefs have been filed by all parties. It is not clear when a Proposed Decision will be issued by the assigned ALJ or when the matter may be submitted for action by the full Commission. An Order Extending Statutory Deadline to 12/31/2024 was published 7/16/2024.

On December 17, 2024 the CPUC assigned Administrative Law Judge (ALJ) Jack Chang assigned to work with ALJ Robert Haga as co-ALJ.

In response to an email inquiry by Cal-Am’s counsel as to the status of this proceeding, ALJ Jack Chang responded on February 11, 2025, to the effect: “Proposed decisions on outstanding issues in this proceeding are targeted for issuance in spring 2025.”

5.b A.22-07-001 Cal-Am 2022 General Rate Case (GRC)

This action deals with Cal-Am triennial request that the CPUC approve both rates and charges, and changes to the Cal-Am operating system for a three-year rate cycle. Although the Commission had previously ordered an extension to the Statutory Deadline in this matter to March 30, 2025, this deadline has since been extended to June 30, 2025.

Cal-Am filed its General Rate Case (GRC) application on July 1, 2022, seeking statewide revenue recovery¹ for a three-year period (2024, 2025 and 2026). MPWMD participated in the proceeding with full party status. On August 27, 2024, the Administrative Law Judge (ALJ) Jacob Rambo issued a Proposed Decision (PD). Once the PD was released parties supporting Cal-Am began lobbying the Commissioners via many ex parte meetings and a vigorous letter-writing campaign. MPWMD set a single ex parte meeting with Commissioners Karen Douglas and Darcie Houck. Two revisions were made to the PD before the matter was voted on at the Commission’s December 5, 2024 meeting.

I. Background

¹ California-American Water Company (Cal-Am) has three divisions within California. They include Northern, Central and Southern Divisions and the Monterey Wastewater District. Monterey Main is part of the Central Division.

GRCs are massive filings. Cal-Am alone filed 40 exhibits and sponsored 25 witnesses; other parties included the Public Advocates Office (Cal Advocates), MPWMD, Public Water Now, City of Thousand Oaks, California Water Efficiency Partnership (Cal WEP), California Water Association (CWA), and the National Association of Water Companies (NAWC).

A. Settlement between Cal-Am and Cal Advocates

A Partial Settlement² was reached on November 17, 2023 between Cal-Am and Cal Advocates. MPWMD supported many of the revenue expenses but objected to several. These included a ten percent (10%) reduction in conservation funding, various statewide subsidies, and certain plant issues such as the delay with the New Carmel Valley Well and elimination of the Advanced Metering Infrastructure (AMI) leak detection project. The settlement did secure substantial reduction of \$25.5 million in Cal-Am's original statewide revenue increase request.

The Settlement estimates Central Division Operating Revenues for 2022 of \$94,653,007 will rise to \$100,720,049 for 2024, \$103,959,979 for 2025 and \$107,076,900 for 2026. Cal-Am will earn a 7.68% rate of return on a current Central Division rate base of \$290,946,200. This will rise to \$319,431,400 by 2026.³

II. The Decision

A. Water Revenue Adjustment Mechanism Issue

A significant portion of the proceeding was spent on whether a “decoupling mechanism” known as a Water Revenue Adjustment Mechanism (WRAM) should be continued or if an alternate should be authorized. Cal-Am's sought WRAM to recover all authorized revenue it alleged to have “lost” due to conservation. Decision 24-12-025 denies Cal-Am's request and authorizes a version that originated in Monterey in 1996⁴. Cal-Am asked to retain an Annual Consumption Adjustment Mechanism (ACAM) but to increase it twice each year. The PD allows the ACAM but restricts it to only once a year.

B. Statewide Subsidies

MPWMD continued to argue against statewide subsidies in the form of customer assistance programs, spreading acquisition costs, and failure to recognize the disparity in the unit cost of water to meet basic human needs.

C. Conservation Budget

Cal-Am proposed a 10.9% reduction in the conservation budget for the Central Division to \$1,566,318. While MPWMD was unsuccessful in its opposition to this reduction, the ALJ did require that all approved conservation funding must be spent in the Monterey Service Area.

² A Partial Settlement does not resolve all issues although it can resolve many issues. In the current proceeding, the settlement resolved all revenue requirement issues and many of the special requests. The ALJ accepted the settlement as presented, without any modifications.

³ It should be noted that any GRC increases authorized by the Commission do not reflect the true rate increase. Surcharges as well as capital projects approved in separate filings add to the cost of water.

⁴ To avoid confusion going forward, a new name for the Monterey WRAM or M-WRAM is the Conservation Adjustments for Rate Tier Designs (CART Designs).

D. Monterey Plant Issues

The settlement agrees to capital projects and investments to provide safe, reliable, high-quality service to customers and continue to meet regulatory requirements for the Central Division of \$71,701,027 for the years 2023 – 2025. MPWMD supported several plant expenditures in the settlement, including \$3.8 million for the Monterey Well Rehabilitation Program, \$3 million for the Well Installation and Replacement Program for the Carmel Valley Well field and the Seaside Basin wells, and \$2.4 million for Los Padres Dam Projects. MPWMD also successfully argued against Cal-Am’s proposed “Water Loss Performance Standards” cost exceeding \$943,000 as a duplicative and unnecessary expenditure.

E. Transmission and Distribution Consolidation Denied

Cal-Am proposed to consolidate all water transmission and distribution net plant assets across all tariff areas into one central pool to be allocated back to each tariff area based on the number of customers in that area. MPWMD and Cal Advocates successfully argued against this.

F. Other Issues

The Decision agrees with MPWMD’s position on other issues such as Cal-Am’s request for earthquake insurance (an unreasonable expense costing \$3.3 million annually that would pay up to \$10 million after a \$25 million deductible), and a chemical cost balancing account (a routine expense already forecast).

III. **Conclusion**

The GRC affords MPWMD an opportunity to obtain information that Cal-Am does not voluntarily provide and to present independent arguments that reflect Monterey customer concerns. MPWMD is also able to work with Cal Advocates on many issues that often result in better outcomes for Cal-Am’s Monterey customers.

Cal-Am will file its 2025 GRC application on July 1, 2025, when the process begins again.

At the Commission’s December 19, 2024, the statutory deadline in A.21-11-024 (PVMX), was further extended to June 30, 2025.

5.c R.22-04-003 CPUC Acquisition Rulemaking

This action deals with CPUC Rulemaking that impacts statewide public utility systems with particular impact on the Cal-Am system. The scope of the proceeding focuses on proposed rules to provide a framework for Public Water System Investment and Consolidation. The effect of these rules may promote or discourage transfer of local costs which would impose subsidies of local costs to non-local systems. The scope of these regulations may affect purchase prices for distressed assets and impose subsidies on local ratepayers.

Workshop Issues are listed below:

Workshop #1: Options for Inadequately Operated and Maintained Systems.

Workshop #2: How to set fair market value of a water utility acquisitions? What appraisal process should apply to utility acquisitions? Should this include overall system value? How should potential liabilities and deferred maintenance be considered? Should water rights be valued and considered?

Workshop #3: How to examine ratepayer impacts regarding water utility acquisitions? What tests and criteria; what information to evaluate ratepayer impacts? Should rate impacts from previous acquisitions be assessed for a proposed acquisition? Should the Commission consider expanding the gain on sale rules? What cost-sharing mechanisms between ratepayers and shareholders should be considered for acquisitions?

Workshop #4: How should the Commission consider grant funding in water system acquisitions, and should investor-owned utilities be required to take grant funding if available? Should this process be coordinated with the State Water Resources Control Board (SWRCB)? Commission reporting requirements for proposed acquisitions; Framework to timely resolve acquisitions issues (e.g., proceedings or advice letters); how to evaluate acquisitions of mutual and municipal water systems.

It is not clear when a Proposed Decision will be issued by the assigned ALJ or when the matter may be submitted for consideration by the full Commission. The Statutory Deadline, extended by the Commission on Sept 12, 2024 to March 30, 2025, was further extended at Commission's December 19, 2024 meeting to September 30, 2025.

In addition to pending matters of active litigation referenced above, two matters of threatened litigation exist. as referenced below.

6 – *Cal-Am v. MPWMD and Monterey One Water (action threatened by not yet filed)*

By letter, Cal-Am threatened to file a breach of contract action relating to the Aquifer Storage & Recovery (ASR) Agreement among the parties. The dispute relates to the status of ASR Well.

The parties continue to cooperatively resolve their concerns and have entered into seven consecutive agreements to toll (extend) filing deadlines and facilitate their ability to reach a mutually acceptable settlement.

Cal-Am's most recent comment states it "has been working diligently to address both extraction and injection concerns relating to ASR-04. Due to a variety of technical and several DDW-related procedural issues we now believe that this will not be fully resolved for several months and perhaps up to a year."

7 – *MPWMD v. SWRCB. Case No. 1-10-CV-163328* (Santa Clara County Superior Court) 10/27/2009.

On July 24, 2024, Sierra Club attorney, Larry Silver, advised by email they will reactivate a claim for attorney's fees in this lawsuit. This Report revises and amends prior characterizations of the attorney's claim submitted by Mr. Silver, based clarifications he sent on an October email.

This case (1-10-CV-163328) asserted four causes of action against the SWRCB related to the Cease & Desist Order. The case was originally filed in Monterey County but was transferred from Monterey to

Santa Clara County. A stay of the SWRCB CDO was issued on November 6, 2009 and remained in effect only until November 4, 2010. The matter was appealed to the Sixth District Court of Appeal and in 2014 was remanded to the Superior Court. Sierra Club filed a Motion for Attorneys' Fees in 2012, and the Appellate Court held in 2014 that the Sierra Club was not precluded from filing a Motion for Fees once there was a final judgement in the case.

The case, although dormant, remains pending in the Santa Clara County Superior Court and has not been dismissed. The Sierra Club is an intervenor in this case.

The 2012 Sierra Club Attorney's Fees demand sought \$256,934 for time spent during the 2008 administrative hearing 2008 (efforts related to the 2009 CDO), for time opposing stay of the CDO, and other efforts associated with this matter. The Sierra Club alleged time to be paid by Cal-Am total 209.35 hours; time to be paid by MPWMD total 45.40 hours; and additional time to be shared by both Cal-Am and MPWMD total 167.5 hours. The District timely filed Opposition to the Sierra Club Motion for Attorneys' Fees.

The extent the Sierra Club may change or increase its 2012 demand is not known. Although our latest call with Sierra Club Counsel, Don Mooney, occurred on February 10, 2025, there have been no substantive developments to date.