

ITEM 14



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TO: Chair Riley, Members of the Board and General Manager Stoldt

FROM: David C. Laredo, Counsel

RE: General Report of Pending Litigation effective May 11, 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:

The series of separate cases filed by Monterey Peninsula Taxpayers Association (MPTA) over a period of years that challenged aspects of the District's Water Supply Charge are in the final steps of settlement. Notice of Entry of Dismissal for three of the cases was entered by the Parties on May 2, 2025. The final settlement of two remaining cases requires settlement approval by the Court. Once the court's final approves the class action, it will enter judgment on the grounds as have been negotiated.

Pursuant to the Settlement, the District will create a Settlement Fund of \$3,353,245 from the supply charge proceeds; this fund shall be used to pay attorney's fees, refund administrative costs, and distribute the remainder to rate payers. As to refund checks that have not been cashed within one year after issuance, unspent monies shall be paid to the Cal-Am Hardship Benefit Program controlled by the United Way and thereon be used to reduce burdens on Cal-Am ratepayers facing impending water-shut offs due to non-payment. No remaining portion of net Settlement Funds shall revert to the District.

The Settlement also provides the District will forbear, until June 30, 2026, from imposing, levying or collecting new Prop 218 fees or charges that did not exist as for February 2025.

2 – MPWMD v. Cal-Am; 23CV004102

This 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 by eminent domain. Cal-Am filed its Answer to the case on Dec. 16, 2024 and contends the District lacks the power to acquire the water system, and the District lacks authority to operate a retail potable water system. Cal-Am also objects on the grounds the condemnation effort fails to satisfy public interest and necessity requirements set forth by law. The District disputes Cal-Am's contentions and objections.

Judge Ian Rivamonte, is now appointed to Department 13A; it appears he will be assigned to this case in place of Judge Vanessa Vallarta.

The parties have agreed the case should be bifurcated with the “right to take” phase adjudicated first by bench trial (decided solely by the Judge) and the “just compensation” phase (decided by a jury) to trail and be necessary after the District prevails in the right to take phase).

Town of Apple Valley v. Apple Valley Ranchos Water, Case No. S289391

In April, 2025, the CA Supreme Court granted a Petition for Review in a case regarding the appropriate standard for a court to review a public entity’s right to take public utility property (*Town of Apple Valley v. Apple Valley Ranchos Water*, Case No. S289391). Specifically, the Supreme Court agreed to resolve the following question:

When a public entity files an eminent domain action seeking to take privately held public utility property, and the owner objects to the right to take, what is the proper standard of judicial review for the trial court to apply to determine whether the property owner has rebutted the presumptions under Code of Civil Procedure sections 1245.250, subdivision (b) and 1240.650, subdivision (c)?

In *MPWMD v. Cal-Am* (23CV004102) Cal-Am has objected to the District’s right to take Cal-Am’s water system. Therefore, the Supreme Court’s *Apple Valley* decision will directly impact Court review in the right to take phase of this trial.

Cal-Am suggests it may need to file a motion for an order staying this action to allow the Supreme Court to clarify applicable law for this case.

Cal-Am also plans to file a Motion for Summary Judgment seeking judgment on the grounds that the District is not authorized to acquire Cal-Am’s property because the District is not legally authorized to provide retail potable water service and has not obtained authorization from the Monterey County Local Agency Formation Commission (“LAFCO”) to provide retail potable water service.

It is likely Cal-Am will file its Motion in May; a hearing on that motion would likely be set in the August/September/October 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.

The date by which Appellants' Opening briefs will be due has been extended by the Court to May 23, 2025.

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

This lawsuit includes 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.

Following a trial on the merits held in December, 2024 and January, 2025, Judge Wills issued a 118-page decision to deny the Petition, ruling in favor of the CCC and Cal-Am. The Court found the CCC did not exceed its jurisdiction or abuse its discretion. The opinion concludes the CCC action was supported by substantial evidence.

Petitioners filed 48 objections to the decision and sought modification. The court allowed Respondents Coastal Commission and Cal-Am to respond to those objections. If modification does not reverse the Court's holding, an appeal may thereafter be taken by one or more of the parties.

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.

A Proposed Decision (PD) as to Phase 2 was circulated among all parties on Friday, May 9. Counsel is in the process of reviewing the PD and will provide a separate, confidential report to the Board as to its contents and next steps in this case.

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.

Cal-Am filed an Application for Rehearing of Decision 24-12-025 on December 12, 2024, challenging the Commission's denial of several special requests. MPWMD and Cal Advocates submitted responses opposing Cal-Am while the California Water Association's response supported Cal-Am's position. The matter is currently pending.

I. Background

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

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.

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.

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.

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

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).

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 (PWMX), 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 May 6, 2025, the Sierra Club and Carmel River Steelhead Association (CRSA) filed Notice of a Motion to Dismiss MPWMD v SWRCB (Case No. 2010-10-CV163328 for Want of Prosecution. This matter was filed in 2010 to challenge the Cease & Desist Order (CDO) issued by the SWRCB. This case 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.

The case was postponed by the parties due to the pendency of proceedings before the CPUC related to Cal-Am's "Monterey Peninsula Water Supply Project" but a stipulated tolling agreement has since expired. The Motion to Dismiss is based on the Code of Civil Procedure Rule that allows dismissal for any case that has not been set for trial within 3 years of filing; this case was filed in 2009. Although a tolling agreement extended that deadline, the tolling date has also passed without renewal.

A decision to oppose the Motion - or not - is highly time-limited. CA Rules of Court requires written opposition to be filed within fifteen days after service of the Notice of Motion. In this instance MPWMD's deadline to file opposition papers expires on May 20, 2025.

This case was filed to contest the SWRCB CDO. Dismissal of this case would not prohibit of a later lawsuit that might allege the SWRCB wrongfully failed to lift or modify the CDO due to changed circumstances. An alternate claim could be based on an allegation that the SWRCB has failed to set equitable regulations for the Monterey Peninsula, or has treated this area in a different manner from other areas that are limited by similar water supply issues.

A hearing on the Motion to Dismiss is set in Department 7 of the Santa Clara County Superior Court on November 13, 2025 at 1:30 p.m.