

Joel Pablo

From: Winston.Stromberg@lw.com
Sent: Monday, October 17, 2022 2:43 PM
To: comments; Karen Paull; District 5; Alvin Edwards; George Riley; Safwat Malek; Amy Anderson; Clyde Roberson
Cc: ian.crooks@amwater.com; kathryn.horning@amwater.com; DJ.Moore@lw.com
Subject: MPWMD Oct. 17, 2022 Special and Regular Meeting Agenda Item 8: letter on behalf of California American Water
Attachments: MPWMD Agenda Item 8 - 10-17-2022 CalAm letter to MPWMD Board.pdf

Dear Members of the Board:

Please see the attached correspondence on behalf of California American Water regarding Agenda Item 8 on today's agenda.

Very truly yours,

Winston P. Stromberg

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October 17, 2022

VIA EMAIL

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, California 93940

Re: MPWMD Board of Directors October 17, 2022 Special and Regular Meeting,
Item 8: Resolution No. 2022-31

Dear Chair Paull and Members of the Board:

On behalf of California American Water Company (“CalAm”), this letter addresses the MPWMD Board’s consideration of proposed Resolution No. 2022-31 (the “Resolution”), which purports to clarify MPWMD’s requirements for CalAm to obtain an amendment to its water distribution system permit for the Monterey Peninsula Water Supply Project (“MPWSP”). The Resolution also would direct MPWMD’s General Manager to notify other regulators with permit authority over the MPWSP that CalAm has not yet applied for or received an amendment to its water distribution system permit. The Resolution misconstrues and overstates MPWMD’s jurisdiction by asserting that an amendment to CalAm’s water distribution permit is necessary before CalAm may construct the MPWSP. Because MPWMD does not have pre-construction jurisdiction and for the reasons set forth below, the Board should reject the Resolution as currently drafted.

First, the Resolution appears to exceed MPWMD’s jurisdiction. The majority of the MPWSP’s infrastructure, including its proposed slant intake wells in the City of Marina, the desalination plant in the unincorporated County, and the pipeline infrastructure associated with those project components, would be constructed *outside* of MPWMD’s boundaries and therefore outside of its jurisdiction. MPWMD Rule 11 defines a “Water Distribution System” as “all works *within the District* used for the collection, storage, transmission or distribution of water from the Source of Supply to the Connection of a system providing water service to any Connection including all Water-Gathering Facilities and Water-Measuring Devices.” (Emphasis added.) Therefore, consistent with this definition, MPWMD does not have permitting authority over construction of any component of the MPWSP that would be built outside of MPWMD’s boundaries. As such, Section 1 of the proposed Resolution only can be read to apply to portions of the MPWSP within MPWMD’s boundaries.

Second, Section 4 of the Resolution is unnecessary. Since the CPUC approved the MPWSP and certified its Final Environmental Impact Report and Final Environmental Impact Statement (“EIR/EIS”) in 2018, CalAm has been working to seek and obtain approvals from

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various governmental agencies for different components of the MPWSP. Currently, CalAm's coastal development permit application (and appeal of Marina's denial of a local coastal development permit) is pending before the Coastal Commission, with a hearing scheduled for November 17, 2022. The MPWSP EIR/EIS identifies more than two dozen necessary permits and approvals for the MPWSP, including that CalAm obtain MPWMD's approval of an amendment to its water distribution system permit. (See EIR/EIS, Table 3-8.) Accordingly, other responsible agencies, such the Coastal Commission and State Lands Commission, are well aware that MPWMD has permitting authority over certain aspects of the MPWSP. Passing a resolution notifying other agencies of CalAm's permitting status is neither necessary nor germane to those agencies' separate permitting authority.

Third, CalAm is concerned that the Resolution appears to misconstrue MPWMD's limited authority over the construction of components of the MPWSP located within MPWMD's boundaries. Section 1 of the Resolution states that CalAm must obtain the amended permit "prior to initiating construction of facilities" pursuant to District Rules 21.C. and 22.E. This statement is not supported by MPWMD's Rules applicable to modifications to water distribution system permits. Specifically, Rule 21.C. and Rule 22.E. do not state that applications for water distribution system amendments must be processed prior to initiation of construction. Nor does any applicable MPWMD Ordinance. As to *initial* permits for a water distribution system, Rule 20.A. states that "[b]efore any Person ***Creates or Establishes*** a Water Distribution System . . ., such Person shall either obtain a written Confirmation of Exemption from the Water Distribution System Permit requirements or a Water Distribution System Permit from the [MPWMD]." (Emphasis added.) Rule 11 defines "Create a Water Distribution System" and "Establish" to mean "the construction and operation of a Water Distribution System." Rule 20.A. and Rule 22.E. also state that before a water distribution system can be modified, expanded, or its supply sources changed, MPWMD must approve an amendment to the existing water distribution system permit. However, neither of these Rules use the terms "Create a Water Distribution System" or "Establish" in connection with modifications to an existing system with an existing permit. While approval of an amendment to a water distribution permit may be required prior to MPWSP operation, the Rules cannot be read so broadly as to require such approval for construction alone. Thus, the Resolution appears to be an attempt to take a position that exceeds MPWMD's authority for considering amendments to existing water distribution permits.¹

MPWMD's proposed Resolution is unnecessary, exceeds MPWMD's authority, and should not be adopted as drafted. Thank you for your consideration of these comments.

Very truly yours,



Winston P. Stromberg
of LATHAM & WATKINS LLP

¹ This letter should not be read as constituting all of CalAm's positions with respect to MPWMD's jurisdiction over the components of the MPWSP, and, as such, CalAm reserves the right to make additional or different arguments in the future. For instance, CalAm notes that the proposed Resolution *may* interfere with the CPUC's constitutional authority to regulate public utilities' production, storage, treatment, transmission and distribution of water.

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cc: Ian Crooks, California American Water Company
Kathryn Horning, California American Water Company
DJ Moore, Latham & Watkins LLP

Distributed to the MPWMD Board of Director's, General Manager and
District Counsel on Monday, October 17, 2022