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Sent: Wednesday, July 13, 2016 11:12 AM
To: Quint, Matthew@Waterboards
Cc: Michael Warburton
Subject: WR 2009-0060 (Carmel River CDO)w

PUBLIC TRUST ALLIANCE

A Project of The Resource Renewal Institute

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July 13, 2016 Comment Letter RE: Preliminary Staff Recommendation to modify CDO WR 2009-0060 (ie. Five more years of illegal diversions from the Carmel River and attempted implementation of an unreasonable and speculative technology)

Dear Public Trustees for California's Water Resources: Please do your public duty and help California have a reasonable public conversation regarding plans for implementing a legal and ecologically sustainable public water supply for the Monterey Peninsula. Our view is that the Staff Recommendation dated June 16, 2016 is unresponsive to current physical and legal circumstances and serves mostly to demonstrate the disproportional influence of private economic ambitions over public resources. We see the present situation as an opportunity to be reasonable and develop a sustainable long term water supply system.

Thank you for this opportunity for comment on a matter of grave public concern. Your upcoming decision will play a role in shaping the future of many communities on the Monterey Peninsula as living conditions there continue to change. More than two decades ago, and only after extensive public hearings, you found that a regulated public utility was illegally diverting water for sale to public ratepayers and simultaneously causing irreparable harm to State-supervised public trust resources. Your initial Cease and Desist Order, WR 95-10 mandated "diligent" progress toward the development of an alternative public water supply for those then depending on illegal diversions from the Carmel River. Yet years slipped by with a great deal of talk and no construction of a more appropriate public water supply. While water was technically inexpensive to distribute, the Monterey service area became one of the most expensive public water systems in the nation for ratepayers.

More than a decade after the major policy direction was ordered, you announced an intention of attaching an actual time table for enforcement. The utility demanded another set of public hearings and it immediately became clear

that the California American Water Company would argue that "diligence" meant merely considering a limited set of alternatives that they and various commercial partners and local authorities defined as feasible. Investigations of solutions to the water supply challenge on the Peninsula remained bounded by the players' perceptions of "reality." Mutually contradictory "Statements of Facts" continued to adorn reams of legal documents filed by "experts" as elected officials and regulatory agencies responded to diverse expressions of "reasonable progress."

In January of 2008, the Public Trust Alliance, along with some of the same public interest representatives who had participated in the Carmel River hearings a decade earlier, contributed renewed legal arguments and protested the utility's unethical and unprofessional reliance on then-recent authority developed in response to very different circumstances. Another Cease and Desist Order, WR 2009-0060, including a five-year allowance for the development of a reasonable alternative water supply was issued after extensive public hearings. The California Legislature had previously delegated the California Public Utilities Commission to supervise the public decision making process to design the new water supply system and the Courts again reaffirmed the plan.

Five years later, the same utility and local authorities now appear before you requesting exactly the same concession as before, but this time, the pace of changing circumstances on multiple dimensions has accelerated to the point where it is no longer publicly credible to harken back to any romantic vision of how "the world" is supposed to behave. This time, the public and all organizations involved have the ability to plainly perceive that the "official" decision making process does NOT appear "reasonably related" to the changed physical and legal circumstances facing the residents of Monterey County.

Climate IS changing: the energy associated with particular weather events has increased; precipitation and run-off timing and quantities have forever changed; sea level is rising and the relationships between atmospheric, surface and underground flows of water are far better understood now than they ever have been in the past. Absolute ownership not only of actual groundwater flows but also of claimed rights in "contractual" speculations can no longer be credibly entertained. "California Law" has changed on the books as well as on the ground.

In the years leading up to the final CPUC Decision (D. 10-12-016) in 2010, the Public Trust Alliance, sharing the objective of actually implementing a reasonable new water supply and stopping illegal and harmful diversion of public water, joined others in determining that a publicly owned and operated desalination plant drawing seawater would be the most practical alternative and supported the public process to move forward. But at that time, "Superstorm Sandy" had not yet reached shore to forever change the economics of the construction of public infrastructure in coastal areas. Assumptions that had always been "reasonable" in the past were not yet even questionable. The same held in the social and legal environments.

But before construction could start, familiar divisions surfaced to scuttle the plans. Another very tightly "bounded" proposal was launched before the CPUC and the entire notion of "Changed Circumstances" was actively resisted even when formally suggested. A singular technological vision of a "solution" persisted through the "digestion" of the implications of Superstorm Sandy, the recent five year drought, new groundwater legislation, and profound changes in "ground rules" governing several distinct areas of public life in our nation.

California Law requires the consideration of “reasonable alternatives” before public resources are devoted to particular projects, and the California Public Utilities Commission can only pass “prudent and reasonable” costs to ratepayers. When the entire capacity of the proposed desalination plant is less than 2% of the current public use of water from the nearby Salinas River, why are Monterey County ratepayers being required to pay higher rates to support more expensive infrastructure in an increasingly vulnerable coastal zone? Why will residents have to face the probable costs of replacing BOTH their transportation AND water infrastructure after an increasingly probable extreme weather event? Long-evaluated public water works at the top of the Salinas Watershed could reliably add more than enough “new” water to the system to satisfy growing demand at far lower cost than desalination. At a time that starting up private desalination facilities in San Diego is causing ever more controversy, why even begin the process in Monterey County where there are already identified “reasonable alternatives?”

A special exemption from Monterey law requiring public ownership and operation of any desalination facility has to be granted to the California-American Water Company to carry out its vision for this project. The CPUC has the theoretical power to order this, but it has not yet done so, nor has it defined a “reasonable” basis for doing so in the future. Right now, this Board is being asked to extend a free pass for a privately owned utility to continue illegal injury to public assets for five additional years while it unreasonably increases its rate base. We see no over-riding public interest in making this finding and we request that you not do so.

Respectfully submitted,

Michael Warburton

Executive Director

Public Trust Alliance