

**DMFPO: Article on the Water Issue by Don Eastman  
December 21, 2009**

Many events have occurred in the Monterey Peninsula water crisis since the State Water Board issued the Cease and Desist Order on October 20, 2009, and we wrote a report for the DMFPO web-site a few days thereafter. In fact, there have been so many events that it is impossible to detail them in a short article. Therefore, we will briefly outline highlights pertaining first to the “long range solution” of a regional desalination, reverse osmosis, water treatment plant to be built on the site of the county land fill north of Marina; and secondly to events surrounding the lawsuit that was filed against the State Water Board by the Monterey Peninsula Water Management District (MPWMD), and joined by California American Water (Cal-Am).

By way of background, the California State Legislature passed a resolution a few years ago urging the California Public Utilities Commission (PUC) to find a solution to the water crisis on the Monterey Peninsula. In response Dr. Steve Kasower, a specialist in water issues, was hired through the auspices of the PUC to study the problem, take action and make proposals. With the help of Dr. Kasower the Water for Monterey County Coalition was formed and conducted meetings for a period exceeding two years. Many if not most of the major constituents in the coastal areas of northern Monterey County participated in the meetings. DMFPO Board President Al Budris attended many of the meetings, and board members Averil Nero and Dick Cassam attended later meetings. While there have been several suggestions for a “long term solution” including a desalinization plant at the power plant at Moss Landing, the solution that appears to have the most appeal is the regional desalination plant at the land fill north of Marina that will be built to supply water to both the customers of Cal-Am, and the customers of the Marina Coast Water District.

At the meeting in Sacramento on October 20 2009 before the California State Water Resources Control Board (SWRCB), a representative of the PUC spoke as did Dr. Steve Kasower. It was made clear to the members of the SWRCB that the “long range solution” of the regional plant was well on its way in the approval process, that the environmental impact report (EIR) was expected to be promptly released, and that the regional plant could be on line by 2012.

As promised the EIR was delivered and released by the PUC on October 30, 2009. The EIR considered all of the proposed plans. The regional desalinization water treatment plant at the land fill north of Marina was the project favored by the EIR. It must be understood that the PUC consists of five Commissioners appointed by the Governor and confirmed by the senate. The purpose of the PUC is to regulate public utilities in the State of California. There are many kinds of public utilities including those that deliver water to the communities in California. The custom of the PUC is to allocate certain types of utilities to a Commissioner, another type to another Commissioner and so on. The Commissioner with oversight of the water utilities is Commissioner John A. Bohn. The PUC works through Administrative Law Judges (ALJs). The ALJs conduct hearings, receive evidence and information and make recommendations to the Commissioner who is responsible for a certain type of utility. That Commissioner will work with the ALJs and

others on the appointed staff, and keep her or his colleague Commissioners informed. When final decisions need to be made, the entire Commission of five Commissioners will conduct open meetings, deliberate, vote and thereby make decisions. Therefore, while proposals such as the regional water treatment plant on the Monterey Peninsula are being processed through the bureaucratic procedures at PUC, nobody including members of the staff, the ALJs or the oversight Commissioner can say that a project is approved unless and until it is finally approved by a vote of the entire Commission.

Thus we begin to see the value of a person such as Dr. Steve Kasower who is an independent consultant, retained by the PUC but not a full time employee. As an experienced expert in the field, Dr. Kasower has much knowledge of the workings of the PUC and the things that can happen after PUC approval of a project such as the Monterey Regional water treatment plant. Dr. Kasower does not live in Monterey County and has no stake in the outcome other than doing his best to invigorate people to develop the best possible solution to the problem. Dr. Kasower has spoken twice at DMFPO semi-annual meetings, once in 2008 and again recently at the November 2009 meeting, and on both occasions Dr. Kasower has been optimistic about the chances of success for the regional plant.

The next event of importance in the PUC proceedings is an order issued by Administrative Law Judge Angela K. Minkin on November 5, 2009. After mentioning that she had consulted with Commissioner Bohn, Judge Minkin set an accelerated time table for proceeding in the hearing process. A main item was that Commissioner Bohn and ALJ Minkin have targeted May, 2010 for the full Public Utilities Commission to consider the issuance of a certificate of public convenience and necessity, and the selection of a project. Meantime, Judge Minkin ordered that the parties set schedule for settlement conferences amongst the parties and keep ALJ Minkin and Commissioner Bohn apprised of the schedule. Also in her order of November 5, 2009 Judge Minkin set a date in late-October/early-November for the release of the EIR, and she further set a target of December 17, 2007 for the entire Commission to consider it at their business meetings. Those two goals were accomplished. On December 18, 2009 the full Commission certified the EIR for use as an initial step in deciding whether a certificate of public convenience will be issued, and what project will be selected.

Therefore, events are moving apace at the PUC.

On another path, we must follow the ongoing course of the lawsuits that have been filed against the SWRCB by MPWMD and Cal Am. Those lawsuits have been filed in "equity" meaning that the moving parties are seeking extraordinary writs from the court to block the implementation of the CDO. The moving parties are seeking declaratory relief, and writs of mandate and prohibition. The lawsuits were filed by MPWMD and Cal-Am shortly after the CDO was issued. In their lawsuits MPWMD and Cal-Am asked for a "stay order" from the court to stay the implementation of the CDO until the issues could be litigated. In an interesting turn of events, lawyers for the State of California did not respond in a timely manner so, prior to November 6, 2009, Judge Kay Kingsley of the Monterey County Superior Court issued the stay order in the absence of resistance from counsel for the

SWRCB. A next item of interest was an early-November, 2009 request to the PUC by Cal-Am to impose a moratorium on new water hook-ups on the Monterey Peninsula. The PUC denied that request because a “stay order” to the CDO had been ordered by the court (thus, temporarily, rendering “moot” the impact of the CDO).

By the time of the DMFPO semi-annual meeting of November 15, 2009 we had learned that the Office of the California Attorney General (AG), on behalf of the State Water Board (SWRCB) had filed a motion in Monterey Superior Court asking that the stay order be dissolved. One basis for the AG’s motion was that representatives of the State of California had not been appropriately served on a timely basis with the original lawsuits by MPWMD and Cal-Am. The AG’s request for an early resolution of that issue was not forthcoming and the stay order has remained in effect for the past several weeks. We understand that a hearing before Judge Kingsley is on calendar for late-January, 2010 at which time both sides will have the chance to argue for and against the stay order. We have also learned that the AG has filed a motion for change of venue and asked that the trial be moved to Santa Clara County or to San Francisco County. The motion for change of venue will also be heard in Judge Kingsley’s courtroom in late-January, 2010.

Other subjects that Cal Am has discussed with the PUC and with MPWMD are the imposition of higher rates, and the possible imposition of high tier rationing on so called “big users” of water. Cal Am has received permission from the PUC to increase rates for high tier use by 36% but has thus far only raised the rates by 7%. Apparently, Cal-Am suggested that high tier rationing be imposed on “big water users”. However, the opinion at PUC and at MPWMD is that the increased rates for “big users” should be fully implemented before high tier rationing is considered.

In discussions with Craig Anthony, General Manager of Cal-Am on the Monterey Peninsula, it was learned that overall water use is down on the Monterey Peninsula. Perhaps the most important reason is the economy and the fact that many businesses, such as the businesses in the hospitality sector, are suffering from a shortage of business and not using as much water. Other factors might be the recent weather with rainstorms that have provided water for landscaping, and have lessened the desire to wash cars. As a result of less water usage, Cal-Am is thus far staying within the guidelines of the CDO for water usage during the period October 20, 2009 to October, 2011. The worrisome factor for citizens on the Monterey Peninsula will be the second and subsequent levels of reduction that have been ordered by SWRCB for October 2011 and subsequent years.

The most important single factor continues to be the “stay order” and the impact of the “stay order” on regulators at PUC and MPWMD. As long as the “stay order” is in effect, the regulators do not appear to be willing to inconvenience water customers on the Monterey Peninsula with moratoriums and water rationing. However, if the “stay order” is lifted by the court, then the efforts by Cal-Am to prepare for the significantly more onerous reductions ordered by SWRCB for October, 2011 and on an annual basis thereafter might gain more sympathy from the regulators at PUC and MPWMD.