



MEMORANDUM

from the office of
PLACER COUNTY COUNSEL
Extension 4044

TO : Board of Supervisors

FROM : Anthony J. La Bouff, County Counsel

DATE : May 24, 2011

RE : Authorization of Limited Exception to Water Source Restrictions in California-American Water Company Franchise During Water Shortage Emergency in the Western Water System of the Placer County Water Agency

ACTION REQUESTED:

Counsel brings forward a proposed resolution that would authorize a limited exception to the water source restrictions in the California-American ("Cal-Am") franchise agreement with the County. If adopted, this resolution would authorize Cal-Am to use ground water supplies but limit such use to the term of the PCWA water supply shortage.

BACKGROUND:

On May 5, 2011, the Board of Directors of the Placer County Water Agency ("PCWA") declared a water shortage emergency in its Western Water System area due to the collapse of a portion of the PG&E Bear River Canal. In a letter dated May 16, 2011, Cal-Am notified the County that PCWA has suspended delivery of treated surface water to Cal-Am during the water shortage emergency. (A copy of Cal-Am's letter is attached.) As a result, Cal-Am states that it is experiencing a shortfall in water supply to its West Placer County customers. While the City of Roseville is apparently providing for that shortfall, Cal-Am proposes to temporarily provide its customers with groundwater from its Antelope water system via its existing emergency intertie. Cal-Am has requested a resolution from this Board allowing the temporary use of groundwater until the PCWA water shortage emergency is abated.

The current franchise agreement was granted to Cal-Am's predecessor in interest, Citizens Utilities Company of CA, in 1994 and it prohibits the use of ground water resources within the franchise area. (See Section 486.3 of the attached copy of the franchise agreement.) The only exception to this ground water use restriction is for the Sabre City service area, which is served by an existing well. According to the Planning Department, the restriction was put into place to avoid potential long term groundwater

depletion in the Dry Creek-West Placer Community Plan area. Environmental Health confirms that the community plan area remains problematic for use of ground water due to poor soil conditions.

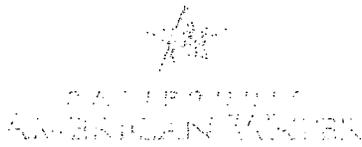
Cal-Am's proposal is to address a short-term emergency water supply problem and as such is not inconsistent with the intent of the water supply restriction (i.e. the concern was long-term depletion of groundwater resources). The attached proposed resolution has been drafted with narrow parameters to ensure that the ground water use would be strictly limited to the time period during which the PCWA water shortage emergency is in effect. The resolution would specifically require Cal-Am to cease use of groundwater and its emergency intertie with its Antelope system when PCWA's water shortage emergency condition is terminated.

ENVIRONMENTAL REVIEW:

Under the California Environmental Quality Act ("CEQA"), an action taken to mitigate an emergency is exempt from CEQA review (CEQA Guidelines section 15269(c)). The resolution proposes to mitigate an existing water shortage emergency and therefore falls within the cited exemption. If the Board adopts the resolution, a notice of exemption will be filed.

Attachments:

Cal-Am May 16, 2011 Letter
Franchise Agreement
Resolution



California American Water
4701 Beloit Drive
Sacramento, CA 95836
www.amwater.com

May 16, 2011

Mr. Thomas M Miller
Placer County Executive Officer
175 Fulweiler Avenue
Auburn, CA 95603

SUBJECT: Water Service to California American West Placer Service Area

VIA ELECTRONIC AND UNITED STATES MAIL

Dear Mr. Miller:

As you know, a landslide damaged the Bear River Canal near Colfax on April 19, 2011. This canal was a major part of the water supply system for the Placer County Water Agency (PCWA). As a result of the damage to the canal, PCWA has declared a water shortage emergency (Attachment 1). It is expected that the Bear River Canal will be out of service for the next four to six weeks.

PCWA is the wholesale agency that supplies California American Water with treated surface water to serve our customers (approximately 960 connections) in our West Placer water system. The water is usually supplied by PCWA through the City of Roseville via interconnections. As a result of the water shortage emergency, PCWA has suspended deliveries of water that supply California American Water's West Placer County customers. The City of Roseville is currently providing for that shortfall.

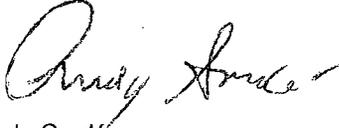
California American Water believes that the optimal solution to this emergency situation would be to temporarily provide our customers with water from our Antelope water system via our existing emergency intertie. Our West Placer system is contiguous with our Antelope system which is located in Sacramento County, just south of the Placer County line.

California American Water has discussed this solution with staff from PCWA, the City of Roseville, and the California Department of Public Health and all have expressed support. Unless we receive an objection from Placer County, we intend to begin supplying our customers with groundwater from the Antelope system on or about May 18, 2011. **Please let me know by 5 p.m. tomorrow, May 17, 2011, if Placer County objects to this plan.** Additionally, we would request the County provide an official resolution endorsing this temporary measure until the emergency has abated.

Please be assured that California American Water will resume supply of our West Placer customers with water from PCWA as soon as the necessary repairs to the Bear River Canal are complete and the water shortage emergency is rescinded. In the mean time our solution will temporarily reduce the demand on supplies needed by PCWA and the City of Roseville, and at the same time, will provide the reliable service our customers deserve.

California American Water has notified our customers of the water shortage emergency and we have requested their support in reducing water consumption by 25% until such time as the emergency has passed. We look forward to working with our customers and regional partners to meet the requested reductions in water use and to ensure a safe and reliable water supply during this emergency. Should you have questions or require additional information, please do not hesitate to call me at (916) 568-4259.

Sincerely,



Andy Soulé
General Manager, Northern District
California American Water

1 Attachment

Cc: Placer County Supervisor Jack Duran
Placer County Counsel Anthony La Bouffe
Derrick Whitehead, City of Roseville
Brian Martin, PCWA Director of Technical Services

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Before the Board of Supervisors County of Placer, State of California

In the matter of: AN ORDINANCE REPLACING
ARTICLE IV, SECTIONS 486.1 THROUGH
486.8 OF CHAPTER 22 OF THE COUNTY
CODE, RELATING TO CITIZENS UTILITIES
WATER COMPANY FRANCHISE

Resol. No:

Ord. No: 4609-B

First Reading: 9-20-94

The following ORDINANCE was duly passed by the Board of
Supervisors

of the County of Placer at a regular meeting held September 27, 1994

by the following vote on roll call:

Ayes: OZENICK, LICHAU, UHLER, BLOOMFIELD, FERREIRA

Noes: NONE

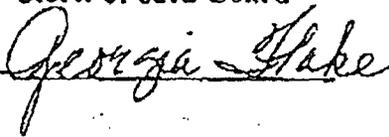
Absent: NONE

Signed and approved by me after its passage



Chairman, Board of Supervisor

Attest:
Clerk of said Board



FOR THE COUNTY OF PLACER, CALIFORNIA
ORIGINAL ON FILE IN THIS OFFICE AFTER
9:30:44
GEORGIA FLAKE
Clerk of the Board of Supervisors of the County of Placer, Calif.

THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF CALIFORNIA,
DOES HEREBY ORDAIN AS FOLLOWS:

Citizens Utilities Company of California, a California utility corporation ("Citizens") and the County of Placer ("County") desire to reaffirm and expand the existing franchise of Citizens within the County for the purposes of granting Citizens the right and privilege to operate water pipe lines, and a water distribution and transmission system within the County consistent with the terms of this franchise.

Article IV, Sections 486.1 through 486.8 of Chapter 22 of the Placer County Code, 1967 is hereby replaced in its entirety as shown on Exhibit A, attached hereto and by this reference incorporated herein.

RECEIVED

MAR 28 1995

EXHIBIT A

CHAPTER 22: FRANCHISES

Placer County Water Agency

ARTICLE IV: CITIZENS UTILITIES COMPANY OF CALIFORNIA FRANCHISE

Sec. 486.1 GRANT OF FRANCHISE

The County hereby grants to Citizens the right, privilege and non-exclusive franchise for a term of fifty (50) years from and after the date that this ordinance shall take effect, to lay, construct, maintain and operate water pipe lines, and a distribution and transmission system consisting of water mains, distribution pipes, service pipes, together with traps, valves, manholes, hydrants, and other necessary appurtenances or appliances for the purpose of transporting and distributing water for domestic, irrigation, commercial, fire prevention and fire fighting purposes, in, under, along and across any and all of the public streets, alleys and public easements now or hereafter existing during the term hereof in that portion of the County of Placer described in the legal description and shown on the boundary map, both of which are attached hereto as Exhibits A-Description (see Sec. 486.14) and B-Map¹ respectively, and are incorporated herein by this reference.

Sec. 486.2 RELATIONSHIP TO EXISTING FRANCHISES

This grant of franchise by County shall supersede and replace franchise Ordinances 486 and 490 held by Citizens within Placer County, i.e. Article IV of Chapter 22 of the Placer County Code.

Sec. 486.3 WATER SOURCE RESTRICTIONS

All water, delivered under this franchise authority, shall be from surface water sources, with the following exception. The existing Sabre City service area, presently served by a Citizens owned well, shall not be subject to the surface water requirement of this Section.

Sec. 486.4 PROHIBITION AGAINST EXPORTING WATER OUTSIDE FRANCHISE BOUNDARY

As a condition to granting this franchise, the County is hereby expressly prohibiting the transmission of surface water, purchased by Citizens from the Placer County Water Agency (PCWA), across the County line.

¹Map is attached to original ordinance on file with the Clerk of the Board of Supervisors

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In the event of a violation to this condition, County shall provide Citizens with written notice of such violation. If, within thirty (30) days after receipt of such written notice, Citizens fails to cease the export of PCWA water, the franchise, hereby granted shall be forfeited.

Sec. 486.5 ALLOWANCE FOR EMERGENCY INTERTIE OF WATER FACILITIES

The existing Sabre City well water system may be intertied to the future surface water distribution system such that an emergency back-up will be provided for both service areas. Citizens will be responsible for installing meters on the intertie that will measure flow volumes in both directions. Also, Citizens will notify the County of all intertie usage during the first business hour following the commencement of intertie use.

Sec. 486.6 MATERIAL AND CONSTRUCTION STANDARDS

All pipes, mains and other conduits which shall be laid, and used under and pursuant to the provisions of this ordinance, and in the exercise of the right, privilege and franchise herein granted, shall be of suitable material and free of hazardous material, as determined by the County, and shall be of such dimensions as Citizens shall determine. All such pipes, mains and conduits shall be laid in a good workmanlike manner with a minimum of thirty inches (30") of cover above the top of the pipe. Furthermore, all work shall be done in conformance to the Improvement Standards and Construction Specifications of Placer County in effect at the time of construction of said facilities.

Sec. 486.7 RELOCATION OF FACILITIES

Citizens, its successors and assigns shall remove and relocate, in a timely manner, and at its sole cost and expense, any facilities heretofore or hereafter installed, used or maintained by Citizens in any public street, alley, highway, or other public easement now or hereafter existing whenever necessary by reason of any work or improvement or traffic needs upon such street, alley, highway or public easement, whether then under the jurisdiction of the State or any city, county or other public authority of the State of California, provided however, that Citizens, its successors and assigns, shall not be obligated at their cost or expense to remove and relocate said facilities in connection with or with respect to any freeway.

Sec. 486.8 OBLIGATION TO REPAIR PUBLIC RIGHTS-OF-WAY

Citizens shall at its own cost and expense, immediately upon the laying, replacing or repairing the said pipes, mains conduits, or appurtenances or appliances, or any part thereof, place said streets and alleys or so much thereof as may have been damaged thereby, in as good order and condition as that in which they were before being disturbed or excavated for the purpose of laying, replacing or repairing said pipes, mains, conduits, disposal plants, or appurtenances or appliances. Said streets, alleys or other public ways shall be repaired and restored in accordance with specifications to be detailed in a County encroachment permit, to be obtained prior to commencement of any work within the

public rights-of-way, (Note: See following Sections 486.9 and 486.10 for additional franchise responsibilities with regard to work within the public rights-of way).

Sec. 486.9 RIGHT TO REPAIR FRANCHISE FACILITIES

Under this franchise, Citizens shall have the right, to maintain, repair and replace any or all of its pipes, mains, conduits, or appurtenances or appliances located within streets, alleys or other public ways from time to time as may be necessary or proper. The encroachment permit requirements, called for in Section 486.10 below, will apply to major repair or replacement work. A "Blanket Permit", for emergency and routine maintenance work, as defined by County in the "Blanket Permit", within the public rights-of-way will be issued to Citizens. This permit is renewable annually as provided for in Section 1469 of the Streets and Highways Code and Chapter 16, Article I of the County Code.

Sec. 486.10 ENCROACHMENT PERMIT REQUIREMENT

Citizens shall obtain an encroachment permit for all work, excepting work covered by a "Blanket Permit" discussed above, prior to the installation, replacement or repair of pipes, mains, conduits, or appurtenances or appliances located within streets, alleys or other public rights-of-way. Said permit shall conform to the provisions of Chapter 16, Article I of the County code.

Sec. 486.11 FRANCHISE REVENUE

Citizens shall, during the term for which the same is granted, pay to County the larger of the following two calculated amounts: 1. Two percent (2%) of its gross annual receipts arising from the use, operation or possession thereof, or 2. One-half percent (1/2%) of the gross annual receipts of Citizens derived from the sale within the County of Placer of the utility service for which this franchise is granted.

Prior to March 1 each year, Citizens shall file with the Revenue Services Division of the County of Placer a statement, covering the previous calendar year, showing the above two revenue computations. A check, payable to the Placer County Treasurer, for payment of the larger amount shall also be sent to the Revenue Services Division on or prior to March 1 each year. In the event that any such payment is not so made, County shall, within thirty (30) days of such failure to pay, provide Citizens with written notice of such non payment. If, within ninety (90) days after receipt of such written notice, Citizens fails to pay to County the required annual payment, said franchise shall be forfeited.

Sec. 486.12 ASSIGNMENT

Citizens shall have the right to sell, convey, transfer, lease or assign its rights and obligations under this agreement and franchise subject to the written consent of County. Such consent shall not be unreasonably withheld. In granting the franchise, the County has considered the stability, management, and economic ability of Citizens to perform

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under the franchise. The County reserves the right to use similar considerations in evaluating any proposed assignee.

Sec. 486.13 HOLD HARMLESS

Citizens, or its successors or assigns shall indemnify and hold harmless the County of Placer and its officers, agents and employees from all liability for damages proximately resulting from any operations under this franchise and shall defend said indemnities against any claim for such damages; provided, however, that Citizens shall not be required to indemnify or hold harmless the County of Placer and its officers, agents and employees from and against any liability for damages which stem from, or arise out of, the negligence of the County, its officers, agents, or employees, and in such case Citizens and the County shall share any such liability according to degree of responsibility for the events giving rise to each liability.

Sec. 486.14 FUTURE ACQUISITIONS

This franchise is granted expressly upon the condition that at any time after five (5) years from the date this franchise is in effect, the works, distribution and transmission system installed, maintained and operated pursuant to this ordinance are sought to be acquired by eminent domain proceedings by the County, Placer County Water Agency, or any municipality, the then owner of the franchise and rights herein granted shall be required to sell the same and accept as its entire compensation therefor an amount not to exceed the then current appraised value thereof as determined pursuant to the provisions of Division 1, Part I, Chapter 8 of the Public Utilities Code of the State of California.

Sec. 486.15 EFFECTIVE DATE

This ordinance shall take effect and be in force on the thirty-first (31st) day after its adoption, and prior to the expiration of fifteen (15) days from the passage hereof, a summary of this Ordinance shall be published once in the Roseville Press Tribune. A newspaper printed and published in the City of Roseville, California.

EXHIBIT A-DESCRIPTION

Sec. 486.14 FRANCHISE LEGAL DESCRIPTION

Beginning at the Southwesterly corner of Placer County, said corner being the common point between Placer, Sutter and Sacramento Counties; thence Northerly along common line between Placer and Sutter Counties to the West 1/4 corner of Section 30, T11N, R5E, M.D.B.&M.; thence East along the East-West centerline of Section 30 and 29 to the East 1/4 corner of Section 29; thence South along the East line of Sections 29 and 32 to the South line of Township 11 North, Range 5 East; thence East along the South line of Township 11 North, Range 5 East and the South line of Township 11 North, Range 6 East, 6.5 miles, more or less, to the centerline of Foothills Boulevard; thence Southerly along the centerline of Foothills Boulevard to the centerline of Roseville Road; thence Southerly along the centerline of Roseville Road to the common line between Placer and Sacramento Counties; thence Northwesterly along the County line to the Point of Beginning.

Excepting therefrom that portion of land lying within the city limits of the City of Roseville, Placer County, State of California.

**Before the Placer County
Board of Supervisors
County of Placer, State of California**

In the matter of:

Authorizing Limited Exception to Water Source
Restrictions in California-American Water Company
Franchise During Water Shortage Emergency in the
Western Water System of the Placer County Water Agency

Resol. No:.....

Ord. No:.....

First Reading:

The following Resolution was duly passed by the Board of Supervisors
of the County of Placer at a regular meeting held _____,

By the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:

Chair, Board of Supervisors

Clerk of said Board

WHEREAS, on May 5, 2011, by Resolution 11-16, the Board of Directors of the Placer County Water Agency ("PCWA") declared a water shortage emergency in its Western Water System service area due to the collapse of a portion of the PG&E Bear River Canal; and

WHEREAS, on May 10, 2011, by Resolution 11-17, the Board of Directors of PCWA reaffirmed its findings and declarations in Resolution No. 11-16 and implemented treated and irrigation water use restrictions and conservation requirements; and

WHEREAS, PCWA has asked for this Board's support and assistance during this water shortage emergency; and

WHEREAS, it is projected that the Bear River Canal water resources will not be fully operational until the end of June 2011 at the earliest; and

WHEREAS, the lack of availability of irrigation water from the PG&E Bear River Canal threatens to negatively impact numerous agricultural and livestock businesses in Placer County ("County") as well as the County's fire fighting capabilities and fire prevention efforts in the Bear River area; and

WHEREAS, this Board finds that such negative impacts will result in a detrimental effect on the health, safety and welfare of its citizens; and

WHEREAS, in 1994 the County granted Citizens Utilities Company of California a fifty year franchise to lay, construct, maintain and operate water pipe lines and a distribution and transmission system for the purposes of transporting and distributing water for domestic, irrigation, commercial, fire prevention and fire fighting purposes; and

WHEREAS, in 2001, the County authorized the assignment of Citizens' franchise to California-American Water Company (hereinafter referred to as the "Cal-Am Franchise"); and

WHEREAS, the Cal-Am Franchise area is generally located in the Dry Creek West Placer Community Plan Area ("Dry Creek CP"); and

WHEREAS, the County has restricted the water delivered under the Cal-Am Franchise to surface water resources with the exception of the Sabre City service area; and

WHEREAS, this restriction was to ensure that Cal-Am's water distribution system does not result in a negative impact to the ground water table in the Dry Creek CP area; and

WHEREAS, during the PCWA water shortage, PCWA has suspended its customary delivery of water to Cal-Am; and

WHEREAS, PCWA's suspension has caused a shortfall in water supply to Cal Am's West Placer County customers, which shortfall the City of Roseville is currently providing for; and

WHEREAS, Cal-Am seeks, during the PCWA water shortage emergency, to temporarily provide its customers with groundwater from its Antelope water system via its existing emergency intertie; and

WHEREAS, to do so, Cal-Am has asked for a temporary exception to the above identified water restriction in order to utilize both ground water and surface water supplies; and

WHEREAS, due to the fact that this exception would be for a very discrete temporary period of time and will be conditioned as set forth below; and

WHEREAS, the Board is finds it necessary to take the actions outlined herein in order to mitigate an emergency water supply shortage and as such the actions authorized in this resolution are exempt under Section 15269(c) of the California Environmental Quality Act Guidelines.

NOW, THEREFORE, BE IT RESOLVED that this Board grants an exception to the Cal-Am Franchise water source restrictions to allow Cal-Am to utilize both ground water and surface supply water based on the following conditions:

1. This exception shall be in effect from the date of this resolution and automatically terminate on October 15, 2011 or on the date the water shortage emergency condition is terminated by PCWA, whichever date is earlier.
2. Upon termination, Cal-Am shall immediately cease delivery of ground water to the Cal-Am Franchise area except to the Sabre City serve area via the existing well.
3. Upon termination, Cal-Am shall immediately cease use of its emergency intertie to the Antelope system and shall immediately shut off and cease conveyance of ground water from the Antelope system to the Cal-Am Franchise area.
4. This exception shall not be extended except through further action of this Board.
5. Cal-Am shall strive to utilize ground water only as a last resort during the exception period.
6. This exception is for the sole purpose of assisting in the alleviation of a water shortage emergency and shall not constitute an agreement, implied or express, by the County to the expansion of Cal-Am Franchise service area boundaries or to a continued use of the emergency intertie to and/or use of the Antelope water system.