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IN THE  
SUPREME COURT OF CALIFORNIA

MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT,  
*Petitioner,*

*vs.*

CALIFORNIA PUBLIC UTILITIES COMMISSION,  
*Respondent,*

CALIFORNIA-AMERICAN WATER COMPANY,  
*Real Party in Interest.*

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On a Petition for Writ of Review from the Public Utilities Commission  
Decisions Nos. 11-03-035 & 13-01-040 (in Application 10-01-012)

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REAL PARTY'S ANSWER  
TO PETITION FOR WRIT OF REVIEW

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**I.**  
**INTRODUCTION**

Real Party in Interest California-American Water Company takes no position with respect to the merits or substantive positions presented by Monterey Peninsula Water Management District's ("MPWMD") petition for writ of review. However, California American Water files this answer to (1) clarify a procedural irregularity with the petition and (2) oppose the "alternative" procedural relief sought at the end of the petition (e.g., Pet. § VII, at pp. 30–31) regarding the purported option of "transferring" the petition to the Court of Appeal. Under California law no transfer to a lower court is authorized for this sort of petition.

**II.**  
**AS A PETITION FOR WRIT OF REVIEW  
UNDER PUBLIC UTILITIES CODE SECTION 1756,  
SUBDIVISION (f), THERE CAN BE NO TRANSFER  
TO A LOWER COURT**

**A. MPWMD's petition is a "petition for writ of review" governed by rule 8.496, not rule 8.500**

MPWMD's petition seeks review of decisions from the California Public Utilities Commission. As the petition itself makes clear, such petitions are allowed under Public Utilities Code section 1756. (E.g., Pet. at pp. 6, 30.) Specifically, subdivision (a) of that statute provides for review of Commission decisions by filing a "petition for a writ of review," and subdivision (f) specifically provides that "review of

decisions pertaining solely to water corporations [the situation here] shall only be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court [an exception not applicable here].”

A petition for writ of review of this sort is governed by California Rules of Court, rule 8.496, titled “Review of Public Utilities Commission cases,” found in title 8, chapter 8 covering “Miscellaneous Writs.” (See Cal. Rules of Court, rule 8.7 [rule titles are substantive].) Rule 8.496 sets forth various procedural requirements for such petitions (e.g., requiring verification and interested entity disclosure), and sets the relevant procedural timeline (e.g., any answer is due “35 days after the petition is filed”).

MPWMD’s petition complies with the requirements of rule 8.496, although it never actually cites that rule. Instead, the petition makes repeated reference (at pages 1, 5, 30, and 31) to rule 8.500, the rule titled “Petition for Review” that governs “review of any decision of the Court of Appeal” (Cal. Rules of Court, rule 8.500(a)(1)). Indeed, MPWMD’s petition is even mistakenly captioned a “Petition for Review,” rather than a petition for *writ of* review, which is what it really is and must be.

Whatever their similarities, and despite the potentially confusing similarity in their names, a “petition for review” and a “petition for writ of review” are different filings, addressing different forms of review, subject to different procedures set forth in different rules. For instance, the time to answer a “petition for review” is only 20 days (not 35) after the petition is filed. (Cf. Cal. Rules of Court, rule 8.500(e)(4) with rule 8.496(b)(1); see also rule 8.40 [petitions for review have white covers; petitions for original writs have red covers].) Given that rule 8.500 concerns petitions for review only from Court of Appeal decisions, it has no bearing on MPWMD’s petition, which seeks review of Commission decisions. The only relevant and applicable rule is rule 8.496.

The petition’s procedural irregularity in relying on rule 8.500 rather than rule 8.496 is, for the most part, immaterial, and has no substantive import except in one regard: The distinction is critically meaningful with respect to the petition’s request for the “alternative” relief of a grant and transfer to the Court of Appeal.

**B. This Court is the only proper venue; California law does not allow transfer to the Court of Appeal to review Commission decisions of this sort**

MPWMD’s petition seeks an alternative form of relief not allowed under California law. On page 5 and pages 30–31, MPWMD urges this Court to “grant and transfer” its petition

to the Court of Appeal. The statutory scheme governing judicial jurisdiction over Commission decisions, however, does not allow for such a transfer. Jurisdiction lies only in this Court.

Article XII of the California Constitution governs Public Utilities and establishes the Commission. Section 5 of article XII provides that “[t]he Legislature has plenary power ... to establish the manner and scope of review of commission action in a court of record ....” Under that Constitutional authority, the Legislature has chosen to limit the jurisdiction of judicial review of Commission decisions, and has created a statutory scheme (governing MPWMD’s petition) that makes clear that jurisdiction is proper only in this Court. Indeed, MPWMD notes early in its petition that “the Supreme Court is vested with the *exclusive jurisdiction* to review Commission decisions pertaining to water corporations,” citing Public Utilities Code section 1756, subdivision (f). (Pet. at p. 6 [emphasis added].) MPWMD also explains that it is invoking this Court’s “original jurisdiction” under section 1756, subdivision (f). (Pet. at p. 30.)

The meaning and import of section 1756, subdivision (f) is clear on its face, so no analysis of legislative history is necessary. But MPWMD nonetheless references legislative history, which only further emphasizes that the Legislature

has specifically and repeatedly rejected “expanded appellate review” (i.e., review in the Court of Appeal in addition to this Court) for matters involving water corporations. (Pet. at p. 30.)

In a nutshell, before 1996, this Court was the only court of original jurisdiction for review of *all* Commission decisions. Reforms enacted in 1996 expanded appellate review solely for customer complaint or enforcement proceedings, allowing petitions for writs of review in *either* this Court or the Courts of Appeal. Legislation in 1998 (Sen. Bill No. 779) then expanded appellate review for all Commission decisions — except for water corporations, for whom review remained only in this Court, up until the end of the year 2000, when that limitation would statutorily expire unless the Legislature took further action. The Legislature did take further action, however, adopting the current form of subdivision (f), which indefinitely extends the exclusiveness of this Court’s jurisdiction. (Assem. Bill No. 1398 (1999–2000 Reg. Sess.) § 1.) The legislative history is therefore clear that, pursuant to Constitutional directive, the Legislature established a statutory scheme that intentionally grants jurisdiction only to this Court and not to the Courts of Appeal.<sup>1</sup>

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<sup>1</sup> All the readily available legislative history reports for Assembly Bill 1398 support the Legislature’s clear intent to vest this Court, and only this Court, with exclusive jurisdiction. (See Sen. Rules Com. (Aug. 22, 2000); Sen. Judiciary Com. (Aug. 8, 2000); Sen. Energy, Utilities and



The only authority MPWMD cites to support its request for a transfer of jurisdiction is rule 8.500(b)(4). That rule is inapplicable, however, because rule 8.500 only concerns petitions for review from Court of Appeal decisions. (Cal. Rules of Court, rule 8.500(a)(1).) Every substantive subpart of rule 8.500 regarding a petition for review (i.e., rule 8.500(a) through (f)) expressly references the Court of Appeal decision that is the subject of the petition. This includes subpart (b), and thus subpart (b)(4): “The Supreme Court may order review of a Court of Appeal decision: [¶] (4) For the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.” Thus, on its face, rule 8.500(b)(4) fails to supply authority for transferring review of the Commission decisions at issue here to the Court of Appeal. MPWMD’s reliance on rule 8.500(b)(4) is simply wrong.

Lacking any legal authority, MPWMD makes two policy arguments. First, MPWMD argues that the substance of its particular petition falls outside the bounds of what the Legislature had in mind when it restricted jurisdiction to this Court. (Pet. at pp. 30–31.) Such an argument cannot succeed, however, because the effectiveness of a clear statute cannot be

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Communications Com. (June 27, 2000); Assem. Com. on Utilities and Commerce (Jan. 10, 2000).)

undermined by distinguishing a situation from the purported rationale of the Legislature in passing a statute. (*People v. Robinson* (2010) 47 Cal.4th 1104, 1138 [a statute’s plain language controls unless its words are ambiguous, allowing resort to legislative history].)

Second, MPWMD belittles the Legislature’s Constitutionally directed grant of exclusive jurisdiction to this Court, calling it “*pro forma*,” and argues that this Court’s “crowded docket” justifies transfer to the Court of Appeal as a matter of judicial economy. (Pet. at p. 31.) Again, this argument cannot succeed because any discussion of “allocating judicial resources” must nonetheless comply with the relevant governing statutory scheme providing for jurisdiction. The Constitution vests the Legislature with “plenary power” to establish jurisdiction and MPWMD’s proposed transfer would violate the operative legislation.

Finally, although never cited in its petition, MPWMD may point to article VI, section 12 of the state Constitution as authority for a transfer. That section provides that “[t]he Supreme Court may ... transfer a cause from itself to a court of appeal .... The court to which a cause is transferred has jurisdiction.” This provision — which generally allows this Court to create “jurisdiction” in a transferee court — conflicts with the more specific Constitutional provision that the

Legislature alone has “plenary power” to confer court jurisdiction for reviewing Commission decisions. (Cal. Const., art. XII, sec. 5.) A basic rule of Constitutional interpretation is that the more specific provision controls over the more general provision. (*Rose v. California* (1942) 19 Cal.2d 713, 724; see *People v. Bustamante* (1997) 57 Cal.App.4th 693, 699, fn. 5 [citing *Winchester v. Mabury* (1898) 122 Cal. 522, 527]; Code Civ. Proc., § 1859.) Here, article XII, section 5 — specifically empowering only the Legislature to confer jurisdiction — takes precedence over article VI, section 12, allowing for transfers generally, because the former is particularly focused on court jurisdiction over Commission decisions.

There being no Constitutional, statutory, or rule-based justification for transfer, MPWMD’s inapposite request for alternative relief cannot be granted.

### III. CONCLUSION

Public Utilities Code section 1756, subdivision (f), is clear that review of Commission decisions “shall *only* be by petition for writ of review *in the Supreme Court*.” There is no basis under precedent, the Constitution, court rules, or the governing statutory scheme that authorizes a transfer of such petitions to the Court of Appeal. Accordingly, MPWMD’s request for alternative relief should be denied.

**CERTIFICATE OF COMPLIANCE**

Counsel certifies that under rules 8.486(a)(6) and 8.204(c)(1) this **Answer** is produced using 13-point Century Schoolbook type including footnotes and contains **1,694** words, as counted by Microsoft Word, which is within the permitted 14,000 words.

March 29, 2013

Respectfully submitted,

By *Benjamin G. Shatz*  
Benjamin G. Shatz

## PROOF OF SERVICE

I, Bess Hubbard, declare I am a United States citizen employed in Los Angeles County, California. I am over 18 years old and not a party to this action. My business address is 11355 West Olympic Boulevard, Los Angeles, CA 90064. On **March 29, 2013**, I served a copy of the **ANSWER TO PETITION FOR WRIT OF REVIEW** by placing those documents in a sealed envelope with postage in the United States mail in Los Angeles addressed thusly:

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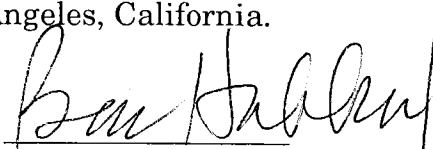
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Executed on **March 29, 2013**, in Los Angeles, California.

  
Bess Hubbard