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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for Authorization to Implement the Carmel River reroute and San Clemente Dam Removal Project and to Recover the Costs Associated with the Project in Rates.

Application 10-09-018
(Filed September 22, 2010)

**ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE'S RULING AND SCOPING MEMO**

1. Summary

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules), this ruling and scoping memo (scoping memo) determines the procedural schedule (with a projected submission date), the category of the proceeding, the issues to be addressed, the designated presiding officer, and the need for hearing.

2. Background

On September 22, 2010, California-American Water Company (Cal-Am) filed this application, which seeks authorization to implement the Carmel River Reroute and San Clemente Dam Removal Project (Reroute and Removal Project) and to recover costs associated with this project over a twenty-year period. Cal-Am's application addresses the finding by the California Department of Water Resources Division of Safety of Dams (DSOD) that the San Clemente Dam does not meet current seismic safety standards and must be either buttressed or removed. Cal-Am states that over the last several decades, as directed by DSOD, it has analyzed and taken steps to address the seismic stability of the

San Clemente Dam. In January 2008, the DSOD certified the Final Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the San Clemente Dam Seismic Safety Project, which includes the Reroute and Removal Project as a project alternative to the dam buttressing project.¹

Cal-Am requests authorization to pursue the Reroute and Removal option rather than the dam buttressing project. The Reroute and Removal Project would permanently remove the dam and bypass a portion of the Carmel River by cutting a 450-foot long channel between the Carmel River and San Clemente Creek, about 2,500 feet upstream of the dam. The project is estimated to cost \$83 million. The California State Coastal Conservancy (State Coastal Conservancy) has pledged approximately \$34 million from state, federal, and private foundation resources. Removal of the San Clemente Dam would resolve continuing issues relating to fish passage, the preservation of habitat for wildlife on the river, and compliance with the federal Endangered Species Act. Cal-Am asserts that the cost to its customers of the Reroute and Removal Project will be no more than the estimated cost of buttressing the San Clemente Dam and that removal is the preferred alternative. Cal-Am proposes this project after extensive discussions with public officials, including a broad coalition of elected congressional, state, and local representatives.

In this application, Cal-Am seeks review and approval of recovering all reasonable preconstruction costs incurred in the San Clemente Dam memorandum account for the period from January 1, 2002 to October 31, 2010,

¹ Under the current DSOD deadline, Cal-Am must start construction by September 2012.

establishment of new balancing accounts and a new surcharge to begin on January 1, 2012, and approval of proposed ratemaking treatment, including a twenty-year recovery of the proposed regulatory asset.

On October 29, 2010, Division of Ratepayer Advocates (DRA) and the Monterey Peninsula Water Management District (MPWMD) both filed protests to Cal-Am's application. Also on October 29, 2010, Hidden Hills Subunit Ratepayers Association (Hidden Hills) filed a Motion requesting party status. On November 8, 2010, Cal-Am filed a reply to the protests.

On November 19, 2010, Cal-Am submitted a supplemental filing on costs tracked in the San Clemente Dam Memorandum Account and included a revised proposed procedural schedule to address DRA's staffing concerns.

A prehearing conference (PHC) was held on November 22, 2010. At the PHC, the parties discussed the proposed scope and schedule for the proceeding.

3. Categorization, Need for Hearings, Ex Parte Communications Rules, and Designation of Presiding Officer

This proceeding has been categorized as ratemaking, as that term is defined in Rule 1.3(e). No party objects to the Commission's preliminary categorization or to its preliminary determination that evidentiary hearings are needed. We affirm the categorization and need for hearings in this scoping memo.²

Assigned Commissioner John A. Bohn designates Administrative Law Judge (ALJ) Christine M. Walwyn as the presiding officer in this proceeding. The Commission's ex parte communications rules applicable to this proceeding

² This scoping memo, only as to the category, is appealable under the procedures set forth in Rule 7.6.

are set forth in Rules 8.1 – 8.5. These ex parte communications rules apply to all parties of record and, more broadly, to all persons with an interest in any substantive matter; the broad category of individuals subject to our ex parte communications rules is defined in Public Utilities Code Section 1701.1(c)(4) and Rule 8.1(d).

4. Scope of the Proceeding

The scope of this proceeding is unusual, as it relies on the yet to be secured financial commitment of \$34 million from various state and federal agencies, coordinated through the California State Coastal Conservancy, and it involves rerouting a portion of the Carmel River and the permanent removal of the 106-foot high San Clemente Dam.³ The cost recovery sought by Cal-Am from its customers is substantial and is proposed to continue over a twenty-year period. As Commissioner Bohn stated at the PHC:

[T]his is an enormously complex, very large, multiyear project
The need of course is clear. How we're going to get it done is not clear, but it will involve many agencies, local, state, and federal
But it is important that we lay a foundation such that as the Commission goes forward in its deliberations, the various parties are represented and we continue along this cooperative view.
(Reporter's Transcript at 2-3.)

As such, this scoping memo will address the issues the parties are identifying at this time and stage of the proceeding. It is highly possible that

³ The dam was constructed in 1921 and has since filled with silt and has been found to not meet current seismic safety standards by DSOD. In a May 11, 2010 letter to Cal-Am, DSOD accepted a Preconstruction Work Plan for the Reroute and Removal Project but stated that if sufficient progress is not made to begin the construction required to remove the dam by 2013, the alternative of strengthening the dam for seismic and flood safety will need to be resurrected. See Appendix 5 of application.

other issues may arise throughout the proceeding, and the Commission will address those if/when they are identified by the parties. Currently, the issues are focused on the implementation of and the reasonableness of implementing the Reroute and Removal Project. DRA and MPWMD are also concerned with the proposed project's financial burden on Cal-Am's ratepayers.⁴

Cal-Am seeks review and approval of the memorandum account costs it has recorded, as authorized by Decision (D.) 06-11-050, through October 31, 2010. Cal-Am chose this date as the cut-off because it is the point where Cal-Am anticipates that costs will shift from San Clemente Dam preconstruction costs to preliminary costs for the Reroute and Removal Project. DRA and MPWMD are concerned with Cal-Am's request to recover this amount through rates and want to evaluate whether Cal-Am has provided enough justification for the \$21,755,029 requested. Both parties state they intend to also review whether Cal-Am's shareholders should bear some of the responsibility for these preconstruction costs. Our record should reflect specific details and support for this memorandum account.

Of particular interest to this proceeding will be establishing the record to reflect Cal-Am's proposed ratemaking treatment for the Reroute and Removal Project. Cal-Am suggests that the Commission approve deferral of all prudent costs of the project into a regulatory asset account and allow it to earn a return on the average balance and recover those costs over a twenty-year period beginning

⁴ While this scoping memo provides guidance regarding the manner in which each identified issue will be considered, the assigned Commissioner or ALJ may make any revisions or provide further direction regarding the manner in which issues raised are to be addressed, as necessary for a full and complete development of the record.

January 1, 2012. DRA desires to review the reasonableness of the request to treat all costs related to the Project as a regulatory asset and may also recommend alternatives to Cal-Am's proposals. The tax issues involved with the Reroute and Removal Project should be analyzed clearly in the record. Cal-Am has already provided direct testimony on this issue.

In addition, Cal-Am requests that the Commission authorize it to begin earning a return on the average balance and recovering the regulatory asset costs via surcharge on January 1, 2012. The costs included in the proposed surcharge fall into six categories: (1) approved San Clemente Dam memorandum account costs (including allowance for funds used during construction (AFUDC)) through October 31, 2010; (2) estimated AFUDC for the San Clemente Dam memorandum account from October 31, 2010 to December 31, 2011; (3) estimated interim dam safety and environmental costs; (4) estimated permitting, compliance, and preliminary engineering costs for the Reroute and Removal Project; (5) estimated construction costs for the Reroute and Removal Project; and (6) estimated post-construction mitigation costs for 2016 and 2017. Cal-Am projects that the costs to be included as part of the regulatory asset equal approximately \$76 million. DRA has addressed evaluating the reasonableness of this proposed surcharge for each identified category. Therefore, our record should provide detailed financials and support for each of the categories identified by Cal-Am.

Cal-Am based the level of surcharge requested on the projected annual revenue requirement of the estimated regulatory asset balance. By using the current schedule for the Reroute and Removal Project, Cal-Am proposes to recover revenue requirement of the estimated regulatory asset balance through a surcharge from 2012 through 2017. After a final review of the costs and true-up

of the requested balancing account, Cal-Am proposes to include the revenue requirement of the remaining unamortized regulatory asset in base rates as part of the 2018 general rate case and recovery of the regulatory asset will continue until 2031. The surcharge will be billed to customers of the main Monterey system and the Ryan Ranch and Bishop subsystems.

Cal-Am also proposes to continue to track the costs for the Reroute and Removal Project in the San Clemente Dam memorandum account until December 31, 2011. On January 1, 2012, Cal-Am would treat all project costs as a regulatory asset and begin recovering the estimated costs over a twenty-year period.

The State Coastal Conservancy has pledged to contribute up to \$35 million in public funding to the Reroute and Removal Project. The State Coastal Conservancy would also be responsible for the administration of and compliance to the grants. The current funding plan presented by the State Coastal Conservancy calls for 75 percent of the public agency grants to be committed by summer 2011 and the remaining by summer 2012. The California Ocean Protection Council would provide a grant to Cal-Am once the State Coastal Conservancy has secured the funding. Cal-Am will then transmit invoices to the California Ocean Protection Council for payment as they are received from vendors and contractors. The State Coastal Conservancy has submitted testimony but does not desire party status. The testimony includes a funding plan with a timeline showing when public funding will be committed. This funding plan is attached as Attachment A to the testimony.

Cal-Am further requests that the Commission authorize a balancing account in which to track the difference between the amounts recovered in rates and the actual revenue requirement of the Reroute and Removal Project. The

actual revenue requirement would be based on final approved costs, actual timing of the expenditures, actual authorized rate of return, ability to recover the costs related to the project for tax purposes, and other ratemaking items. If the actual revenue requirement of the authorized costs is less than the actual surcharge recovery in rates, Cal-Am pledges to return the difference to customers. Cal-Am believes this balancing account will ensure that its customers only pay for the actual costs of the Reroute and Removal Project and it will also provide Cal-Am recourse if the revenue requirement is more than the surcharge collections from customers. Cal-Am also wishes that the balancing account accrue interest at the company's authorized rate of return, pursuant to D.08-05-036. And finally, Cal-Am wishes to track in this balancing account any financing costs Cal-Am may incur because of delays or reductions in grant payments. DRA has identified evaluating the need for the proposed balancing account as an issue in the proceeding.

Cal-Am currently owns 928 acres of land surrounding the San Clemente dam and reservoir, which it would like to transfer to a government or non-profit entity. Transfer will be conditional upon restricting the use of the land to recreational and open space use in perpetuity, and not for commercial or other development, and acceptance of responsibility for future stewardship and management of the land. The transfer could potentially provide tax benefits, which is discussed in Charles A. Lennox of Ernst & Young's direct testimony. This transfer has significant ratemaking consequences. DRA has identified several tax issues that will need to be reviewed and analyzed for reasonableness and effects on rates.

Lastly, Cal-Am seeks approval of its update and final review process. Cal-Am proposes that if the design/build contract for the Reroute and Removal

Project or the public funding has not been secured by summer 2012 and these delays significantly affect the cost of the project, it would file an advice letter to revise the revenue requirement. Otherwise, the difference between the estimated and final costs will be tracked in the balancing account and reviewed after the Reroute and Removal Project is completed.⁵

Six months after completion of the Reroute and Removal Project, Cal-Am proposes to submit a new application for review of the final costs and true-up of the proposed balancing account. Cal-Am anticipates that the 2018 general rate case will then be filed following the completion of the Reroute and Removal Project, and that it will include in base rates the annual revenue requirement on the remaining balance of the regulatory asset and its share of the estimated post-construction costs.

MPWMD has expressed concern regarding the status of its Sleepy Hollow Steelhead Rearing facility. MPWMD's current lease with Cal-Am for the rearing facility will expire in December 2010 unless renewed. The facility is located on the land that Cal-Am proposes to transfer as part of the Reroute and Removal Project. As of now, MPWMD operates the facility under a license as part of a mitigation process for Cal-Am. MPWMD is concerned there might still exist a need for the Sleepy Hollow Steelhead Rearing facility after the transfer and if so, who will maintain and operate the facility so long as its need existed. At the PHC, MPWMD expressed an interest in securing an ownership interest in the facility or some other condition that would enable it to operate the facility

⁵ If the costs are lower, the cost savings will be allocated between Cal-Am and the State Coastal Conservancy based on the source of the saving.

efficiently and cost-effectively if some third entity took possession of it. Both Cal-Am and MPWMD agreed that this issue was one that could be negotiated with any entity that took over the land from Cal-Am as part of the Reroute and Removal Project. However, if the negotiations do not occur, MPWMD would like to preserve its rights in the facility.

MPWMD also raised the issue of downstream effects from the Reroute and Removal Project onto property owners. However, it was agreed at the PHC that the EIR/EIS adequately covered this issue and the issue has been dismissed from this proceeding.

5. Consultant for DRA

DRA has requested that Cal-Am pay for a reimbursable contract with an outside sediment management expert consultant and a possible tax consultant. Cal-Am has agreed to DRA's hiring of both consultants as long as they are allowed recovery in rates and the process does not delay the schedule. We approve DRA's requests for consultants as needed.

6. Hidden Hills No Longer a Party

Hidden Hills filed a motion requesting party status on October 29, 2010, claiming that the purchase agreement between Hidden Hills and Cal-Am provides that Hidden Hills' ratepayers would not be charged for costs incurred resulting from the Carmel River Project. At the PHC, Cal-Am agreed that the purchase agreement was controlling and Hidden Hills would not be assessed costs for this project. Based on this confirmation, Hidden Hills withdrew its request to participate as a party in this proceeding.

7. Procedural Schedule

After consideration of the PHC statements and the discussion at the PHC, we set the following schedule for the proceeding:

Prehearing Conference	November 22, 2010
Scoping Memo	December 23, 2010
Public Participation Hearings	(1) February 7, 2011, 6 p.m. Monterey City Hall Council Chambers 580 Pacific Street Monterey, CA 93940 (2) February 8, 2011, 1 p.m. Oldemeyer Center 986 Hilby Avenue, Auditorium Seaside, CA 93955
DRA and Intervenor Testimony	April 28, 2011
Rebuttal Testimony	May 18, 2011
Settlement Meetings	May 23-June 1, 2011
Evidentiary Hearings	June 8-13, 2011
Briefing Period Ends	July 13, 2011
Record Closes	July 13, 2011
Proposed Decision Mailed	By October 11, 2011
Decision on Commission Agenda	November 10, 2011

The parties discussed and agreed to holding Public Participation Hearings (PPH) for the Monterey district. DRA requests that the PPHs be held sometime after January 21, 2011 in order to accommodate its analysts who are also working on Cal-Am's general rate case, Application (A.) 10-07-007.⁶

⁶ The parties also discussed combining the PPH's for this proceeding with those for A.10-07-007. However, most of the parties felt combining the PPH's for both proceedings would prove confusing for ratepayers. Therefore, the PPH's for this proceeding will remain separate from those in A.10-07-007.

Additionally, MPWMD requested that the Proposed Decision (PD) be mailed a few days before October 11, 2011 because the PD for A.10-07-007 may be mailed on October 11, 2011, which would require opening and reply comments to be due on the same dates for both proceedings. Cal-Am does not object to moving the PD mailing date as long as this proceeding appears on the Commission's November agenda. Cal-Am would like to have a ruling by the end of calendar year 2011 in order to consolidate a rate increase with that of the general rate case.

Parties requesting final oral argument before the Commission under Rule 13.13 must include that request in their opening brief.

It is anticipated that this proceeding will conclude as set forth above. However, the assigned ALJ may modify this schedule as required to promote the efficient and fair resolution of the matter. In any event, this proceeding should be completed within 18 months of this scoping memo, as required by Public Utilities Code Section 1701.5.

8. Filing and Service of Documents, Party Status and Service List

The official service list for this proceeding is attached to this ruling and updates are maintained by the Commission's Process Office and accessible on our website at www.cpuc.ca.gov. Parties must file and serve all pleadings as set forth in Article 1 of the Commission's Rules of Practice and Procedure. Testimony must be served but not filed.

Parties are encouraged to file electronically, pursuant to Rule 1.13, whenever possible as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/PUC/efiling>. We will follow the electronic service protocols adopted by Rule 1.10 for all documents, whether

formally filed or just served. This Rule allows for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, we require concurrent e-mail service to ALL persons on the service list, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request. The assigned Commissioner and ALJ should always be served a paper copy.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: A.10-09-018. In addition, the party sending the e-mail should briefly describe the attached communication; for example, Brief. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

Prior to serving any document, each party must ensure that it is using the most up-to-date service list for A.10-09-018. The list on the Commission's website meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

We urge parties to work cooperatively to resolve any discovery issues. We expect parties to respond to data requests and other information requests in a timely fashion.

Therefore, **IT IS RULED** that:

1. This proceeding is categorized as ratesetting and that category determination is appealable under the procedures set forth in Rule 7.6. Ex parte communications are permitted with restrictions, as set forth in Rules 8.2, 8.4, and 8.5, and are subject to the reporting requirements of Rule 8.3.

2. Evidentiary hearings are required.

3. Administrative Law Judge Christine M. Walwyn is the presiding officer.

4. The issues to be addressed and the hearing schedule and procedural process for this proceeding are as set forth in the body of this ruling.

5. Division of Ratepayer Advocates is authorized to enter into reimbursable contract(s), to be funded by California-American Water Company, to finance the consulting work provided by a sediment management expert consultant and a possible tax consultant.

6. Corrections to an exhibit shall be made in advance and in writing, not orally from the witness stand. The original text to be deleted shall be lined out with the substitute or added text shown above or inserted. Each correction page shall be marked with the word "revised" and the revision date it is served on all parties.

7. Any motion to strike prepared testimony must be made at least three business days before the witness is scheduled to appear.

8. Any party who wishes to request Final Oral Argument before a quorum of the Commission shall so request in its opening brief.

9. The electronic filing protocols delineated in this ruling shall govern this proceeding. Prior to serving any document, each party must ensure that it is using the most up-to-date service list for Application 10-09-018. The service list on the Commission's website meets this definition. Paper format copies, in

addition to electronic copies, shall be served on the assigned Commissioner and the Administrative Law Judge.

Dated December 23, 2010, at San Francisco, California.

/s/ JOHN A. BOHN
John A. Bohn
Assigned Commissioner

/s/ CHRISTINE M. WALWYN
Christine M. Walwyn
Administrative Law Judge

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