

Decision **PROPOSED DECISION OF ALJ BUSHEY** (Mailed 4/6/2012)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of  
California-American Water Company  
(U210W) for an Order Authorizing the  
Collection and Remittance of the Monterey  
Peninsula Water Management District User  
Fee.

Application 10-01-012  
(Filed January 5, 2010)

**INTERIM DECISION AUTHORIZING AQUIFER STORAGE AND  
RECOVERY PROJECT PHASE 2 AND CARMEL  
RIVER MITIGATION AGREEMENT**

**Summary**

This decision authorizes California-American Water Company (Cal-Am) to create the Aquifer Storage and Recovery Project Phase 2 memorandum account in which to record the reasonable costs for adding Well 4 to the Project on an expedited basis and, when completed, to move the costs so recorded to rate base with a Tier 2 advice letter. Cal-Am is also authorized to enter into an agreement with the Monterey Peninsula Water Management District (District) to fund Carmel River mitigation measures required by the State Water Resources Control Board Order 95-10, where Cal-Am is responsible for the measures, should the District cease to perform them. A surcharge is authorized to recover these costs on an on-going basis.

**Background**

On August 22, 2011, California-American Water Company (Cal-Am) filed and served its amended application seeking Commission authorization to:

1. Collect a surcharge on Cal-Am's Monterey district customers to fund the Carmel River Mitigation Program performed by the Monterey Peninsula Water Management District (District);
2. Collect a surcharge on Cal-Am's Monterey district customers to fund the District's Phase 1 Aquifer Storage and Recovery Facilities; and
3. Establish a memorandum account to track Cal-Am's Phase 2 Aquifer Storage and Recovery Facilities.

Cal-Am requested that the amended application be categorized as ratesetting, with evidentiary hearings required.

The Division of Ratepayer Advocates (DRA) protested the amended application, preliminarily identifying issues with the District's proposed budgets and Cal-Am's proposed ratemaking. DRA did not rule out the possibility that evidentiary hearings would be necessary.

The District also protested the amended application. In its protest, the District agreed that it would implement the Carmel River Mitigation Program as proposed by Cal-Am, if approved by the Commission. The District, however, challenged the Commission's jurisdiction to review the costs and scope of the Mitigation Program, and contended that the District's own statutory authority gave the District the right to require Cal-Am to collect a user fee from Monterey District customers and remit the collections to the District. The District incorporated by reference the jurisdictional and legal arguments it had set forth in its rehearing application for Commission Decision (D.) 11-03-035, which focuses on the District's statutory authority to impose the user fee.

On October 14, 2011, the District filed its Petition for Modification of Decision 11-03-035. The petition contended that the settlement agreement rejected by the Commission in D.11-03-035 should instead be approved. The petition stated that the District has statutory authority to lawfully impose a user fee, and that the Commission should modify D.11-03-035 to allow Cal-Am to resume collecting the fee for the District.<sup>1</sup>

In the petition, [the](#) District also revealed that on May 26, 2011, it had adopted a resolution ordering Cal-Am to collect and remit the user fee. In response, Cal-Am filed on July 21, 2011, a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief against the District, captioned *California-American Water Company v. Monterey Peninsula Water Management District*, Monterey County Superior Court Case No. M113336.

The petition also included a copy of the Interim Implementation Agreement for 2011-2012 Carmel River Mitigation Program between Cal-Am and the District which provided for Cal-Am to fund the mitigation program for 2012. Cal-Am is recording these costs in a memorandum account, for recovery from its ratepayers.

On February 8, 2012, the assigned Administrative Law Judge (ALJ) convened a prehearing conference and the parties gave status updates on the pending litigation, the Carmel River mitigation program, and the Aquifer Storage and Recovery Project. Cal-Am and the District reported that a case management conference before the Monterey Superior Court was scheduled for March in the user fee lawsuit referenced above. Cal-Am and the District also

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<sup>1</sup> Petition to Modify at 25.

reported that they had entered into an interim agreement to fund the portions of the District's Carmel River mitigation program that are Cal-Am's contingent responsibility, with annual costs for Cal-Am of \$1.6 million. Cal-Am also reported that Phase 2 of the Aquifer Storage and Recovery Project, which consists of constructing a second well at the Seaside Middle School site, which is well number 4 for the overall project, was scheduled for completion in 2013. In response to questioning from the assigned ALJ, Cal-Am indicated that moving up the projected in-service date to 2012 was likely feasible but would incur additional costs.

At the prehearing conference, the parties agreed that due to the urgent need for additional water supply in Cal-Am's Monterey district, Cal-Am should investigate the potential for moving up the projected in-service date for Phase 2 and file and serve a statement showing the forecasted cost for the accelerated construction. Cal-Am agreed to meet and confer with DRA regarding the revised costs. Also in that statement, Cal-Am agreed to provide an accounting and proposed recovery mechanism for the interim mitigation program costs. The parties agreed that any further procedural steps would also be requested in that filing.

On February 24, 2012, Cal-Am filed and served its revised costs for an expedited Phase 2, showing a 20% increase in labor costs, which brought the total estimated costs to \$4.7 million from \$4.2 million. This amount also includes a 20% project contingency, as well as 12% overheads for the project. Cal-Am will be contracting with the District to construct the well. Cal-Am proposed that the costs be recorded in a memorandum account as incurred, and when the project is

completed, moved to base rates with a Tier 2 advice letter up to the cap of \$4.7 million.<sup>2</sup>

DRA reviewed the projected costs and supported the proposed ratemaking for Phase 2.

Cal-Am also included its surcharge proposal to recover from its Monterey district customers the \$1.6 million annual costs for its share of the Carmel River mitigation program. Cal-Am noted that on April 1, 2012, it will initiate a surcharge to recover from customers \$5.5 million paid to the District during 2009 - 2011, and that surcharge of 11.7% will end in April 2013. Cal-Am proposed to move the additional \$1.6 million per year in costs to the same balancing account, and to begin collecting the new costs after June 30, 2012, with an additional 5.42% surcharge. After adjusting to amortize transferred costs over 12 months, the projected surcharge increases to 15.37% for October 2012 to March 2013, and then drops to 5.42 %.

Cal-Am's filing did not include DRA's position on the mitigation program costs or the proposed surcharge. No party requested further procedural steps, so the issues of the Aquifer Storage Phase 2 and the mitigation program funding required from Cal-Am were submitted for resolution by the Commission on March 28, 2012. Cal-Am also reported that on February 23, 2012, the District's

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<sup>2</sup> Cal-Am would be required to obtain Commission authorization for any costs above the cap either with a Tier 3 advice letter or in a general rate case.

Board of Directors authorized a rate study that is a precursor to placing a new tax on parcels within the District to generate additional revenue for the District.<sup>3</sup>

### **Discussion**

As required by Public Utilities Code § 454, Cal-Am bears the burden of justifying the proposed ratemaking treatment for the Aquifer Storage and Recovery Project Phase 2, Seaside Well ASR-4, and the fisheries, riparian vegetation and wildlife, and lagoon vegetation and wildlife components of the Carmel River mitigation program, and of demonstrating that the proposed rates will be just and reasonable as required by § 451. As set forth below, Cal-Am has met its burden of justifying its proposals, and we approve the Seaside Well ASR-4 and the Carmel River mitigation agreement.

The urgent need to increase water supply in Cal-Am's Monterey district is well-documented.<sup>4</sup> In its testimony supporting its application, Cal-Am stated that this additional well is necessary to allow Cal-Am to capture the full 2,900 acre-feet per year it is allowed to divert from the Carmel River pursuant to Permit 208008C. This permit allows Cal-Am during the winter period — December 1<sup>st</sup> to May 31<sup>st</sup> of the succeeding year - to divert from the Carmel River for injection into the Seaside Basin up to 2,900 acre-feet. Cal-Am stated that it requires a second well at the Seaside Middle School site to accomplish this diversion reliably.

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<sup>3</sup> In its filing, Cal-Am repeated its request for surcharge to fund the District's Aquifer Storage and Recovery Project Phase 1 costs. Those costs, some of which are from 2005, are part of the user fee matter being litigated in Monterey Superior Court.

<sup>4</sup> See, e.g., D.09-07-021.

No party disputed Cal-Am assertions justifying Well ASR-4, and DRA supports the project.

Cal-Am presented cost forecasts of \$4.2 million for Well ASR-4, with a projected completion date of 2013. To expedite the project for a projected completion date in 2012, Cal-Am forecasted total costs of \$4.7 million. DRA has examined these cost forecasts and supports the estimates and proposed ratemaking.

Cal-Am has presented detailed cost forecasts for the record, which have been reviewed and are supported by DRA. Therefore, we conclude that Cal-Am has met its burden of justifying the costs of Well ASR-4.

Cal-Am requested a memorandum account, with costs properly recorded therein to be transferred to rate base via a Tier 2 advice letter to be filed upon placing well ASR-4 into service. The amount authorized to be recorded in the memorandum account must be reasonable and shall not exceed \$4.7 million. Should Cal-Am's reasonable and actual costs exceed \$4.7 million, Cal-Am may request Commission authorization to include such costs in revenue requirement by a Tier 3 advice letter or the next general rate case. The memorandum account will accrue interest at the 90-day commercial paper rate.

We conclude that Cal-Am has met its burden of showing that the proposed ratemaking for well ASR-4 is just and reasonable.

Turning now to the portions of the District's mitigation program for which Cal-Am is responsible,<sup>5</sup> Cal-Am and the District have entered into a written agreement pursuant to which the District will continue these activities and

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<sup>5</sup> See D.11-03-035 at 15 - 16.

Cal-Am will reimburse the District for its costs up to \$1.6 million per year. ~~The District's testimony offered in support of this application shows that from July 2009 to June 2010, the District spent about \$1 million on these same functions.<sup>6</sup> DRA has not objected to this 60% increase, and we are reluctant to impede the continuation of these required mitigation functions. We will,[We](#) therefore, ~~make the finding~~[find](#) that Cal-Am has justified these costs but will also cap this amount pending further detailed review of the direct costs, indirect allocations, management and administrative costs, and overhead allocations in Cal-Am's next general rate case. We will also approve Cal-Am's proposed recovery of these costs by continuing its existing District surcharge mechanism with the amounts adjusted to reflect the change in costs being recorded.~~

Therefore, Cal-Am is authorized to collect a surcharge in its Monterey district for Carmel River mitigation program costs included in the agreement with the District. Cal-Am reports that it has been recording in its Cease and Desist Order Compliance memorandum account payments to the District since May 24, 2011, the effective date of its agreement with the District. Cal-Am proposed to transfer all such amounts recorded in the Cease and Desist Order memorandum account to the existing District fee surcharge balancing account, as of June 30, 2012.<sup>7</sup> The amounts so transferred will be amortized and collected from ratepayers over 12 months. Thus, for October 2012 to March 2013 both the

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~~<sup>6</sup> See testimony of District General Manager at Exh. DF-8, Table XIII-1.~~

<sup>7</sup> Pursuant to Advice Letter 935, Cal-Am is collecting a surcharge of 12.5% in its General Metered Service Tariff as Special Condition 24. The Carmel River mitigation program costs approved in today's decision will be added to this balancing account and recovered through this surcharge.

existing District fee surcharge and the Carmel River mitigation program costs will be simultaneously collected, with a resulting cumulative surcharge of 15.37%. Thereafter, all mitigation program payments will be recorded directly in the District surcharge balancing account, amortized and collected from ratepayers, with a surcharge of 5.42%, through December 2014. In this way, Cal-Am will record and recover ~~up to \$1.6 million annually~~ annual costs for the Carmel River mitigation program through December 2014.

### **Comments of Proposed Decision**

~~The~~ On April 6, 2012, the proposed decision was mailed to ~~the~~ parties in accordance with Section 311 of the Public Utilities Code, and the comments were allowed under

Rule 14.3 of the Commission's Rules of Practice and Procedure. ~~Comments were filed on \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.~~

On April 16, 2012, the assigned Commissioner issued his Scoping Memo finding that all outstanding issues had been addressed in this proceeding or were pending in Superior Court, and proposing to close the docket. Parties were authorized to comment on this proposal.

The Division of Ratepayer Advocates and the Monterey Peninsula Water Management District raised procedural issues in their comments on the April 6, 2012, proposed decision and the April 16, 2012, Scoping Memo. To provide the parties an opportunity to identify disputed issues of material fact necessary for resolution in this proceeding, and evidence that might be presented on those issues, a prehearing conference was held on Tuesday, June 5, 2012.

At the prehearing conference the parties agreed that the amount to be authorized in this proceeding for the interim mitigation agreement should be

[escalated to by 10% for 2013 and 2014. Cal-Am and the District also agreed to meet and confer regarding the District's costs for Phase I of the Aquifer Storage project, with a new proposal to be filed in this docket no later than August 2, 2012.](#)

### **Assignment of Proceeding**

Michael [R.](#) Peevey is the assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Cal-Am's Monterey District is and has been experiencing a water supply shortage.
2. Well ASR-4 is necessary to ensure that Cal-Am will be able to divert its full allocation under Permit 208008C from the Carmel River for storage in the Seaside Basin.
3. The costs of ~~well~~[Well](#) ASR-4 are reasonable, and it is reasonable to expend the additional increment necessary to potentially expedite the in-service date of the well.
4. The Agreement with the District reasonably meets Cal-Am's Carmel River mitigation obligations.
5. DRA supports ~~well~~[Well](#) ASR-4 and no party opposed the Agreement with the District.
6. No evidentiary hearing was necessary for this phase of this proceeding.

### **Conclusions of Law**

1. Cal-Am has met its burden of justifying the construction of ~~well~~[Well](#) ASR-4, including the costs of an expedited schedule.
2. The projected expedited costs of ~~well~~[Well](#) ASR-4 are reasonable, and the ratemaking steps proposed by Cal-Am should be approved.

3. The Agreement with the District is reasonable, and recovery of costs through the ratemaking surcharge proposed by Cal-Am should be approved.
4. Issues related to the District's user fee are not addressed by today's decision.
5. This decision should be effective today.
6. This proceeding should remain open.

## O R D E R

### IT IS ORDERED that:

1. California-American Water Company's (Cal-Am) request for authorization to construct ~~well~~[Well](#) ASR-4 is granted, and, if feasible, Cal-Am shall accomplish such construction on an expedited schedule with a target in-service date for the well in 2012.
2. California-American Water Company (Cal-Am) is authorized to file a Tier 1 Advice Letter to create the Aquifer Storage and Recovery Project Phase 2 memorandum account, and to record in this account the reasonable costs, not to exceed \$4.7 million, ~~for well~~ [plus interest calculated at the 90-day commercial paper rate, for Well](#) ASR-4 to be constructed at the Seaside Middle School site. Upon completion of construction and placing ~~well~~[Well](#) ASR-4 into service, Cal-Am is authorized to file a Tier 2 advice letter to move the costs properly recorded into rate base. Any costs for ~~well~~[Well](#) ASR-4 that exceed the cap of \$4.7 million may be presented for Commission reasonableness review and ratemaking consideration in a Tier 3 advice letter or in the next general rate case.
3. California-American Water Company (Cal-Am) is authorized to enter into the Interim Implementation Agreement for 2011-2012 Carmel River Mitigation Program, with a term through December 2014, with the Monterey Peninsula

Water Management District (District). Annual billings from the District to Cal-Am pursuant to this Agreement and to be recovered from ratepayers shall not exceed \$1.6 million: [for 2012, \\$1.76 million for 2013, and \\$1.94 million for 2014](#). Future payments for all such billings from the District pursuant to this agreement may be recorded in the balancing account and surcharge authorized in Advice Letter 935. Cal-Am is also authorized to file a Tier 1 advice letter to transfer payments pursuant to the Agreement since its initiation date of May 24, 2011, and recorded in the Cease and Desist Order Compliance memorandum account, from that account to the Advice Letter 935 balancing account and surcharge.

4. California-American Water Company is authorized to collect a concurrent surcharge under Advice Letter 935 for amortization of the previously recorded and transferred costs, with a resulting total surcharge of 15.37% from October 2012 to March 2013. Thereafter the surcharge authorized in Advice Letter 935 shall expire and the only surcharge shall be to recover the payments to the Monterey Peninsula Water Management District authorized by today's decision, at a rate of ~~5.42~~[6.03](#)%.

5. California-American Water Company must present in its next general rate case a detailed ratemaking analysis of any costs from the Monterey Peninsula Water Management District (District) sought to be included in revenue requirement. Such analysis must include justification for and reasonableness demonstration of all direct costs, indirect allocations, management and administrative costs, and overhead allocations. A detailed showing that the costs proposed to be included in revenue requirement are not also recovered by the District through its other funding sources will also be required.

6. No later than August 1, 2012, California-American Water Company may file and serve a revised proposal for Aquifer Storage Phase 1 costs. The assigned Administrative Law Judge may reschedule this filing date for good cause shown.

[7.](#) ~~6.~~ This proceeding should remain open to address the remaining issues.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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