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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W), California Water Service Company (U60W), Golden State Water Company (U133W), Park Water Company (U314W) and Apple Valley Ranchos Water Company (U346W) to Modify D.08-02-036, D.08-06-002, D.08-08-030, D.08-09-026, D.08-11-023, D.09-05-005, D.09-07-021, and D.10-06-038 regarding the Amortization of WRAM-related Accounts	A.10-09-017 (Filed September 20, 2010)

MOTION OF CALIFORNIA-AMERICAN WATER COMPANY (U210W) FOR CLARIFICATION AND RECONSIDERATION OF THE FEBRUARY 28, 2011 RULING OF THE ASSIGNED ADMINISTRATIVE LAW JUDGE REQUIRING SPECIAL NOTICE AT SHAREHOLDER EXPENSE

Sarah E. Leeper
Olivia Para
333 Hayes Street, Suite 202
San Francisco, CA 94102
Telephone: (415) 863-2096
Facsimile: (415) 863-0615
Email: sarah.leeper@amwater.com

Attorneys for Applicant
California-American Water Company

Dated: March 10, 2011

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RELIEF REQUESTED 2

III. PROCEDURAL AND FACTUAL BACKGROUND 4

IV. THE FEBRUARY RULING INCORRECTLY FINDS THAT CALIFORNIA AMERICAN WATER DID NOT COMPLY WITH THE DECEMBER RULING 6

V. REQUEST FOR RECONSIDERATION OF THE ALJ'S DISALLOWANCE OF CUSTOMER NOTICE COSTS SINCE IT WAS BASED ON A MISUNDERSTANDING OF THE FACTS 7

VI. REQUESTS FOR CLARIFICATION OF WHICH CUSTOMERS MUST BE NOTICED BY SEPARATE MAILER AT SHAREHOLDER EXPENSE 8

A. California American Water Seeks to Clarify That it May Provide Regular Billing Notices to the Extent Customers Receive Notices Within the Timeline Established at the February 17, 2011 Prehearing Conference 8

VII. REQUEST FOR CLARIFICATION OF REQUIREMENT TO NOTICE MONTEREY DISTRICT CUSTOMERS PRIOR TO RESOLUTION OF PROPOSED SURCHARGE TO ADDRESS UNDER-COLLECTION OF WRAM 9

VIII. CONCLUSION 10

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I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, California-American Water Company ("California American Water") respectfully submits this Motion for Clarification and Reconsideration of the Assigned Administrative Law Judge's ("ALJ") February 28, 2011 ruling ("February Ruling"), which concludes, *inter alia*, that California American Water failed to comply with an earlier ruling requiring customer notice of this application. As the attached declarations demonstrate, California American Water was in compliance and is being penalized based on misperception of the facts. The February Ruling orders California American Water to send customers in all of its districts except Ventura a "special" notice of this application in a tri-folded mailer at shareholder expense. The February Ruling unfairly discriminates against California American Water by imposing special noticing requirements that go well beyond the noticing required of other utility applicants. California

American Water remains on track to notice its customers by the end of April as approved by the Administrative Law Judge for all utility applicants in this proceeding.

II. RELIEF REQUESTED

California American Water respectfully seeks clarification as to whether it is required to send separate mailers to customers who can be noticed within the timeframe approved for all other water utility applicants, as well as for customers that will not be impacted by the request made in this application. Furthermore, California American Water requests reconsideration of the February Ruling to the extent that it precludes the Company from seeking recovery of the costs associated with the required notices. As described below, the February Ruling effectively imposes a penalty on California American Water based on incorrect statements about California American Water's customer notice. California American Water had no opportunity to respond to the accusation that it failed to comply with an earlier ruling requiring customer notice, in violation of its due process rights. As the attached declarations demonstrate, California American Water was in compliance.

Moreover, as a result of the February Ruling's directive for DRA and California American Water to explore alternatives to a proposed surcharge to address the under-collection of the Water Revenue Adjustment Mechanism ("WRAM"), California American Water is awaiting approval of its revised customer notice for the Monterey District. California American Water seeks clarification regarding the notice to Monterey District customers prior to the resolution of the proposed surcharge to address under-collection of the WRAM.

Accordingly, the Commission should:

(1) reconsider the February Ruling's finding that California American Water did

not comply with the December 20, 2010 Ruling ("December Ruling");[1]

(2) reconsider the requirement that California American Water send a "special" notice to its customers about the application at shareholder expense; and

(3) with respect to the Monterey District only, grant additional time for California American Water to comply with the notice requirement since it will need to draft a completely new customer notice in light of the Assigned Administrative Law Judge's request for DRA to propose within 30 days various alternatives to address the under-collection of the WRAM for the Monterey District.

California American Water has worked diligently to provide customer notices as soon as possible and within the timeframe the Assigned Administrative Law Judge accepted at the February 17, 2011 prehearing conference for all utility applicants to this proceeding. As David Stephenson explained at the February 17, 2011 prehearing conference, California American Water committed that it would provide notice in a manner that would allow customers to receive bill inserts within the same timeframe as the other utility applicants, by the end of April.[2] After reporting on the status of the customer notice, the Assigned Administrative Law Judge appeared to accept mid- to late-April as the timeframe when most of the utilities would be able to complete the customer notices.[3] Despite some delay in obtaining final approval by the Public Advisor of its notices, which was outside of its control, California American Water maintained its commitment to ensuring that all its customers would be provided notice by the

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[1] *Administrative Law Judge's Ruling Directing Customer Notice of This Application Be Provided Pursuant to Rule 3.2(d) of the Commission's Rules of Practice and Procedure*, dated December 20, 2010.

[2] February 17, 2011 Prehearing Conference Transcript ("2/17/11 PHC Tr.") at 92:12-16. *See also* Declaration of David P. Stephenson in Support of Motion for Clarification and Reconsideration of the February 28, 2011 Ruling of the Assigned Administrative Law Judge Requiring Special Notice at Shareholder Expense ("Stephenson Declaration at ¶¶ 4-6").

[3] Stephenson Declaration at ¶ 4.

end of April. Indeed, as of March 7, 2011, the Public Advisor's Office had approved all California American Water notices required for this proceeding, with the exception of notices for the Monterey District.

As described below, there are no grounds or facts in the record to justify singling out California American Water for not complying with the December Ruling when it has committed to providing customer notice within the timeframe for all utilities in this proceeding set by the Assigned Administrative Law Judge. Furthermore, requiring California American Water to provide a "special notice" at shareholder expense would penalize it even though it will provide customer notice within the same timeframe as has been accepted for all the other utilities.

III. PROCEDURAL AND FACTUAL BACKGROUND

On December 20, 2010, Administrative Law Judge Walwyn issued the *Administrative Law Judge's Ruling Directing Customer Notice of this Application be Provided Pursuant to Rule 3.2(d) of the Commission's Rules of Practice and Procedure* ("December Ruling"). In the December Ruling, Administrative Law Judge Walwyn directed each applicant to provide, as soon as possible, customer notice of this application pursuant to Rule 3.2(d) of the Commission's Rules of Practice and Procedure and to obtain pre-approval of the customer notices from the Public Advisor.[4] At the February 17, 2011 prehearing conference, Administrative Law Judge Walwyn determined that it was reasonable for the utility applicants to provide notice to customers by the end of April 2011.[5] At the prehearing conference, the Administrative Law Judge Walwyn made no indication that the utility applicants would be unable to recover the costs of these notices from their customers.

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[4] December Ruling at 5.
[5] 2/17/11 PHC Tr. at 91:12-15.

The December Ruling also required the applicants to work with DRA and the Public Advisor in drafting the customer notices due to concerns about potential customer confusion. To that end, California American Water worked diligently with the other utility applicants, DRA, and the Public Advisor's Office to finalize its notices.[6] Rather than inundate the Public Advisor with dozens of proposed customer notices, California American Water and each of the other utility applicants submitted a "template" notice for one district that, once approved, would be replicated for the remaining districts. California American Water provided a draft customer notices for Application ("A") 10-09-017 for the Larkfield district on January 21, 2011 to the Public Advisor. On February 1, 2011, the Public Advisor approved California American Water's "template" notice for the Larkfield District, subject to tracked changes; however, California American Water was not notified of the approval until February 10, 2011. Immediately upon receipt of the approval of the notice, California American Water submitted the corrected customer notice to the Public Advisor. Although California American Water did not receive final approval for its Larkfield District template customer notice until February 17, 2011, the Company fully expected to be able to able to meet the same notice timeline as the other utilities.[7] At the February 17, 2011 prehearing conference, all utility applicants, including California American Water, indicated that they expected to mail their customer notices by April 2011.[8] The Administrative Law Judge made no indication, at the prehearing conference or for that matter any time prior to the February Ruling, that the agreed-upon target for customer notices was in anyway deficient for California American Water or any other utility applicant in

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[6] *See* Declaration of Sherrene P. Chew in Support of Motion for Clarification and Reconsideration of the February 28, 2011 Ruling of the Assigned Administrative Law Judge Requiring Special Notice at Shareholder Expense ("Chew Declaration") at ¶¶ 2-8.

[7] 2/17/11 PHC Tr. at 92:11-16.

[8] *Id.* at 90:9-91:11.

this proceeding.

IV. THE FEBRUARY RULING INCORRECTLY FINDS THAT CALIFORNIA AMERICAN WATER DID NOT COMPLY WITH THE DECEMBER RULING

The February Ruling states that California American Water did not comply with the December Ruling directing the five applicants to this proceeding to "provide, as soon as possible, customer notice of this application to the customers of each district subject to the requested relief."[9] There is no basis to support the Assigned Administrative Law Judge's finding that California American Water did not comply with the December Ruling.

The accusation that California American Water did not comply with the December Ruling appears to be based entirely on a misunderstanding that California American Water "never submitted" a corrected draft of the initial draft customer notice for the Larkfield District.[10] As described in the Declaration of Sherrene P. Chew, this is factually incorrect. In fact, California American Water immediately responded to the Public Advisor with the corrected Larkfield draft notice *within half an hour* of receiving notice on February 10, 2011.[11] Moreover, when it did not receive final approval of the Larkfield template notice sent to the Public Advisor on February 10, California American Water contacted the Public Advisor on February 16, 2011 to inquire as to its status. In response to this inquiry, California American Water received final approval of its Larkfield template notice, which had been revised to address minor language changes requested by the PAO, ***on February 17, 2011***. Only then was California American Water able to prepare notices for the remaining districts, which it promptly completed. Although it was required to make time consuming calculations for each of the districts, California American Water completed this within four business days and submitted the notices for its

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[9] February Ruling at 4.
[10] *Id.* at 4, fn. 3.
[11] Chew Declaration at ¶ 5.

remaining districts on February 23, 2011. Thus, contrary to the finding that California American Water "never submitted" a corrected draft for the Larkfield District,[12] California American Water provided a corrected draft and fully complied with the December Ruling.

V. REQUEST FOR RECONSIDERATION OF THE ALJ'S DISALLOWANCE OF CUSTOMER NOTICE COSTS SINCE IT WAS BASED ON A MISUNDERSTANDING OF THE FACTS

The February Ruling concludes that "Since Cal-Am did not comply with the December 20 ruling, no costs related to this mailing should be recorded in utility expense accounts."[13] Without explicitly stating so, this February Ruling effectively imposes a penalty that could amount to over $60,000 on California American Water for allegedly failing to comply with a Commission ruling. The Commission has recognized that "when penalties are involved, due process requires prior notice, opportunity to respond, and a hearing when appropriate to resolve issues of fact."[14] As such, California American Water requests reconsideration of the February Ruling because it penalizes the Company even though its actions are in line with the Assigned Administrative Law Judge's most recent timeline for noticing customers as stated at the February 17, 2011 prehearing conference.[15] Moreover, California American Water provided a status update of the customer notice to the Assigned Administrative Law Judge at the February 17, 2011 prehearing conference, at which time it was given ***no*** indication that it needed to send notices out sooner than the other utility applicants to avoid penalties. In fact, the February Ruling was the first time that the Assigned Administrative Law Judge indicated that California American Water's actions somehow did not meet the requirements of the December 20 ruling. California American Water was given ***no*** opportunity to respond to the allegation in the February

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[12] February Ruling at 4, fn. 3.
[13] *Id.* at 4.
[14] *Re So. Pacific Transportation Co.*, D.97-09-063 at 10; 75 CPUC 2d 641 (1997).
[15] 2/17/11 PHC Tr. at 91:12-15.

Ruling that it had violated the December Ruling's notice requirements. Had California American Water been given notice of this penalty and opportunity to respond, it could have demonstrated that it was diligently working to provide notification to its customers "as soon as possible" in compliance with the December Ruling.

VI. REQUESTS FOR CLARIFICATION OF WHICH CUSTOMERS MUST BE NOTICED BY SEPARATE MAILER AT SHAREHOLDER EXPENSE

A. California American Water Seeks to Clarify That it May Provide Regular Billing Notices to the Extent Customers Receive Notices Within the Timeline Established at the February 17, 2011 Prehearing Conference

California American Water seeks clarification as to whether it can include the customer notices as bill inserts as planned for those customers whose regular billing cycles would permit notification in accordance with the schedule approved for all the applicants at the February 17, 2011 prehearing conference. California American Water seeks to clarify that the February Ruling does not require California American Water to incur additional shareholder expense where it can meet the timeline established for all utility applicants to this proceeding, especially to the extent that those utilities are not required to incur the additional expenses of sending a separate mailer to all of its customers. For example, customers in California American Water's Monterey and Larkfield Districts are billed monthly, so these customers can easily be notified before the end of April, which is well within the timeline established for the other utility applicants.[16]

Furthermore, California American Water seeks to clarify the February Ruling as to whether it intends to make California American Water shareholders pay for the expense of separate mailings even in districts where customers will not see an immediate rate impact under this application. The February Ruling excluded Ventura from the direct mail requirement

[16] 2/17/11 PHC Tr. at 91:12-15.

because it "does not have an estimated WRAM/MCBA balance with an immediate rate impact under this application."[17] The same is true for the Coronado District since the under-collection balance in that district is so low that it doesn't currently have a surcharge.[18] While California American Water has committed to provide customer notices, it is concerned about the customer confusion that could result from a notice of a complex ratemaking issue when there is no rate impact,[19] California American Water seeks to clarify that it may provide regular billing notice for this Coronado district as well.

VII. REQUEST FOR CLARIFICATION OF REQUIREMENT TO NOTICE MONTEREY DISTRICT CUSTOMERS PRIOR TO RESOLUTION OF PROPOSED SURCHARGE TO ADDRESS UNDER-COLLECTION OF WRAM

The February Ruling requires California American Water to modify the customer notice for the Monterey District to include notice of a proposal that was only recently put forward on February 22, 2011. The draft notice submitted for the Monterey District, of course, does not include notice of California American Water's February 22 proposal to institute a surcharge to address the under-collection of the Monterey District WRAM because, at the time it provided its notice, California American Water had not yet submitted its proposal as requested by the Assigned Administrative Law Judge. However, the February Ruling is unclear because it also holds that California American Water's proposal to impose an immediate surcharge will not be considered until the required customer notices have been sent. The February Ruling requires California American Water and DRA to provide supplemental filings on California American Water's surcharge proposal, as well as ***six other proposals*** put forth by DRA on March 22,

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[17] February Ruling at 4.

[18] The WRAM/MCBA balance for 2010 is large, but these customers will be notified of this according to the normal Advice Letter procedures when California American Water files for recovery of these balances in March.

[19] In fact, the Commission's rules on customer notices are intended to notify customers of rate increases. *See e.g.,* Rule 3.2(b) of the Commission's Rules of Practice and Procedure; Cal. Pub. Util. Code §454(a).

2011.[20] It is unclear from the February Ruling what would be required to provide adequate notice to Monterey District customers since there are multiple proposals on the table that have a wide-range of possible impacts on customers of unknown magnitude. If the Assigned Administrative Law Judge had accepted California American Water's surcharge proposal, California American Water would undoubtedly have been able to obtain final approval of a notice for all of its districts, including the Monterey District.[21] As of the date of this filing, the approval of the customer notice for the Monterey District is outside of the Company's control since DRA has been given 30 days to come up with its proposal. Thus, at a minimum, California American Water requests that it be given additional time to comply with this new notice requirement since it will need to draft a completely new and more complicated customer notice for Monterey in light of these developments.

VIII. CONCLUSION

For the foregoing reasons, California American Water respectfully seeks clarification and reconsideration of the February Ruling as set forth above.

Dated: March 10, 2011

Respectfully submitted,

By: */s/ Sarah E. Leeper*
Sarah E. Leeper

Attorney for Applicant
California-American Water Company

[20] February Ruling at pp. 2-3 (discussing the variations to the proposed surcharge that will have to be addressed).

[21] Chew Declaration at ¶10 (explaining that the Division of Water & Audits is currently reviewing the customer notice).

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DECLARATION OF DAVID P. STEPHENSON IN SUPPORT OF THE MOTION OF CALIFORNIA-AMERICAN WATER COMPANY (U-210-W) FOR CLARIFICATION AND RECONSIDERATION OF THE FEBRUARY 28, 2011 RULING OF THE ASSIGNED ADMINISTRATIVE LAW JUDGE REQUIRING SPECIAL NOTICE AT SHAREHOLDER EXPENSE

1. My name is David P. Stephenson and I am employed by California-American Water Company as Manager of Rate Regulation. My business address is 4701 Beloit Drive, Sacramento, CA 95838.

2. I appeared for California American Water at the February 17, 2011 prehearing conference in proceeding A.10-09-017.

3. At this prehearing conference I notified the assigned Administrative Law Judge that California American Water had submitted its draft customer notice to the Public Advisor for review, but had not received final approval.

4. At that time, I committed that California American Water would ensure that all of its customers were notified by the end of April, which is in line with the time frame for all other utilities participating in this proceeding.

5. At the February 17, 2011 prehearing conference, I reported on the status of California American Water's customer notice. At the prehearing conference, the Assigned Administrative Law Judge made no indication that California American Water needed to complete the mailing of its customer notices sooner than the time frame when most of the utilities would be able to complete the customer notices.

6. In particular, I stated that California American Water would, where needed, mail out separate customer notices to any customers whose cycles fell outside the time frame to ensure that California American Water did not hold up the process.

7. At no point during the prehearing conference or before the February 28, 2011 ruling was issued was I notified that California American Water would be required to send direct mailers at shareholder expense for allegedly violating the December 20, 2011 ruling issued in this proceeding.

8. The statements in the declaration are true to my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 10th day of March, 2011, at Sacramento, California.

Respectfully submitted,

By: _____
David P. Stephenson

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DECLARATION OF SHERRENE P. CHEW IN SUPPORT OF THE MOTION OF CALIFORNIA-AMERICAN WATER COMPANY (U-210-W) FOR CLARIFICATION AND RECONSIDERATION OF THE FEBRUARY 28, 2011 RULING OF THE ASSIGNED ADMINISTRATIVE LAW JUDGE REQUIRING SPECIAL NOTICE AT SHAREHOLDER EXPENSE

1. My name is Sherrene P. Chew and I am employed by California-American Water Company as a Financial Analyst. My business address is 4701 Beloit Drive, Sacramento, CA 95838.

2. I worked closely with the other water utilities and DRA to draft the customer notices for Application ("A") 10-09-017, which were submitted to the Public Advisor for review on January 21, 2011.

3. Rather than inundate the Public Advisor with dozens of proposed customer notices, each water utility submitted a "template" notice for one district that, once approved, would be replicated for the remaining districts. The template I submitted on January 21, 2011 was for California American Water's Larkfield district.

4. The Public Advisor approved the Larkfield customer notice template subject to tracked changes on February 1, 2011. However, I was not notified of this approval until February 10, 2011.

5. Within half an hour of receiving this approval notice on February 10, 2011, I immediately submitted the corrected Larkfield customer notice to the Public Advisor for final approval.

6. When I did not receive a response to my February 10, 2011 submittal, I followed-up with the Public Advisor's on February 16, 2011.

7. I received notice from the Public Advisor that the Larkfield customer notice template had been given final approval on February 17, 2011.

8. Upon receiving final approval of the Larkfield template, I immediately began preparing the customer notices for California American Water's remaining districts.

9. I submitted the draft customer notices for the remaining California American Water districts on the morning of February 23, 2011.

10. The Public Advisor approved the customer notices for all remaining districts on March 6, 2011, except for Monterey, which is currently being reviewed by the Division of Water & Audits.

11. The statements in the declaration are true to my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 10th day of March, 2011, at Sacramento, California.

Respectfully submitted,

By: _____
Sherrene P. Chew