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06-23-11
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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)

**CALIFORNIA-AMERICAN WATER COMPANY'S (U210W)
MOTION TO WITHDRAW FROM APPLICATION 10-09-017**

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Dated: June 23, 2011

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. SUMMARY OF SCOPING MEMO	3
A. Scope of Issues Specific to California American Water’s Monterey County District.....	4
B. Scope of Issues Applicable to All Applicants’ Districts Except for Monterey.....	4
III. THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE SHOULD GRANT CALIFORNIA AMERICAN WATER’S REQUEST TO WITHDRAW FROM A.10-09-017	5
A. Delayed Resolution of this Proceeding Has Resulted in Conflicting Scope with California American Water’s Pending GRC	5
B. California American Water’s Pending GRC is the Appropriate Proceeding for Addressing the Growing WRAM Balance in Monterey; California American Water’s Request to Withdraw from the Proceeding is Supported by Commission Precedent.....	7
C. Delayed Resolution of this Proceeding Has Rendered Moot Any Effort to Minimize the Continued Under-Collection of the 2011 WRAM Balance in Monterey	8
D. Expanding the Scope of This Proceeding Violates California American Water’s Due Process Rights.....	10
IV. CONCLUSION.....	11

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I. INTRODUCTION

Pursuant to Rule 11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) California-American Water Company (U210W) (“California American Water”) respectfully submits this request to withdraw from Application (“A”) 10-09-017, which requests modification to certain processes for amortizing the Water Revenue Adjustment Mechanisms (“WRAMs”) and the Modified Cost Balancing Accounts (“MCBAs”).

The five water utility applicants filed this application on September 20, 2010 with a request that it be handled on an expedited basis due to the pressing need to quickly address the issues raised in the application. DRA did not oppose the request for an expedited schedule and generally did not oppose the proposals outlined in the application subject to additional discovery regarding how the changes would impact bills.¹ Despite this request for expedited treatment

¹ *Response of the Division of Ratepayer Advocates* at 2, 6 (October 27, 2010).

more than nine months ago, after five prehearing conferences, and after twenty-nine compliance filings there is still no clear schedule or final scope to address the pressing need for immediate relief requested in this proceeding by California American Water with respect to its growing under-collected WRAM/MCBA balances and the need to comply with Emerging Issues Task Force (EITF) 92-7.² Also, because of the staggering under-collected WRAM/MCBA balance in Monterey, it was determined that special consideration may be necessary to immediately consider ways to limit continuing 2011 under-collections.

Although a recent Scoping Memo³ recognized the need for immediate relief to address the continuing under-collected balance in California American Water's Monterey County District WRAM,⁴ it did not set a schedule that will provide immediate relief. As explained herein, California American Water now seeks to withdraw from A.10-09-017 because it is clear that the delayed resolution of this proceeding in regards to all WRAM/MCBA balances, as well as the expanded scope of the proceeding, has resulted in a direct conflict with the scope of its pending general rate case ("GRC"). In its pending GRC, California American Water is currently litigating its request for authority to amortize balancing account balances in

² Financial Accounting Standards Board (FASB) Emerging Issues Task Force (EITF) Issue Paper 92-07 EITF (Emerging Issues Task Force) 92-7 is a financial accounting standard that only allows a regulated utility to "recognize" revenues in a fiscal year (e.g. 2009) if the regulatory process enables the utility to actually recover those revenues within 24 months of the end of the period for which the revenue is recognized. Failure to modify the amortization period to allow all balances to be recovered within 24 months could force the utilities to have to restate their books and report large write-offs. This would negatively impact the financial strength of the companies, ultimately resulting in higher financing costs that negatively impact ratepayers. To prevent possible write offs under Generally Accepted Accounting Principles (GAAP), the applicants deemed eighteen months a reasonable outcome.

³ *Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo*, issued June 8, 2011 ("Scoping Memo"), nine months after the application was filed with a request for expedited treatment due to financial implications that could severely harm the utilities.

⁴ The Scoping Memo sets a schedule that would provide for a decision by the end of the year for all other applicable districts of California American Water and the other utility applicants.

rates on an annual basis⁵ and as discussed below is addressing issues that contribute to the under-collected balance of its Monterey WRAM. California American Water's continued participation in this proceeding will conflict directly with issues properly within the scope of its pending GRC, wherein a decision is scheduled to be issued within the same time frame as this proceeding, rendering this proceeding now a duplication of effort that could result in a conflicting decision. In addition, the delayed resolution of this proceeding has rendered moot any effort to minimize the continued under-collection of the 2011 WRAM balance in Monterey. Moreover, at the June 20, 2011 prehearing conference, the assigned Administrative Law Judge indicated that the Scoping Memo would need to be re-scoped to include additional expansive issues, in direct contradiction to the Scoping Memo and in violation of California American Water's due process rights.

II. SUMMARY OF SCOPING MEMO

As described in more detail below, the extremely delayed Scoping Memo limited the scope of the proceeding to certain discrete issues and bifurcated the proceeding in order to immediately address the unique issues in California American Water's Monterey County District. Specifically, the Scoping Memo bifurcated the proceeding so that the Commission could quickly address the continued under-collection of California American Water's Monterey WRAM balance, separate from the nine specific requests originally identified in the application. With respect to issues in the second phase of the bifurcated proceeding, the Scoping Memo changed the original determination on the need for evidentiary hearings and found that "there are disputed material facts at issue and, therefore, evidentiary hearings are necessary."⁶ As described in the Scoping Memo, a final decision in this proceeding will not be issued until the

⁵ See California American Water's pending GRC Special Request #34.

⁶ Scoping Memo at 4.

end of 2011, rendering California American Water's requests moot and duplicative of requests in its pending general rate case, and leading to potential financial harm to all applicants.

A. Scope of Issues Specific to California American Water's Monterey County District

The Scoping Memo specifically excluded from the scope DRA's proposal to revert to a Monterey-style WRAM/MCBA because this "would require hearings and lead to a very limited implementation period for 2011."⁷ Therefore, for the Monterey County District, the Scoping Memo limited the "scope here to addressing the amortization period for 2010 and 2011 balances."⁸ Accordingly, the Scoping Memo ruled that this proceeding needed to:

Quickly address the extraordinarily high 2010 and 2011 WRAM/MCBA balances in Cal-Am's Monterey District, especially in light of the unique characteristics of that district, and *specify the procedural forum and timetable to address longer-term options.*⁹

The Scoping Memo required DRA and California American Water to inform the Commission of any disputed issues of material fact as to the above limited scope that would require evidentiary hearings and scheduled another prehearing conference for June 20, 2011 in order to set an expedited schedule for the Monterey issue. However, at that prehearing conference, no schedule was set and the scope of the proceeding was once again expanded beyond the original, limited scope.

B. Scope of Issues Applicable to All Applicants' Districts Except for Monterey

The Scoping Memo excluded from the scope the Applicants' request for an immediate interim rate surcharge to recover those 2008, 2009 and 2010 WRAM/MCBA balances that would not otherwise be recovered consistent with EITF 92-7. The Scoping Memo expanded the scope of issues addressed by the applicants in the filing, but did limit the scope to the

⁷ Scoping Memo at 13.

⁸ *Id.*

⁹ *Id.* at 16 (emphasis added).

following issues:

Resolve the nine specific requests identified in the application, and do this in light of the data submitted by applicants on the WRAM/MCBA balances incurred to date and estimated for 2011 (Appendices A and B to this ruling). Include an examination of whether the high volatility experienced in some districts comports with the Commission's expectations in adopting the mechanisms, including our stated conservation objectives and the safeguards articulated in D.08-06-002 and other decisions. Also analyze the volatility of the WRAM/MCBA mechanism in light of the data presented by the applicants in their April 15, 2011 filing, unless DRA specifically reserves an area of analysis for later, more comprehensive review.

The Scoping Memo further agreed with the Parties that the Commission needs to undertake further review of the WRAM/MCBA mechanisms in *other* proceedings, including evaluation of the risk consequence of the mechanisms in the utility's cost of capital proceeding.¹⁰ The Scoping Memo set a schedule for the second phase of the proceeding that includes the submission of testimony, evidentiary hearings and briefs, with an anticipated final Commission decision set for December 15, 2011. The expanded scope, the refusal to address the immediate need for relief as requested, and the timing of a decision in this case have rendered California American Water's involvement in this application ineffective and in conflict with requests made prior to this application in California American Water's GRC application.

III. THE ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE SHOULD GRANT CALIFORNIA AMERICAN WATER'S REQUEST TO WITHDRAW FROM A.10-09-017

A. Delayed Resolution of this Proceeding Has Resulted in Conflicting Scope with California American Water's Pending GRC

California American Water seeks to withdraw, in part, because the delayed resolution of this proceeding has resulted in a direct conflict with the scope of its pending GRC,¹¹ in which the issue of the amortization period for all deferred balances, including the

¹⁰ Scoping Memo at 12-13.

¹¹ California American Water filed its proposed application on May 3, 2011, and its final

WRAM/MCBA has already been addressed in testimony, subject to cross-examination during evidentiary hearings and will be an issue briefed over the next three weeks.¹² In its GRC,¹³ California American Water requested authority to amortize balancing accounts such as the WRAM on an annual basis and that issue is currently being litigated as Special Request #34.

After the submission of this Special Request #34 on the amortization period for its WRAM in the GRC, California American Water learned that other water utilities were planning to submit a joint application to address the same issue on an expedited schedule. Out of an abundance of caution, California American Water made the decision to join the four other Class A water utilities in filing an application to request expedited recovery of the WRAM/MCBA balances in rates. California American Water agreed to participate because, at the time of the filing, it appeared likely that a Commission decision could be issued by the end of 2010 and, therefore, would limit the applicability of its Special Request #34 in the GRC to deferred balances other than the WRAM/MCBA. With an anticipated decision initially scheduled for *December 2010*, California American Water believed this application could be resolved even before DRA's testimony on California American Water's GRC application was due in January. This timeline would have avoided any conflicting scope of issues in each proceeding.

Unfortunately, the delay in resolving this proceeding in an expedited manner, as the parties requested, has resulted in the same issues being address simultaneously in two separate active proceedings. As explained in more detail below, since the GRC is the more

application on July 1, 2010.

¹² The parties to the GRC will submit initial briefs on June 30, 2011 and reply briefs on July 15, 2011. These briefs will cover Special Request #34, which addresses California American Water's request to shorten on the amortization period for all deferred balances, including the WRAM/MCBA balances.

¹³ California American Water filed its proposed application on May 3, 2011, and its final application on July 1, 2010.

appropriate proceeding to resolve the issues and has already developed a full record on the issue, California American Water requests to withdraw from this proceeding and address these issues in the pending GRC as originally planned.

B. California American Water's Pending GRC is the Appropriate Proceeding for Addressing the Growing WRAM Balance in Monterey; California American Water's Request to Withdraw from the Proceeding is Supported by Commission Precedent

California American Water, DRA and interested intervenors in the pending GRC have had an opportunity to address California American Water's request to shorten the amortization period of deferred balances and issues driving the continually growing Monterey WRAM balance. Indeed, in the pending GRC, DRA submitted testimony on California American Water's Special Request #34, both DRA and California American Water have conducted cross-examination on the issue, and both parties will submit briefs on June 30, 2011 that will address Special Request #34. Furthermore, two evidentiary hearing dates are scheduled for June 28, 2011 and July 1, 2011 in the pending GRC to address other issues that are the ultimate cause of the growing WRAM balances including forecasted consumption and rate design. In fact, DRA, jointly with intervenors TURN and NRDC, submitted a Joint Proposal in the pending GRC that includes changes to forecasted consumption and rate design designed to reduce the balances accruing to the WRAM.¹⁴ In its response to the Joint Proposal, California American Water presented an analysis of the effect that forecasted consumption has on the projected WRAM balances in all its districts, including Monterey. Both the Joint Proposal and California American Water's response will be subject to cross-examination and briefing in the pending GRC.

By contrast, the instant proceeding involving California American Water and four

¹⁴ See CAW Exhibit 65, submitted June 20, 2011, in A.10-07-007.

other utility applicants does not have the necessary facts in evidence to address the Monterey WRAM. While some data has been provided regarding 2010 and 2011 balances, this proceeding does not provide an opportunity for California American Water to provide direct testimony regarding the facts and circumstances relating to the issues that are causing the Monterey WRAM to continue to be severely under-collected. Therefore, at this point, it is clear that the expanded scope of the proceeding is duplicating California American Water and DRA's efforts in two proceedings and could result in two conflicting decisions being issued simultaneously.

California American Water's request to withdraw on this basis is supported by Commission precedent. In D.10-05-044, the Commission granted Southern California Edison's motion to withdraw its application because the application proposed a program that would have duplicated work in other proceedings.¹⁵ In D.94-10-056, the Commission granted Southern California Edison's motion to withdraw its application because it found that the issues presented in the application would be adequately addressed in other pending proceedings.¹⁶ Accordingly, in the interest of regulatory efficiency and to avoid conflicting decisions, California American Water requests to withdraw from this proceeding.

C. Delayed Resolution of this Proceeding Has Rendered Moot Any Effort to Minimize the Continued Under-Collection of the 2011 WRAM Balance in Monterey

In its motion requesting a scoping memo, filed on April 22, 2011, California American Water explained that the only Monterey-specific issue that could be properly addressed in this proceeding without overlapping with issues already within the scope of either its pending GRC or Phase III of the Coastal Water Project proceeding was the immediate implementation of some mechanism to *reduce* the under-collections accruing to the Monterey

¹⁵ See D.10-05-044, *Decision Granting Motion to Withdraw Application*.

¹⁶ See D.94-10-056, Finding of Fact 2, Conclusion of Law 2.

WRAM during 2011. To reiterate, the issue of how to reduce under-collections that accrue to the Monterey WRAM after December 31, 2011 is and always has been an issue being addressed in the pending GRC, which seeks to modify water consumption forecasts, and Phase III of the Coastal Water Project proceeding (A.04-09-019), which will address Monterey rate design issues contributing to the high balances.

Lastly, all Parties and the Scoping Memo agree that any further review of the WRAM/MCBA mechanisms should appropriately take place in other proceedings,¹⁷ including evaluation of the risk consequence of the mechanisms in the utility's cost of capital proceeding. Accordingly, the only remaining Monterey-specific issue properly within the scope of this proceeding is the immediate implementation of a mechanism to reduce the 2011 Monterey WRAM balance.

Given that the only feasible mechanism under consideration in this proceeding that could achieve an immediate reduction to the growing under-collection accruing to the Monterey WRAM in 2011 is the immediate implementation of a surcharge and to address the issues regarding the Monterey WRAM/MCBA in California American Water's pending GRC, the schedule discussed at the June 20, 2011 prehearing conference renders this request moot. Due to DRA's opposition to a surcharge and its request to brief the issue, it is clear that no resolution of this option could occur before the end of 2011.

It is now clear that there is little possibility of implementing any mechanism in this proceeding to reduce the growing 2011 WRAM balances soon enough to have any

¹⁷ As DRA stated in its previous filings, DRA envisions a comprehensive scope to address this issue, and preferably, in the existing Conservation Order Instituting Investigation ("OII") 07-01-022 as a new phase, or in a subsequent OII. *See Response of the Division of Ratepayer Advocates to the April 22, 2011 Motion of California-American Water Company (U210W) for the Preparation of a Final Scoping Memorandum*, at 3-4.

meaningful impact on those 2011 balances.¹⁸ Therefore, this issue has become moot. Since there are no other remaining issues properly within the scope of this proceeding that do not conflict with the scope of other active proceedings, California American Water requests that the assigned Commissioner and Administrative Law Judge grant leave for it to withdraw from this application and to address the issues regarding the Monterey WRAM/MCBA in its pending GRC.

D. Expanding the Scope of This Proceeding Violates California American Water's Due Process Rights

Despite the fact that the Scoping Memo specifically excluded from the scope of this proceeding any consideration of DRA's proposal to revert to the old Monterey-style WRAM/MCBA, at the June 20, 2011 prehearing conference, the assigned Administrative Law Judge indicated that the proceeding would need to be re-scoped to include this additional issue. Moreover, the assigned Administrative Law Judge indicated that the schedule would not permit California American Water the opportunity to submit direct testimony. Re-scoping this proceeding to include issues specifically excluded in the Scoping Memo, to deny California American Water the right to present its evidence first on those issues, to include in the scope changes to the WRAM mechanism in isolation without addressing the underlying causes of the large under-collections in the WRAM, and to force California American Water to litigate issues in multiple active proceedings is a violation of California American Water's due process rights.

Based on the limited scope set out in the Scoping Memo, both DRA and California American Water agreed that evidentiary hearings on the under-collection of the

¹⁸ The Scoping Memo suggests that a proper issue within the scope of this proceeding is the amortization period for of the 2010 and 2011 WRAM balances. However, the amortization period for balances accrued in 2010 and 2011 has no impact on *reducing* 2011 balances. Furthermore, as explained above, this is an issue already within the scope of California American Water's pending GRC, which seeks an annual amortization period for all deferred balances to be recovered after January 1, 2012, regardless of when the balances were accrued.

