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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)

**REPLY OF CALIFORNIA-AMERICAN WATER COMPANY (U210W) TO
THE RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES TO
THE MOTION TO WITHDRAW FROM THE PROCEEDING**

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TO WITHDRAW FROM THE PROCEEDING INTRODUCTION**

I. INTRODUCTION

Pursuant to Rule 11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”) and with leave of the assigned Administrative Law Judge (“ALJ”),¹ California-American Water Company (U210W) (“California American Water”) hereby submits its reply to the Division of Ratepayer Advocates’ (“DRA”) opposition to the request to withdraw from this proceeding. California American Water filed its *Motion to Withdraw From Application (“A”) 10-09-017* on June 23, 2011 (“Motion”) as a result of the significant delays in this proceeding and the existence of a better record on the issues in its pending General Rate Case (GRC). The five water utility applicants filed the application on September 20, 2010 with a request that it be handled on an expedited basis without hearings due to the pressing need to quickly address the proposed modifications to certain processes for amortizing the Water Revenue Adjustment Mechanisms (“WRAMs”) and the Modified Cost

¹ By email, dated July 7, 2011, ALJ Christine Walwyn granted California American Water’s request to file a reply and set July 18, 2011 as the due date for the reply.

Balancing Accounts (“MCBAs”). The Commission designated the proceeding as not needing hearings. Despite this request for expedited treatment more than nine months ago, the Scoping Memo did not issue until June 8, 2011 and the assigned Administrative Law Judge recently indicated that the Scoping Memo would need to be re-scoped to include additional expansive issues and that hearings were necessary.

For the reasons set forth in this Reply, the Commission should disregard DRA’s opposition and grant California American Water’s request to withdraw from this proceeding.

II. CALIFORNIA AMERICAN WATER SHOULD BE ALLOWED TO WITHDRAW FROM THIS PROCEEDING

DRA’s opposition to California American Water’s Motion boils down to three spurious claims: (1) California American Water “created this situation” by “making overlapping requests in two separate proceedings”²; (2) the pending GRC is not the appropriate place to address the WRAM balance issue; and (3) dismantling the WRAM and implementing a Monterey-style WRAM will provide an “interim solution” for the undercollected WRAM balance. As discussed below, DRA’s response contains inaccurate and misleading statements about California American Water’s limited request in this proceeding and the nature of the issues that will be addressed in its pending GRC, California American Water’s actual ability to address the large under-collected WRAM balance for the Monterey District through its participation in this proceeding, and the appropriateness and legality of modifying the WRAM when the parties agreed to the WRAM as a settled item in Decision (“D.”) 09-07-021. Furthermore, DRA’s proposal to eliminate the WRAM and revert back to the Monterey-style WRAM runs contrary to

² *Response of the Division of Ratepayer Advocates’ to California American Water Company’s Motion to Withdraw With a Recommendation to Modify the Scope of this Proceeding to Address a Change to the Water Revenue Adjustment Mechanism for the Monterey District*, filed July 6, 2011 (“DRA Response”), p. 3.

the Commission's long recognized goals of decoupling sales from revenue to eliminate disincentives for conservation.

A. **California American Water did not create the situation by making overlapping requests in two separate proceedings. The significantly delayed resolution and expansive rulings in this proceeding created the situation.**

While it is true that California American Water first filed Special Request #34 to address the recovery period of its WRAM/MCBA balance in its GRC, it is the delay in resolving this proceeding in an expedited manner that has created the current predicament:³ a situation resulting in the same issues being addressed in two separate active proceedings. As explained in California American Water's Motion, it was only after the Company had submitted Special Request #34 in the GRC that California American Water learned that other water utilities were planning to submit a joint application to address the same amortization issue on *an expedited schedule*. California American Water decided to join the four other Class A water utilities in filing this application regarding the amortization of the WRAM/MCBA balances⁴ based on its understanding that the proceeding would be concluded by the *end of 2010* and it would be able to obtain expedited recovery due to the urgency of the request and the fast track requested schedule. By joining in this application, it was California American Water's intent to resolve the amortization issue prior to hearings in the GRC, enabling it to litigate the other issues relating to amortization of all balancing accounts in the GRC. These issues now have already have been the subject of testimony, cross examination and briefing in the GRC. Instead, the ALJ is seeking to import certain issues that have already been raised, heard and briefed in the GRC into this

³ As of the date the Motion was filed, there have already been 29 compliance filings made and 5 prehearing conferences held in this proceeding. *See* Motion, pp. 1-2.

⁴ As such, California American Water's participation in this proceeding would limit the applicability of its Special Request #34 in the GRC to deferred balances other than the WRAM/MCBA.

proceeding, further delaying their resolution. California American Water believes the GRC will be decided prior to or concurrently with any decision in this proceeding.

1. The conflict over the resolution of the amortization period and broader issues related to the WRAM in two proceedings is the result of the delay in this proceeding while California American Water has diligently pursued them in its GRC which pre-dates this proceeding.

Contrary to DRA's claims, California American Water's request to withdraw from the proceeding is really caused by the delayed resolution of this proceeding, because at the time the request in this proceeding was made, the timeline for the GRC under the Rate Case Plan would not allow for an expedited decision by the end of **2010**.⁵ The GRC will be resolved by the end of 2011, which California American Water believes will be before any resolution in this proceeding. California American Water's withdrawal from this proceeding will allow the Commission to avoid the delayed resolution of this issue in this proceeding in direct conflict with the scope of its pending GRC, in which the issue of the amortization period for all deferred balances, including the WRAM/MCBA has already been addressed in testimony, subject to cross-examination during evidentiary hearings and has been briefed.⁶ Taken together with DRA's position in the GRC, it appears that DRA is seeking to cause financial harm to California American Water by requiring it to litigate the issue in two proceedings and opposing California American Water's request to withdraw from this proceeding. DRA is well aware that the financial accounting standards may require California American Water and other water utilities to have to restate their books: resulting in large write-offs and causing extremely inconsistent

⁵ D.07-05-062, *Order Instituting Rulemaking to Consider Revisions to the General Rate Case Plan For Class A Water Companies*, 2007 Cal. PUC LEXIS 226, Appendix A, *75.

⁶ The parties to the GRC submitted initial briefs on June 30, 2011 and reply briefs on July 15, 2011. These briefs covered 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.

financial statements because the amortization period is not changed to align with the requirements of EITF 92-7. For the situation in the Monterey County District, the consequences could be severe for California American Water and its customers if the WRAM balance continues to grow. Indeed, as of June 2011, the under-collection for the Monterey WRAM continues to grow at a pace that if continued, would result in the same under-collection as 2010.⁷

Furthermore, the intent of the joint applicants in this proceeding was to change only the recovery period for the accounts, not to address other policy issues relating to the WRAMs. The assigned ALJ's expansion of the scope of this proceeding to include a broad set of issues related to the WRAM, which are also being addressed in the Company's pending GRC, is not within California American Water's control. Glossing over these potential areas of conflict, DRA apparently believes that the Commission should continue to allow issues to be addressed in two simultaneous proceedings since California American Water "created the situation." California American Water did not create the situation. The lengthy GRC processing period and the expansive rulings and delays in this case created it. Contrary to DRA's claims, the Commission should issue a decision on the merits of Special Request #34 in the GRC, based upon the full record in that proceeding.

2. Consistent with Commission precedent, California American Water should be allowed to withdraw from this proceeding because the expanded scope of this proceeding duplicates California American Water's and DRA's efforts in two proceedings.

As explained in more detail in the Motion, the GRC is the more appropriate proceeding to resolve the issues as the Commission has already developed a full record on the issue. DRA ignores that the expanded scope of this proceeding duplicates California American

⁷ California American Water is on target to hit the same under-collection for 2011 as it faces for 2010. The balance as of June 30, 2011 is \$9.4 million, as compared to \$18.2 million for year-end 2010.

Water and DRA's efforts in two proceedings and could result in two conflicting decisions being issued. 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 submitted opening and reply briefs on June 30, 2011 and July 15, 2011, respectively, that address Special Request #34. Furthermore, an evidentiary hearing was held on June 28, 2011 in the pending GRC to address forecasted consumption which is one of the main ultimate causes of the growing Monterey WRAM balance.

DRA ignores precedent that supports California American Water's request to withdraw from this proceeding and address these issues in the pending GRC as originally planned. Specifically, California American Water's request to withdraw is supported by D.10-05-044, in which the Commission granted the utility's motion to withdraw its application because the application proposed a program that would have duplicated work in other proceedings.⁸ Similarly, in D.94-10-056, the Commission granted the utility's motion to withdraw its application because it found that the issues presented in the application would be adequately addressed in other pending proceedings.⁹ In addition to choosing to ignore these decisions, DRA fails to explain how its position will serve the interest of regulatory efficiency and avoid conflicting decisions.

Finally, California American Water's withdrawal from the proceeding will not prejudice any of the other parties to the proceeding. The Scoping Memo recognizes that the situation in California American Water's Monterey County District is unique, and different from

⁸ See D.10-05-044, *In the Matter of the Application of Southern California Edison Company (U338E) for Approval of its Renewable Integration and Advancement Program*, 2010 Cal. PUC LEXIS 180, **5-6.

⁹ See D.94-10-056, *Application of Southern California Edison Company (U 338-E) to Establish an Off-System Power Sales Incentive Mechanism and Related Substantive and Procedural Relief*, 1994 Cal. PUC LEXIS 675, *6, Finding of Fact ¶2, Conclusion of Law ¶2.

the other Class A water utilities and their WRAMs. Because the situation in California American Water's Monterey County District is unique, it needs to be addressed in a suitable proceeding where all issues that are the root cause of the situation can be addressed, and that proceeding is the current GRC where much of the necessary information is already gathered.

B. The Commission is not foreclosed from addressing the WRAM balances until 2015 should California American Water withdraw from this proceeding.

The assigned ALJ and Commissioner should ignore DRA's misguided position that the Commission may not be able to review the Monterey WRAM until 2015 and therefore must re-scope this proceeding to include changes to the Monterey District WRAM in this proceeding. Contrary to DRA's claims, the pending GRC is the appropriate proceeding to address any changes to the WRAM, as well as related issues that are typically reviewed in a GRC. DRA ignores that it is the Commission's practice to address all aspects of a utility's rates, including those items that would impact the WRAM balance, in a GRC. As described below in more detail, if the Commission considers changes to the WRAM it should do so in the pending GRC, where such issues are already being addressed. For example, issues such as the Monterey County District's forecasted consumption, integral to the WRAM's calculation, are currently being litigated in the GRC. An evidentiary hearing was held in the pending GRC on June 28, 2011 to address revenue recovery related issues which directly relate to uncollected WRAM balances. The parties to that proceeding, including DRA, will file briefs over the next several weeks. DRA omits the fact that the revenue recovery/rate design phase of the GRC is still open.

DRA itself admits that it is appropriate to address modifications to the WRAM in a different proceeding.¹⁰ While DRA envisions a comprehensive scope to address the WRAM issue, such as the existing Conservation Order Instituting Investigation ("OII") 07-01-022, or in a

¹⁰ DRA Response, p. 7.

subsequent proceeding, California American Water believes that the Commission can easily address Monterey revenue recovery/rate design issues in the pending GRC.¹¹ As discussed in more detail below, California American Water opposes DRA's request to dismantle the WRAM as such action runs contrary to the Commission's adopted policy to decouple water sales from revenue.

DRA's contention that this proceeding can simply be re-scoped to address the Monterey WRAM in place of the pending GRC is unreasonable. It would make no sense to re-scope this proceeding to include changes to the WRAM mechanism in isolation, without addressing the underlying causes of the large under-collections in the WRAM. Indeed, with the benefit of an extensive and full record in the pending GRC, the Commission is able to address in the pending GRC factors contributing to the under-collected balance on the Monterey County District WRAM. To the extent the Commission does not adequately address factors contributing to the under-collected WRAM balance in the pending GRC, it can always re-scope the GRC proceeding or initiate another phase. Again, as discussed above, the Monterey situation is unique from all other districts served by the joint applicants and at issue in this proceeding. A decision in the pending GRC will be limited to California American Water's unique situation in the Monterey County District and will not pre-judge the outcome of this proceeding.

¹¹ 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*, filed May 9, 2011, pp. 3-4.

C. **DRA’s “interim solution” for the undercollected WRAM balance - dismantling the WRAM and implementing a Monterey-style WRAM - is improper, runs contrary to the Commission’s decoupling goals, and is not a workable solution.**

1. DRA’s proposal is an improper attempt to modify a prior settlement.

DRA’s proposal is an improper attempt to modify the settlement agreement between California American Water and DRA, adopted by the Commission in D.09-07-021. In that settlement agreement the parties agreed to a program comprised of two components: the WRAM/MCBA and [enhanced] conservation rate design.¹² The Commission cannot change one without the other.¹³ Additionally, the consumption estimates in that case were settled based on prior history, even though a reduction was sure to occur as a result of the extremely aggressive conservation rate design. The settlement on rate design occurred at this level because of the agreement to institute the WRAM/MCBA. California American Water entered into the settlement with an extremely aggressive conservation rate design in reliance upon the WRAM/MCBA, which was expressly intended to “[s]ever the relationship between sales and

¹² Section III.A.1 provides “the conservation rate designs and related decoupling mechanisms Water Revenue Adjustment Mechanism (WRAM) and Modified Cost Balancing Account (MCBA) in the Monterey Main System, Hidden Hills, Bishop, Ryan Ranch and Ambler Park constitute a Pilot Program.” D.09-07-021, *Application of California-American Water Company (U210W) for Authorization to In-crease its Revenues for Water Service in its Monterey District by \$ 24,718,200 or 80.30% in the year 2009; \$ 6,503,900 or 11.72% in the year 2010; and \$ 7,598,300 or 12.25% in the year 2011 Under the Current Rate Design and to Increase its Revenues for Water Ser-vice in the Toro Service Area of its Monterey District by \$ 354,324 or 114.97% in the year 2009; \$ 25,000 or 3.77% in the year 2010; and \$ 46,500 or 6.76% in the year 2011 Under the Current Rate Design, and Related Matters*, 2009 Cal. PUC LEXIS 346, Appendix A (“D.09-07-021, 2009 Cal. PUC LEXIS 346”), **244-245.

¹³ California American Water notes that DRA did not oppose the Joint Applicants’ request in this proceeding and thus, the requested modifications to the amortization period do not commit the same error.

revenue to remove any disincentive for California American Water to implement conservation rates and conservation programs.”¹⁴

Allowing DRA to unilaterally modify that agreement and eliminate the WRAM violates the terms of the agreement and runs contrary to the good faith negotiations of the parties. Section I.C provides that “the Settlement Agreement is being presented as an *integrated package* such that Parties are agreeing to the Settlement *as a whole, as opposed to agreeing to specific elements of the Settlement.*”¹⁵ Furthermore, the Settlement Agreement provides that “If the Commission adopts the Settlement Agreement with modifications, *all Parties must consent to the modifications or the Settlement is void.*”¹⁶ Not only is it procedurally improper for DRA to advocate this unilateral change, there is no justification for the Commission to eliminate the WRAM and adopt the Monterey-style WRAM without considering all revenue recovery/rate design issues in the Monterey County District.

2. DRA’s proposal is a step backwards and would run contrary to the Commission’s policy of de-coupling sales from revenue to encourage conservation.

Removing the current WRAM and replacing it with the Monterey-style WRAM, which does not decouple sales from revenues in the least, would run contrary to the Commission’s recognized goals in the Water Action Plan. The Monterey-style WRAM is simply a mechanism to capture variances in rate designs. It captures the difference between what is actually billed under an experimental design and what should have been billed under a

¹⁴ See Section XIV.A.1 of the Settlement Agreement noting that de-coupling sales from revenue is one of the primary purposes of the WRAM/MCBA. D.09-07-021, 2009 Cal. PUC LEXIS 346, Appendix A, **271-272.

¹⁵ D.09-07-021, 2009 Cal. PUC LEXIS 346, Appendix A, *241, Section I.C (emphasis added).

¹⁶ D.09-07-021, 2009 Cal. PUC LEXIS 346, Appendix A, *241, Section I.C (emphasis added).

Commission standard rate design.¹⁷ As such, it is not a useful mechanism for Monterey due to the continuing declining sales.

Furthermore, reverting back to the Monterey-style WRAM is a step backwards and would work at cross purposes to the Commission's goals of decoupling sales from revenues to remove any disincentives for conservation. In the 2005 Water Action Plan, the Commission recognized that a WRAM provides water companies and customers revenue neutrality with respect to the effects of water conservation programs and is consistent with the Commission's successful revenue decoupling mechanisms for gas and electric utilities.¹⁸ The 2010 Water Action Plan notes that the Commission adopted the 2005 Water Action Plan after the wettest winter in recent history, and after three years of drought, it is now absolutely essential that the principals and objectives are not compromised. The 2010 Water Action Plan also recognizes the importance of strengthening water conservation programs to a level comparable of energy utilities.¹⁹ The WRAM was modeled after mechanisms long established by the Commission for energy utilities and remains a critical component of strengthening water conservation in areas such as the Monterey County District.

California American Water continues to support the Commission's policies on decoupling and conservation and does not support lengthy and costly proceedings for DRA to attempt to undo the WRAM and thwart the Commission's existing decoupling policy. DRA's proposal to eliminate the WRAM is wholly inappropriate as it seeks to change a policy already

¹⁷ A Monterey style WRAM will not capture customer consumption variation - it only captures a difference in the billed amounts versus what ordinarily would have been billed. The only time this mechanism is a reasonable approach is when consumption remains constant. If an area is subject to large sales variations - then this mechanism may do more harm than good.

¹⁸ 2005 Water Action Plan, pp. 9, 28, Appendix B, *available at* ftp://ftp.cpuc.ca.gov/PUC/hottopics/3water/water_action_plan_final_12_27_05.pdf.

¹⁹ 2010 Water Action Plan, pp. 1, 3, 17-19, *available at* http://www.cpuc.ca.gov/PUC/hottopics/3Water/051109_wateractionplan.htm.

adopted and accepted by the Commission. It is appropriate, however, to consider modifications to the WRAM, such as shortening the amortization period to address the under-collected WRAM balances, to improve the Commission's adopted mechanism to strengthen conservation in California.

3. DRA's proposal is not a workable solution and fails to address the real issue.

DRA misses the point that the WRAM is *not* the issue; it is the factors contributing to the growing balance in the Monterey WRAM that are the issue. Without articulating any coherent argument as to why the Commission should eliminate the WRAM, DRA concludes that the Commission can simply adopt a Monterey-style WRAM to stop the growing WRAM balance. DRA appears to base its suggestion solely on the fact that it believes the Monterey-style WRAM would somehow result in lower rates for customers (especially if consumption continues to decline compared to the forecasted consumption in the GRC). However, DRA provides no justification for denying California American Water the opportunity to recover these legitimate costs that would otherwise be tracked in the WRAM. DRA's proposal to arbitrarily change the WRAM to a Monterey-style WRAM ignores the requirement that the Commission base its decisions on reasonable, fact-based determinations.²⁰

California American Water is concerned that DRA cannot see that its actions in this and other proceedings are short-sighted and ultimately adverse to ratepayers. The Monterey County District will continue to face increasing rate increases. If it is successful in delaying the resolution of this issue, DRA will ultimately harm ratepayers with potential rate shock when the under-collected balance is recovered. The negative impacts of DRA's proposal to ratepayers

²⁰ See Pub. Util. Code §1705 (the Commission is required to issue decisions containing "separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision").

include: (1) creating disincentives for conservation rates when the Monterey County District is subject to severe reductions in water consumption and without strong conservation incentives ratepayers will face sizeable penalties for failing to meet regulatory and judicial restrictions; (2) causing intergenerational inequities by delaying the recovery of Commission authorized cost of water service; (3) eroding the financial health of the utility, which will ultimately increase capital and other costs paid by customers.

The impact of DRA's cumulative recommendations in this and other proceedings to prevent or delay the recovery of legitimate Commission authorized costs of service is very concerning. DRA consistently advocates for positions that undermine the financial health of the California American Water. The Commission must consider the financial impacts of DRA's proposal in this proceeding, combined with the many other proceedings where DRA is advocating that California American Water should not have the opportunity to recover all of its prudently incurred costs.

4. Changing the Monterey WRAM to a Monterey-style WRAM will not provide an interim solution.

Even if it was appropriate to consider DRA's unilateral change to a Monterey-style WRAM, there is no way to implement such changes during 2011, as DRA suggests. DRA admits that its proposal to implement a Monterey-style WRAM will protract this proceeding to at least the same length as the GRC. In short, even if the proceeding was re-scoped and the Monterey WRAM could be addressed as part of this proceeding, the resolution of this issue could be done just as easily, and sooner, in the pending GRC. As set forth in the Motion, re-scoping this proceeding to include issues specifically excluded in the June 8, 2011 Scoping Memo, would require the Commission to consider changes to the WRAM mechanism in isolation without addressing the underlying causes of the large under-collections in the WRAM,

