

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of
California Water Service Company (U60W)
and the City of Selma to Recover Costs for
Groundwater Fees in the Selma District.

Application 14-01-008
(Filed January 17, 2014)

**DECISION ADOPTING SETTLEMENT BETWEEN CALIFORNIA WATER
SERVICE COMPANY, THE CITY OF SELMA, AND THE OFFICE OF
RATEPAYERS ADVOCATES**

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Appendix A: Settlement Agreement Addressing All Outstanding Issues

DECISION ADOPTING SETTLEMENT BETWEEN CALIFORNIA WATER SERVICE COMPANY, THE CITY OF SELMA, AND THE OFFICE OF RATEPAYERS ADVOCATES**Summary**

The Joint Motion of California Water Service Company (Cal Water), the City of Selma (City), and the Office of Ratepayer Advocates for adoption of the *Settlement Agreement between California Water Service Company (U-60-W), the City of Selma, and the Office of Ratepayer Advocates* (Settlement Agreement) is adopted.

This Settlement Agreement resolves all outstanding issues and is signed by all parties. Key items of the Settlement Agreement adopted herein include:

- 1) authority for Cal Water to collect a groundwater surcharge from its Selma customers that will be recorded in a Replenishment Fund whose balance will not exceed \$3 million; 2) transfer the City's vote regarding the governance of the Replenishment Fund to Cal Water, and requires Cal Water to report on the votes taken and uses of Replenishment Fund money in its General Rate Case filings;
- 3) resolution of inconsistencies between the Consolidated Irrigation District (CID)-City Cooperative Agreement (CA) and the City's Ordinance 2012-2014 (City Ordinance), extension of the CID-CA and amendment by the City Ordinance; and 4) the inclusion of key terms of the Settlement Agreement itself incorporates key terms from the CID-CA and the City Ordinance.

This proceeding is closed.

1. Background

On January 17, 2014, California Water Service Company (Cal Water) and the City of Selma (City) jointly filed Application (A.) 14-01-008 to recovery costs for groundwater fees in the Selma District.¹ On February 5, 2014, Resolution ALJ 176-3330 preliminarily determined that category of this proceeding as ratemaking and that hearings would not be necessary. On February 11, 2014, the Office of Ratepayer Advocates (ORA) filed a protest.

A prehearing conference (PHC) was held on April 15, 2014 to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding. The three parties to this proceeding are Cal Water, the City, and ORA.

On May 14, 2014, a Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo) was issued, in which the assigned Commissioner ruled in part, that the preliminary determination that no hearings were necessary be changed to requiring evidentiary hearings (EH), detailed the scope and schedule of this proceeding. On May 23, 2014, the City filed a response to the Scoping Memo.

On June 20, 2014 a Public Participation Hearing (PPH) was held in Selma, and on July 25, 2014, an EH was held in San Francisco.

On November 21, 2014, Cal Water, the City, and ORA, jointly filed The Joint Motion of Cal Water, the City, and the ORA for adoption of the *Settlement Agreement between California Water Service Company (U-60-W), the City of Selma,*

¹ Cal Water and the City are also referred to together as “Joint Applicants” herein.

*and the Office of Ratepayer Advocates (Settlement Agreement).*² No party filed comments to this motion.

On December 2, 2014, the Acting Chief Administrative Law Judge (ALJ) issued a Notice of Reassignment from Judge Linda Rochester to Judge Seaneen M. Wilson. All rulings of the assigned Commissioner and assigned ALJs are affirmed herein.

2. Overview of Parties' Positions

2.1. Cal Water and the City

By the Joint Application, Cal Water and the City request authority for the institution of a groundwater surcharge on Cal Water's Selma District ratepayers reflects the terms of the Cooperative Agreement (CA)³ between the City and the Consolidated Irrigation District (CID), and the City's Ordinance 2012-2014 (City Ordinance). This proposed groundwater surcharge, would:

1. Include both a Baseline Fee for cost reimbursement to CID and a Replenishment Fee to be used for offset or reduction of the impact of Selma District customers' use of groundwater on those groundwater sources;
 - a. The volumetric portion of the groundwater surcharge would rise from \$0.1262/Ccf⁴ in the first year to \$0.4287/Ccf in the eighth year; and

² Settlement Agreement is attached to this decision as Appendix A.

³ Legal actions by CID against the City in the Fresno County Superior Court alleged that urban development was in violation of the California Environmental Quality Act. In order to resolve the legal actions, the City and CID entered into the CA on October 1, 2012. The CA established a framework that will allow continued groundwater extraction and new urban development in the City, while ensuring recharge of the Upper Kings River Basin.

⁴ Ccf represents the term "100 cubic feet".

- b. The Replenishment Fee portion of the groundwater surcharge would be held in an account for future use, with a balance capped at \$4,000,000;
2. Be payable by Cal Water to the City;
3. Be intended to replenish groundwater resources in the Upper Kings River Basin; and
4. Would allow the City to move forward with measured urban development.

In its rebuttal testimony to ORA's Report, the City addressed ORA's concerns regarding: 1) the assumptions and calculations on which the groundwater fee was based; and 2) the CID and its recharge activities.

2.2. ORA

In its protest, ORA stated it would determine whether the Joint Applicants request was just and reasonable, appropriate, in the public interest, and benefitted ratepayers. ORA also stated it would examine the effect on Selma District customer bills by phasing in of the groundwater surcharge, as well as the legal authority the City relied on to institute the groundwater surcharge on Cal Water's Selma District customers.

In its testimony, ORA provided a detailed assessment of the Applicant's request. ORA posited that:

1. The proposed groundwater surcharge would result in a substantial bill increase for Selma District customers;
2. Current ratepayers would be responsible for a greater percentage of CID groundwater fees compared to a previous CA (100% compared to 80%);
3. The assumptions used and calculations made by CID in its determination of the groundwater surcharge should be revised;
4. Because the City had not imposed development fees for groundwater recharge on new commercial and residential

- developments, these entities would not pay their fair share the benefits resulting from the institution of the CA;
5. The imposition of a groundwater surcharge on Cal Water's Selma District customers,⁵ but not on other groundwater users in the City is inequitable;
 6. Inequity of Selma district flat rate customers not being subject to the groundwater surcharge;
 7. The City's Ordinance does not but should include:
 - a. Funding alternatives to a Replenishment Fee, including state and federal funding and development fees; and
 - b. The termination date of the CA or the terms for payment suspension of the CA;
 8. Cal Water should participate in determining how the Replenishment Fund would be used to ensure the long-term survivability of the groundwater basin; and
 9. Doubts regarding the benefits to Cal Water's Selma District customers of CID's groundwater recharge plan.

3. Settlement Agreement

Pursuant to Rules 11.2 and 12.1(a),⁶ Cal Water, the City, and ORA jointly filed a motion on November 21, 2014, requesting approval and adoption of the

⁵ Pursuant to the City Ordinance.

⁶ Pursuant to Rule 12.1, parties to a proceeding may file a written motion requesting adoption of a settlement, any time after the first PHC and within 30 days after the last day of hearing. Rule 11.6 permits motions for extensions of time to comply with the Rules or an ALJ ruling. Prior to filing the Joint Motion in the current proceeding (which was filed more than 30 days after the last day of hearing), counsel for GSWC/BVES submitted a motion through e-mail to the assigned ALJ, requesting an extension of time to file a motion for approval of a settlement agreement in this proceeding. The assigned ALJ granted GSWC/BVES's motion by an e-mail ruling on May 5, 2014 to May 12, 2014.

all-party Settlement Agreement. The issues addressed in the Settlement Agreement include all outstanding issues in this proceeding.

In accordance with Rule 12.1(b), the Parties to the Settlement Agreement convened a settlement conference on November 6, 2014. Notice and opportunity to participate were provided to all parties for the purpose of discussing a settlement in this proceeding.

3.1. Description of Key Parts of the Settlement

In order to resolve ORA's concerns regarding the reasonableness of the proposed groundwater surcharge, the Settlement Agreement: 1) provides for a higher credit to Selma District customers (27 percent instead of 20 percent) against the groundwater surcharge to account for storm-water, wastewater treatment discharge, and other activities;⁷ 2) caps the Replenishment Fund balance at \$3 million instead of \$4 million, thereby reducing the amount of groundwater surcharge being held by Cal Water;⁸ 3) requires Selma District Flat rate customers to pay a groundwater surcharge;⁹ and 4) requires Cal Water to show the surcharge as a separate line item on customer bills.¹⁰

Pursuant to the Settlement Agreement, Cal Water will collect from ratepayers and pay to the City a groundwater surcharge rate that is made up of a Baseline Fee and a Recharge Fee: 1) an annual baseline ground water recharge

⁷ Settlement Agreement at Section IV.D.

⁸ Settlement Agreement at Section V.F.

⁹ Settlement Agreement at Section IV.B, E, and F.

¹⁰ Settlement Agreement at Section IV.C.

fee of \$0.069/Ccf;¹¹ and 2) an annual Replenishment Fee of \$0.23/Ccf.¹² The fees will be adjusted as detailed in the Settlement Agreement starting in Year Five and for each year thereafter.¹³

In the original request, the Replenishment Fund would have been governed by a committee consisting of one representative of CID and one representative of the City (with a Kings River Conservation District representative serving as a tiebreaker). In order to provide Cal Water (and the Commission) with a voice in the governance of the Replenishment Fund, the settling parties agree to give the City's vote to Cal Water,¹⁴ and required Cal Water to report on the votes taken and uses of Replenishment Fund money in Cal Water's general rate case (GRC) filings.¹⁵

ORA raised concerns about the terms of the CA and the City Ordinance, including some inconsistencies between them. Some of these concerns were resolved by CID's and the City's extension of their CA and the City's amendment to its Ordinance; with the balance of ORA's concerns addressed in the Settlement Agreement, by the inclusion of key terms from the CA and City Ordinance,. In particular: 1) the term "Effective Date" in the City Ordinance means the effective date of the tariff sheets that contain the Selma

¹¹ Settlement Agreement at Attachment C (CA) at 3.a.

¹² Settlement Agreement at Attachment C (CA) at 3.b.

¹³ Settlement Agreement at Section IV.H.

¹⁴ Settlement Agreement at Section V.G.

¹⁵ Settlement Agreement at Section VI.B.

District groundwater surcharges;¹⁶ 2) the term “Annual Adjustment” in the City Ordinance applies to the phase-in of the Replenishment Fee increases at 12-month intervals from the Effective Date of the groundwater surcharge;¹⁷ 3) the groundwater surcharge will be calculated based upon the water production and sales figures available for the last full calendar year;¹⁸ 4) Cal Water will remit the funds to the City that were actually collected through the groundwater surcharge, within 30 days of the end of the calendar year (beginning with the calendar year in which the Selma Surcharges becomes effective);¹⁹ 5) Cal Water’s remittances to the City will constitute fulfillment of Cal Water’s payment obligations described in the CA and the City Ordinance;²⁰ 6) where the terms of the CA or City Ordinance conflict with the terms of the Settlement Agreement, the terms of the Settlement Agreement prevail;²¹ and 7) any modifications to the CA or the City Ordinance that is not consistent with the financial terms or obligations of Cal Water or its ratepayers requires Commission authorization.²²

¹⁶ Settlement Agreement at Section V.B.

¹⁷ Settlement Agreement at Section V.B.

¹⁸ Schedules D-1 and D-7 of the annual report to the Commission for the Selma District. See Settlement Agreement at Section V.C.

¹⁹ Settlement Agreement at Section V.C.

²⁰ Settlement Agreement at Section V.C.

²¹ Settlement Agreement at Section VII.A.

²² Settlement Agreement at Section VII.C.

4. Discussion and Conclusion

The Commission shall adopt the Settlement Agreement because it complies with Commission requirement for approval of settlements, because it is an all-party settlement, reasonable in light of the whole record, consistent with the law, and in the public interest.

4.1. The Settlement Agreement is Reasonable in Light of the Whole Record

This proceeding includes a full record of both written and oral testimony, and ratepayer input at the Public Participation Hearings. The Settlement Agreement was reached after careful analysis of the issues by each party involved, all of whom are knowledgeable and experienced, and includes detailed instructions regarding implementation of the terms of the Settlement Agreement.

The settling parties agree that the Settlement Agreement: 1) provides significant benefits of groundwater recharge in the Upper Kings River Basin, because the additional credits and controls included in the Settlement Agreement alleviate concerns about the size of the surcharge and governance of the fees collected; 2) recognizes the need for groundwater recharge in the area; and 3) provides a more equitable groundwater recharge fee and creates additional opportunities for Commission oversight than was originally requested in the application.

The Settlement Agreement is consistent with Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record. This policy supports many worthwhile goals, including reducing the expense of litigation, conserving scarce Commission resources, and allowing parties to reduce the risk that litigation will produce unacceptable results. Thus, we conclude the Settlement Agreement is reasonable.

4.2. The Settlement Agreement is Consistent with the Law

The terms of the Settlement Agreement complies with all applicable statutes. These include Pub. Util. Code § 451 which in part requires, that utility rates must be just and reasonable, and Pub. Util. Code § 454, which in part prevent a change in public utility rates unless the Commission finds such an increase justified. Nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

4.3. The Settlement Agreement is in the Public Interest

The Settlement Agreement is in the public interest and in the interest of parties involved. The agreed-upon terms, pursuant to the Settlement Agreement, resolve all items at issue in this proceeding, and the parties have voluntarily entered into the Settlement Agreement.

Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties. The parties to the Settlement Agreement comprise all of the active parties in this proceeding. Thus, the Settlement Agreement commands the unanimous sponsorship of the affected parties who fairly represent the interests affected by the Settlement Agreement.

The Settlement Agreement is a reasonable compromise on all issues, and is mutually beneficial to the Parties. Approval of the Settlement Agreement will enable groundwater recharge in the Upper Kings River Basin, enable measured urban growth in Selma, provide ongoing Commission oversight over the Replenishment Fee, and more equitably apply a groundwater recharge fee, all of which is in the public interest.

We also find that the evidentiary record contains sufficient information for us to determine the reasonableness of the Settlement Agreement and for us to

discharge any future regulatory obligations with respect to this matter. For all these reasons, we approve the Settlement Agreement.

5. Advice Letter (AL)

Cal Water shall file a Tier 1 AL within 30 days of the issuance of this decision in order to make all applicable tariff changes resulting from our order herein.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code §311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Catherine J.K. Sandoval is the assigned Commissioner and Seaneen M. Wilson is the assigned ALJ in this proceeding.

Findings of Fact

1. On January 17, 2014, Cal Water and the City jointly filed A.14-01-008, requesting authority to recover costs for groundwater fees in the Selma District.
2. On February 5, 2014, Resolution ALJ 176-3330 preliminarily determined that category of this proceeding as ratemaking and that hearings would not be necessary.
3. On February 11, 2014, ORA filed a protest.
4. A PHC was held on April 15, 2014, to establish the service list for the proceeding, discuss the scope of the proceeding, and develop a procedural timetable for the management of the proceeding. The three parties to this proceeding are Cal Water, the City, and ORA.

5. On May 14, 2014, a Scoping Memo was issued, in which the assigned Commissioner ruled in part, that the preliminary determination that no hearings were necessary be changed to requiring EHs, and detailed the scope and schedule of this proceeding.

6. On May 23, 2014, the City filed a response to the Scoping Memo.

7. On June 20, 2014 a Public Participation Hearing was held, and on July 25, 2014, an EH was held in San Francisco.

8. In accordance with Rule 12.1(b), the Parties to the Settlement Agreement convened a settlement conference on November 6, 2014. Notice and opportunity to participate were provided to all parties for the purpose of discussing a settlement in this proceeding.

9. On November 21, 2014, Cal Water, the City, and ORA, jointly filed a motion requesting adoption of the Settlement Agreement. No party filed comments to this motion.

10. On December 2, 2014, the Acting Chief ALJ issued a Notice of Reassignment from Judge Linda Rochester to Judge Seaneen M. Wilson.

11. The Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.

12. In order to resolve ORA's concerns regarding the reasonableness of the proposed groundwater surcharge, the Settlement Agreement: 1) provides for a higher credit to Selma District customers (27 percent instead of 20 percent) against the groundwater surcharge to account for storm-water, wastewater treatment discharge, and other activities; 2) caps the Replenishment Fund balance at \$3 million instead of \$4 million, thereby reducing the amount of groundwater surcharge being held by Cal Water; 3) requires Selma District Flat

rate customers to pay a groundwater surcharge; and 4) requires Cal Water to show the surcharge as a separate line item on customer bills.

13. Pursuant to the Settlement Agreement, Cal Water will collect from ratepayers and pay to the City a groundwater surcharge rate that is made up of a Baseline Fee and a Recharge Fee: 1) an annual baseline ground water recharge fee of \$0.069/Ccf; and 2) an annual Replenishment Fee of \$0.23/Ccf. The fees will be adjusted as detailed in the Settlement Agreement starting in Year Five and for each year thereafter.

14. In order to provide Cal Water (and the Commission) with a voice in the governance of the Replenishment Fund, the settling parties agree to give the City's vote (on the committee of CID, the City, and the Kings River Conservation District) to Cal Water, and require Cal Water to report on the votes taken and uses of Replenishment Fund money in Cal Water's GRC filings.

15. Inconsistencies between the CA and the City Ordinance were: 1) resolved by CID's and the City's extension of their CA and the City amendment to its Ordinance; and 2) addressed in the Settlement Agreement, by the inclusion of key terms from the CA and City Ordinance, and the City Ordinance.

16. In particular: 1) the term "Effective Date" in the City Ordinance means the effective date of the tariff sheets that contain the Selma District groundwater surcharges; 2) the term "Annual Adjustment" in the City Ordinance applies to the phase-in of the Replenishment Fee increases at 12-month intervals from the Effective Date of the groundwater surcharge; 3) the groundwater surcharge will be calculated based upon the water production and sales figures (Schedules D-1 and D-7 of the annual report to the Commission for the Selma District) available for the last full calendar year; 4) Cal Water will remit the funds to the City that were actually collected through the groundwater surcharge, within 30 days of

the end of the calendar year (beginning with the calendar year in which the Selma Surcharges becomes effective); 5) Cal Water's remittances to the City will constitute fulfillment of Cal Water's payment obligations described in the CA and the City Ordinance; 6) where the terms of the CA or City Ordinance conflict with the terms of the Settlement Agreement, the terms of the Settlement Agreement prevail; and 7) any modifications to the CA or the City Ordinance that is not consistent with the financial terms or obligations of Cal Water or its ratepayers requires Commission authorization.

17. The settling parties agree that the Settlement Agreement: 1) provides significant benefits of groundwater recharge in the Upper Kings River Basin, because the additional credits and controls included in the Settlement Agreement alleviate concerns about the size of the surcharge and governance of the fees collected; 2) recognizes the need for groundwater recharge in the area; and 3) provides a more equitable groundwater recharge fee and creates additional opportunities for Commission oversight than was originally requested in the application.

18. The terms of the Settlement Agreement comply with all applicable statutes. Nothing in the Settlement Agreement contravenes statute or prior Commission decisions.

19. The parties have voluntarily entered into the Settlement Agreement.

20. Approval of the Settlement Agreement avoids the cost of further litigation, and reduces the use of valuable resources of the Commission and the parties.

21. The parties to the Settlement Agreement comprise all of the active parties in this proceeding. Thus, the Settlement Agreement commands the unanimous sponsorship of the affected parties who fairly represent the interests affected by

the Settlement Agreement. The Settlement Agreement is reasonable compromise on all issues, and is mutually beneficial to the Parties.

22. Approval of the Settlement Agreement will enable groundwater recharge in the Upper Kings River Basin, enable measured growth in Selma, provide ongoing Commission oversight over the Replenishment Fee, and more equitably apply a groundwater recharge fee, all of which is in the public interest.

Conclusions of Law

1. The Settlement Agreement is reasonable compromise on all issues, and is mutually beneficial to the Parties.

2. The Commission should adopt the Settlement Agreement because it complies with Commission requirement for approval of settlements, because it is an all-party settlement, resolves all outstanding issues, is reasonable in light of the whole record, consistent with the law, and in the public interest.

3. Cal Water should file a Tier 1 AL within 30 days of the issuance of this decision in order to make all applicable tariff changes resulting from our order herein.

4. A.14-01-008 should be closed.

O R D E R

IT IS ORDERED that:

1. The uncontested *Settlement Agreement between California Water Service Company (U-60-W), the City of Selma, and the Office of Ratepayer Advocates*, which is attached in Appendix A to this decision, is reasonable in light of the whole record, consistent with law, in the public interest and is approved.

2. California Water Service Company shall file a Tier 1 Advice Letter within 30 days of the issuance of this decision in order to make all applicable tariff changes resulting from our order herein.

3. Application 14-01-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.