

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

Application of CALIFORNIA WATER SERVICE COMPANY (U60W), a California corporation, for an order from the California Public Utilities Commission authorizing a memorandum account to record asbestos litigation expenses.

A.14-09-003  
(filed September 3, 2014)

**SETTLEMENT AGREEMENT OF  
CALIFORNIA WATER SERVICE COMPANY  
AND THE OFFICE OF RATEPAYER ADVOCATES**

Shanna Foley  
Office of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 703-2969  
shanna.foley@cpuc.ca.gov

Attorney for the Office of Ratepayer Advocates

Lori Anne Dolqueist  
Manatt Phelps & Phillips, LLP  
One Embarcadero Center  
30th Floor  
San Francisco, CA 94111  
(415) 291-7400  
LDolqueist@manatt.com

Attorney for Applicant  
California Water Service Company

Natalie Wales  
Regulatory Attorney  
California Water Service Company  
1720 North First Street  
San Jose, CA 90505-5272  
(408) 367-8566  
nwales@calwater.com

Attorney for Applicant  
California Water Service Company

February 6, 2015

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

Application of CALIFORNIA WATER SERVICE COMPANY (U60W), a California corporation, for an order from the California Public Utilities Commission authorizing a memorandum account to record asbestos litigation expenses.

A.14-09-003  
(filed September 3, 2014)

**SETTLEMENT AGREEMENT OF  
CALIFORNIA WATER SERVICE COMPANY  
AND THE OFFICE OF RATEPAYER ADVOCATES**

**I. TERMS OF THE SETTLEMENT AGREEMENT**

Pursuant to Article 12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), California Water Service Company (“Cal Water”) and the Office of Ratepayer Advocates (“ORA”) (collectively, “the Parties”) have agreed on the terms of this settlement agreement (the “Settlement Agreement”), which they now submit for approval. This Settlement Agreement addresses all of the disputed issue between Cal Water and ORA in this proceeding.

After conducting discovery, negotiating in person, and analyzing their respective interests, the Parties have determined that this Settlement Agreement is in their best interests, in the public interest, and more cost-effective for all concerned than undertaking the expense, delay, and uncertainty of further litigation. Because this Settlement Agreement represents a compromise, the Parties have entered into each stipulation contained in the Settlement Agreement on the basis that its approval by the Commission not be construed as an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding.

Pursuant to Rule 12.5 of the Commission’s Rules of Practice and Procedure, approval of this

Settlement Agreement by the Commission may not be construed as a precedent or statement of policy of any kind except as it relates to the current and future proceedings addressed in the Settlement.

**I. MEMORANDUM ACCOUNT**

The Parties agree that the Commission should authorize Cal Water to establish the Asbestos Litigation Memorandum Account (“ALMA”) to track costs related to litigation arising from alleged exposure to asbestos from asbestos cement (“AC”) water pipes in Cal Water's service areas. The exposures are alleged to have incurred as early as the 1950s and as late as the 1990s. Plaintiffs in these cases are individuals that allege that they were exposed to asbestos while working with AC pipes in Cal Water’s service areas, or the family-members of these individuals. AC pipe was used extensively throughout the water industry during this period, including by Cal Water. The Commission repeatedly approved projects using AC pipe, including Cal Water projects, and found that projects using AC pipe met the standards of General Order 103. Cal Water has been able to obtain partial monetary contributions to its defense costs and settlements from contractors or developers who employed the plaintiffs. However, with the passage of time and each new lawsuit, the developers and contractors are increasingly found to be bankrupt or out of business. The dollars available under Cal Water’s insurance policies for defense costs and settlements are also being exhausted with each new asbestos lawsuit.

Cal Water recognizes that establishment of the ALMA does not guarantee recovery of the recorded costs. Cal Water recognizes that the establishment of the ALMA does not equate to a finding by either ORA or the Commission that costs recorded in the ALMA are reasonable. Cal Water will request recovery of the recorded costs as discussed below, at which point the Commission, ORA, and any other interested parties will have the opportunity to review the recorded costs for reasonableness and recovery.

**A. Items to Be Recorded**

**1. Outside Services Costs**

Cal Water shall only record costs for outside services related to defending against

asbestos litigation lawsuits and seeking indemnification or cost recovery from insurers, developers, contractors, or other involved parties. Cal Water shall not record any costs for internal services related to defending against asbestos litigation lawsuits and seeking indemnification or cost recovery from insurers, developers, contractors, or other involved parties. In addition to the items listed in A.2 (settlement payments) and A.3 (judgments), Cal Water shall only record the following outside service costs to the memorandum account:

- a. Filing and court fee costs
- b. Attorney fees
- c. Legal representation administrative costs
- d. Legal representation travel costs
- e. Litigation support costs
- f. Investigative costs
- g. Court reporter costs
- h. Deposition costs
- i. Expert witness fees
- j. Expert witness administrative costs
- k. Witness representation costs
- l. Witness travel costs
- m. Insurance coverage attorney costs
- n. Other reasonable and justified costs from outside service providers directly tied to asbestos litigation cases.

**2. Settlement Payments**

Cal Water may record in the ALMA payments made according to settlement agreements in litigation related to alleged asbestos exposure.

**3. Judgments**

Cal Water may record in the ALMA judgments against it in litigation related to alleged asbestos exposure.

#### **4. Credits**

Cal Water shall record any recovery or compensation of costs from outside sources as a credit to the memorandum account. Any recovery or compensation of costs recorded in the memo account is to be credited against the costs recorded in the memorandum account, including recovery or compensation received after any expiration of the memorandum account. Costs that shall be treated as a credit in the memorandum account include, but are not limited to:

- a. Developer indemnity
- b. Developer reimbursement of expenses
- c. Developer insurance reimbursement
- d. Contractor indemnity
- e. Contractor insurance reimbursement
- f. Contribution by other defendants
- g. Court awards
- h. Settlement awards

#### **5. Interest**

Pursuant to Standard Practice U-27-W of the Division of Water & Audits (“SP U2-7”), the ALMA will earn interest at the 90-day commercial paper rate.<sup>1</sup>

#### **B. Recovery of Expenses Recorded in Memorandum Account**

Cal Water shall seek recovery of costs recorded in the memorandum account if triggered under SP U-27,<sup>2</sup> or at the end of the five-year term of the memorandum account. The request shall be in a filing that is in accordance with SP U-27 and General Order 96-B, Water Industry Rule 7.3.3. Cal Water shall provide the following information in any advice letter, general rate case, or application filing seeking recovery of costs recorded in the ALMA:

- a. The number of active cases pending against Cal Water involving claims related to alleged asbestos exposure.

---

<sup>1</sup> SP U-27, p. 8.

<sup>2</sup> “Reserve account amortization for Class A utilities will be part of the General Rate Case or may be by advice letter when the account over or under collection exceeds 2%, at the utility’s option.” SP U-27, p. 10. The 2% referenced here refers to 2% of the utility’s last adopted revenue requirement.

- b. For each active case currently pending against Cal Water, the status of each case and a description of the claims made against Cal Water.
- c. The amount of costs that Cal Water has spent to date for each case, specified by year.
- d. An estimate of the amount that Cal Water anticipates it will incur in further asbestos litigation expenses for each case listed above.

Cal Water must demonstrate in any filing seeking recovery of any costs that have been recorded in the ALMA that Cal Water has taken all reasonable actions and legal recourse to recover insurance funds and funds from contractors, developers or other parties partially or wholly responsible for asbestos exposure. If Cal Water has not undertaken any of the actions listed below, it must provide an explanation and justify why such step(s) were not taken.

The actions include but are not limited to:

- a. Cal Water has contractually required all developers and contractors to defend, indemnify, and hold Cal Water harmless.
- b. Cal Water contractually requires contractors to add Cal Water as an additionally insured party to contractors' general liability insurance.
- c. Cal Water has filed a cross-complaint against any developers, contractors, or other pertinent parties in any litigation.
- d. Cal Water has determined the insurance policies in effect at the time of the alleged exposure and analyzed any limitations or exclusions.
- e. Cal Water has tendered all asbestos claims to its insurance carriers.
- f. As an additional insured, Cal Water has directly tendered a claim to the contractor's insurance carrier regarding claims arising from alleged asbestos exposure.
- g. Cal Water and/or its insurers, have pursued other parties and their insurance regarding any claims arising from alleged asbestos exposure. This includes demonstrating that Cal Water has determined the identity of any

contractors or developers who may have been involved, researched the ability to recover costs from those parties and/or their insurers, and then taken steps to pursue such recovery. If a developer or contractor fails to indemnify Cal Water or the developer or contractor's insurers decline to cover Cal Water's tendered claim, Cal Water has taken legal action against the responsible party.

For any settlement agreements whereby Cal Water has agreed to pay any amount for claims related to asbestos exposure, Cal Water must provide a confidential copy of the settlement agreement and an explanation as to why the agreement was reasonable and the payment should be recovered from ratepayers. For judgments against Cal Water, Cal Water must provide a copy of the court's decision and an explanation as to why it is reasonable for the judgment amount to be recovered from ratepayers.

### **C. Term of the Memorandum Account**

The Commission should authorize Cal Water to track asbestos litigation-related costs incurred on or subsequent to January 1, 2015. Cal Water shall file to add to its tariff a preliminary statement titled "Asbestos Litigation Memorandum Account (ALMA)" within 30 days of a final decision approving this Settlement Agreement. A draft preliminary statement for the ALMA is included with this Settlement Agreement as Attachment 1. Unless the Commission approves an extension, the ALMA shall expire by the end of Cal Water's next GRC cycle on December 31, 2019. Cal Water may request an extension of the memorandum account (which will not preclude amortization of the balance recorded over this five-year term).

## **II. ASBESTOS LITIGATION-RELATED COSTS AND RATES**

The Parties agree that Cal Water should treat the forecasted cost for asbestos-related litigation in the approved rates for 2015 and 2016 as credits to the ALMA. The Parties agree that \$90,000 per year is a reasonable estimate of the forecasted cost for asbestos-related litigation for 2015 and 2016. Cal Water will credit \$90,000 to the ALMA each year for 2015 and 2016. In its 2015 GRC filing, Cal Water will clearly identify the recorded costs related to asbestos litigation

in the recorded years used to develop a forecast for legal expenses, and exclude those costs from forecasted rates.

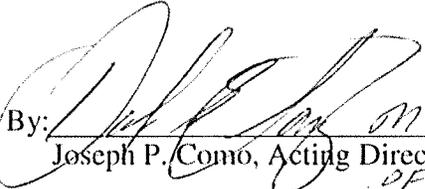
### III. EXECUTION AND APPROVAL

This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument. By signing below, each signatory for a Party by signing below represents and warrants that he/she is authorized to sign this Settlement Agreement on such Party's behalf and thereby bind such Party to the terms of this Settlement Agreement.

The Parties agree to use their best efforts to obtain Commission approval of the Settlement Agreement. The Parties shall request that the Commission approve the Settlement Agreement without change and find the Settlement Agreement to be reasonable, consistent with the law, and in the public interest.

OFFICE OF RATEPAYER ADVOCATES

CALIFORNIA WATER SERVICE  
COMPANY

By:  on behalf  
Joseph P. Como, Acting Director

By: \_\_\_\_\_  
Lynne McGhee, General Counsel

February 6, 2015

February \_\_, 2015

in the recorded years used to develop a forecast for legal expenses, and exclude those costs from forecasted rates.

### III. EXECUTION AND APPROVAL

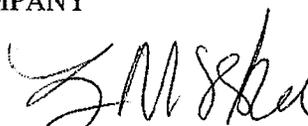
This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts together shall constitute one and the same instrument. By signing below, each signatory for a Party by signing below represents and warrants that he/she is authorized to sign this Settlement Agreement on such Party's behalf and thereby bind such Party to the terms of this Settlement Agreement.

The Parties agree to use their best efforts to obtain Commission approval of the Settlement Agreement. The Parties shall request that the Commission approve the Settlement Agreement without change and find the Settlement Agreement to be reasonable, consistent with the law, and in the public interest.

OFFICE OF RATEPAYER ADVOCATES

CALIFORNIA WATER SERVICE  
COMPANY

By: \_\_\_\_\_  
Joseph P. Como, Acting Director

By:  \_\_\_\_\_  
Lynne McGhee, General Counsel

February \_\_, 2015

February 6, 2015

## **ATTACHMENT 1**

### **Draft Preliminary Statement**

#### **Asbestos Litigation Memorandum Account (ALMA)**

**PURPOSE:** The Asbestos Litigation Memorandum Account (“ALMA”) will track costs, settlement payments, judgments and credits related to litigation arising from alleged exposure to asbestos from asbestos-cement (“AC”) water pipes in Cal Water’s service areas.

**APPLICABILITY:** The ALMA is effective beginning January 1, 2015 through December 31, 2019, unless the California Public Utilities Commission authorizes an extension. The ALMA applies to all districts.

**RATES:** The ALMA has no rate component.

**ACCOUNTING PROCEDURE:** Cal Water shall make the entries described below on a monthly basis. Cal Water shall only record costs for outside services related to defending against asbestos litigation lawsuits and seeking indemnification or cost recovery from insurers, developers, contractors, or other involved parties. Cal Water shall not record any costs for internal services related to defending against asbestos litigation lawsuits and seeking indemnification or cost recovery from insurers, developers, contractors, or other involved parties. Cal Water shall only record the following outside services costs related to asbestos litigation to the memorandum account:

- a. Filing and court fee costs
- b. Attorney fees
- c. Legal representation administrative costs
- d. Legal representation travel costs
- e. Litigation support costs

- f. Investigative costs
- g. Court reporter costs
- h. Deposition costs
- i. Expert witness fees
- j. Expert witness administrative costs
- k. Witness representation costs
- l. Witness travel costs
- m. Insurance coverage attorney costs
- n. Other reasonable and justified costs from outside service providers directly tied to asbestos litigation cases.

Cal Water may record in the ALMA payments made according to settlement agreements in litigation related to alleged asbestos exposure. Cal Water may record in the ALMA judgments against it in litigation related to alleged asbestos exposure.

Cal Water shall record any recovery or compensation of costs from outside sources as a credit to the memorandum account. Any recovery or compensation of costs recorded in the memo account is to be credited against the costs recorded in the memorandum account, including recovery or compensation received after any expiration of the memorandum account. Costs that shall be treated as a credit in the memorandum account include, but are not limited to:

- a. Developer indemnity
- b. Developer reimbursement of expenses
- c. Developer insurance reimbursement
- d. Contractor indemnity
- e. Contractor insurance reimbursement
- f. Contribution by other defendants
- g. Court awards

h. Settlement awards

Pursuant to Standard Practice U-27-W (“SP U-27”) of the Division of Water & Audits, the ALMA will earn interest at the 90-day commercial paper rate.

DISPOSITION: Cal Water shall seek recovery of costs recorded in the memorandum account if triggered under SP U-27, or at the end of the five-year term of the memorandum account. The request shall be in a filing that is in accordance with SP U-27 and General Order 96-B, Water Industry Rule 7.3.3.