



October 16, 2015

Proposed Resolution W-5030

Agenda ID: 14363

To: All Interested Persons

Enclosed is Proposed Resolution W-5030 of the Division of Water and Audits, which denies Hillview Water Company's request to increase the Safe Drinking Water State Revolving Fund Surcharge Rates in its Oakhurst, Royal Oaks, Sunnydale, and Sierra Lakes Service Areas in conjunction with the debt authorized by Decision 02-11-015 and Resolution W-4633. Proposed Resolution W-5030 is scheduled to appear on the November 19, 2015 Commission Meeting Agenda (ID #14363).

The Commission may act on this resolution or it may postpone action until later. When the Commission acts on a proposed resolution, the Commission may adopt all or part of the proposed resolution, as written, or amend or modify the proposed resolution; or the Commission may set the proposed resolution aside and prepare a different resolution. Only when the Commission acts does the resolution become binding.

Interested persons may submit comments on Proposed Resolution W-5030 via email to [Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov) or via mail to the following addresses below:

California Public Utilities Commission  
Division of Water and Audits  
505 Van Ness Avenue  
San Francisco, CA 94102

Interested persons must also serve an electronic or written copy of their comments on the utility on the same date that the comments are submitted to the Division of Water and Audits. Interested persons may submit comments on or before November 5, 2015

Comments should focus on factual, legal, technical errors, or policy issues in the proposed resolution.

Persons interested in receiving comments submitted may contact the Division of Water and Audits at [Water.Division@cpuc.ca.gov](mailto:Water.Division@cpuc.ca.gov) or (415) 703-1133.

/s/RAMI S. KAHLON

Rami S. Kahlon, Director  
Division of Water and Audits

Enclosures: Proposed Resolution W-5030  
Certificate of Service  
Service List

# PROPOSED RESOLUTION

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DWA

AGENDA ID #14363

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS  
Utility Audit, Finance and Compliance Branch

RESOLUTION W-5030  
November 19, 2015

### RESOLUTION

**(RES. W-5030) RESOLUTION DENYING HILLVIEW WATER COMPANY, INC. THE AUTHORITY TO INCREASE THE SAFE DRINKING WATER STATE REVOLVING FUND SURCHARGE RATES IN ITS OAKHURST, ROYAL OAKS, SUNNYDALE AND SIERRA LAKES SERVICE AREAS IN CONJUNCTION WITH THE DEBT AUTHORIZED BY DECISION 02-11-015 AND RESOLUTION W-4633.**

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### SUMMARY

This Resolution denies Hillview Water Company, Inc. (HWC) the authority requested in its Advice Letter (AL) No. 102, because the orders contained herein make the requested surcharge increase unnecessary.

HWC requests authority pursuant to General Order 96-B (GO 96-B) to:

1. Increase the Oakhurst, Royal Oaks, Sunnydale and Sierra Lakes service areas' Safe Drinking Water State Revolving Fund (SDWSRF) surcharge rates in order to provide adequate collection for future semiannual payments of \$69,821.52 or \$139,643.04 per year.

This Resolution discusses HWC's improper handling and accounting of the SDWSRF surcharges, imposes conditions on HWC and orders an audit of HWC's collection and accounting for the SDWSRF surcharges.

Notice of AL No. 102 was made by publication in the Commission's Daily Calendar of January 7, 2015. A notice of the proposed surcharge increase was mailed to each customer on January 28, 2015, and published in the Sierra Star on January 29, 2015. No protests have been received.

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## **BACKGROUND**

HWC, a California corporation, is a Class C water company that owns and operates the Oakhurst and Sierra Lakes (OSL) water system. The water system currently serves approximately 1,036 metered customers in Oakhurst, Royal Oaks, Sunnydale and Sierra Lakes, Madera County. In addition, the community hosts an estimated one million visitors per year that pass through on their way to Yosemite National Park.

### **A. Current SDWSRF Surcharge Loan**

In Decision (D.) 02-11-015, dated November 7, 2002, the Commission authorized HWC to borrow \$3,408,447 under the SDWSRF administered by the State Water Resources Control Board (SWRCB), previously the California Department of Public Health, for system improvements for the OSL water system. In addition, HWC was authorized to establish a maximum lump sum service fee of \$2,000 for new connections pertaining to vacant or undeveloped lots, since they will benefit from the improvements (SRF Service Fee).<sup>1</sup>

The Loan Contract is for 30 years, maturing in 2039, and required the accumulation of a 10% reserve during the first 10 years of the loan.<sup>2</sup> The loan contract also required the execution of a Fiscal Services Agreement with a fiscal agent (Fiscal Agent) who shall act as trustee for loan repayment funds deposited in the required SDWSRF trust account (SRF Trust Account) and perform services pertaining to receiving deposits, remitting payments and accumulating the reserve. The Loan Contract, the Fiscal Services Agreement, and D.02-11-015 require that all SDWSRF surcharge and SRF Service Fee be deposited into the SRF Trust Account within 30 days of receipt.<sup>3</sup> In addition, HWC is to provide the Division of Water and Audits (DWA) semi-annual summaries of all transactions in the SRF Trust Account.<sup>4</sup> D.02-11-015 required HWC to implement the surcharge six months prior to completion date of the project.

The surcharge authorized in D. 02-11-015 is shown in the following table.

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<sup>1</sup> See D.02-11-015, OP 13.

<sup>2</sup> Loan Contract # SRF02CX302.

<sup>3</sup> See D.02-11-015, OP 6.

<sup>4</sup> See D.02-11-015, OP 7.

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**Table 1**  
**Original Surcharge Rates**

<b>Size of Meter</b>	<b>Monthly Surcharge Year 1 - 1 0</b>	<b>Monthly Surcharge Year 11 – 30</b>
¾"	\$ 7.97	\$ 7.25
1"	\$ 13.29	\$ 12.08
1-1/2"	\$ 26.57	\$ 24.16
2"	\$ 42.52	\$ 38.65
3"	\$ 79.72	\$ 72.48
4"	\$132.87	\$120.79
6"	\$265.75	\$241.59

In Resolution (Res.) W-4633, dated February 15, 2007, the Commission authorized HWC to secure an additional \$400,000 under the SDWSRF loan program to fund the completion of the OSL water system improvements. In its filing then, HWC did not seek an increase in the surcharge rates but requested that the surcharge rates authorized in D.02-11-015 be implemented sooner to meet the first semiannual payment. HWC projected that future customer growth might result in a larger customer base, which could make up for part of the surcharge collection shortfall as a result of the increase in the new loan amount.

In consideration of this, Res. W-4633 authorized HWC to implement the surcharges approved in D.02-11-015 eight months prior to July 1, 2008 instead of 30 days prior to the completion date of the project and granted HWC's request to have the ability to review the surcharge rates six months after the first semiannual loan payment, in order to determine whether any surcharge adjustment was needed. Also, Res. W-4633 ordered HWC to provide DWA with its SRF Trust Account bank statements on a monthly basis.<sup>5</sup>

In D.02-11-015 and Res. W-4633, the Commission indicated that the surcharge funds are dedicated for the payment of principal and interest on the loan and for any Fiscal Agent

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<sup>5</sup> See Res. W-4633, OP 5.

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fees. In addition, the SWRCB Loan Agreement and Fiscal Services Agreement, that HWC signed, specify that the surcharge funds can only be used for interest during construction, principal and interest payments and any fiscal agent fees.

By AL No. 80 that became effective October 26, 2007, HWC implemented the SDWSRF surcharge rates shown in Table 1 above.

Based on a review of the SDWSRF loan account in 2013, HWC filed AL No. 98 that became effective September 20, 2013, that reduced the surcharge rates by 5%, as shown in the following table. These are the rates currently in effect.

**Table 2**  
**Current Surcharge Rates**

<b>Size of Meter</b>	<b>Monthly Surcharge</b>
3/4"	\$ 7.56
1"	\$ 12.60
1-1/2"	\$ 25.20
2"	\$ 40.32
3"	\$ 75.60
4"	\$126.00
6"	\$252.00

## **B. Other Debt Authorization**

In addition to the SDWSRF loan described above, HWC has had other debt authorizations that have had an impact on the Trust Account. Two of those other loans were also recovered by surcharge rates.

By D.91560, dated April 15, 1980, the Commission authorized HWC to borrow \$442,797 under the California Safe Drinking Water Bond Act of 1976 (SDWBA) to correct the deficiencies in its Oakhurst, Royal Oaks, Sunnydale and Sierra Lakes Water Systems, and to add a surcharge to water rates to repay the principal and interest on the loan. Among other things, the SDWBA loan contract required the surcharges be deposited in a trust account administered by a fiscal agent.

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By Res. F-632, dated November 22, 1994, the Commission authorized HWC to borrow a total of \$1,500,000 from the National Bank of Cooperatives (CoBank), by executing two loan agreements, one for \$540,000 (equity loan) and one for \$960,000 (surcharge loan), both at a fixed rate, and to use the proceeds to finance construction projects that included the OSL water systems, and to refinance the SDWBA loan authorized by D.91560. Res. F-632 required HWC to establish a trust account, with a trustee, to manage the reserve for the \$960,000 loan, the revenue collected through the monthly surcharge, and the yearly receipts of CoBank Cash Patronage and Capital Retired in Cash (CoBank Patronage Refund). Res. F-632 also authorized HWC to impose a service fee not to exceed \$1,000 for a ¾-inch service when a customer requested new service. By AL No. 50, effective August 10, 1995, HWC implemented the CoBank loan surcharge.

CoBank is a cooperative bank owned by the customers it serves. Historically, a substantial portion of bank earnings is returned to the bank's owners (its borrowers) in the form of CoBank Patronage Refund. The amount of capital or equity investment to be held by each stockholder/borrower was determined based on a percentage of each borrower's five-year average loan volume. As the loan was amortized, the capital required to be maintained by the borrower decreased, and the investment began to be returned to the borrower. However, since the amount of investment was based on the borrower's five-year loan balance, the borrower continued to receive CoBank Patronage Refund for several years after the loan was fully paid. Res. F-632 required that the refund be deposited in the CoBank trust account.

By Res. F-638, dated April 26, 1995, the Commission authorized HWC an additional \$100,000, which increased the CoBank equity loan from \$540,000 to \$640,000.

By D. 05-09-031, dated September 22, 2005, the Commission authorized HWC to borrow \$1.8 million from Oro Financial of California, Inc. (Oro Financial) to repay certain obligations that included, among others: the CoBank equity loan with a balance of \$314,448; \$69,445 that HWC owed to the SDWBA surcharge account; and the CoBank surcharge loan with a balance of \$218,642. D.05-09-031 approved a Settlement Agreement between HWC and the Commission's Division of Water and Audits (DWA) that stated, among other things, that approximately \$292,666 of excess CoBank surcharges that HWC collected should be used to assist in paying off the CoBank loan, and HWC may continue the CoBank surcharge rates since the remainder of the CoBank loan will be paid by the Oro Financial loan.

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By D.09-01-018, dated January 29, 2009, the Commission granted modification of D.05-09-031 authorizing HWC to procure a loan from Excel National Bank instead of Oro Financial and reducing the loan approval from \$1,800,000 to \$1,623,100. D.09-01-018 ordered that all other provisions of D.05-09-031 and the Settlement Agreement appended to D.05-09-031 would remain in full force and effect.

Between 2005, when D.05-09-031 was authorized and January 29, 2009, when D.05-09-031 was modified by D.09-01-018, HWC was able to collect sufficient surcharge revenues, when combined with the \$292,666 of excess CoBank surcharge discussed in D.05-09-031, to pay off the CoBank loan. HWC did not use the proceeds from Excel National Bank to pay any of the Co-Bank loans. On September 16, 2009, HWC paid off the CoBank surcharge loan from funds accumulated in the CoBank trust account, as shown in the following table.

**Table 3**  
**CoBank Loan**

CoBank Trust Account balance as of 8/16/2009	\$525,610
Full Payment of CoBank Surcharge loan	(497,798)
CoBank Surcharge Surplus	<u>\$ 27,812</u>

By AL No. 90, effective October 23, 2009, HWC terminated the CoBank surcharge rates. In AL No. 90, HWC indicated that it was transferring the following to the SDWSRF trust account: 1) the balance of \$27,812 from the CoBank surcharge account; 2) \$23,799.69 from the SDWBA surcharge account; and 3) \$69,445 from the Excel National Bank loan that HWC owed to the SDWBA account.<sup>6</sup>

HWC asserts it deposited the \$69,445 to the SRF Trust Account in 2009 and deposited \$27,812 and \$23,799.69 to the SRF Trust Account in 2010.

By AL No. 98, effective September 20, 2013, HWC reduced the SDWSRF surcharge rates by 5%.

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<sup>6</sup> D.05-09-031, as modified by D.09-01-018, authorized that part of the proceeds from the debt be used to pay the \$69,445 amount HWC owed to the CoBank surcharge account.

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## C. 2014 Review of the SRF Trust Account

In July 2014, DWA's Utility Audit, Finance and Compliance Branch (UAFCB) conducted a review of HWC's SDWSRF loan account and determined that HWC should have approximately \$100,000 of excess funds in the SRF Trust Account. Based on available information at that time, UAFCB noted that while HWC should have excess funds in its trust account, it is not collecting the appropriate revenues to provide for both the future loan payments and the reserve requirement.

According to HWC, the excess funds accumulated in the SRF Trust Account came from the \$27,812 CoBank surcharge surplus; the \$23,800 SDWBA surplus and the \$69,445 transferred to the SRF Trust Account; receipts from 2012 to 2014 of \$19,558 of CoBank Patronage Refund; and \$31,899 of SRF Service Fee collected between 2008 to 2014 from customers of vacant lots that requested new service.

On October 6, 2014, UAFCB informed HWC that Section 8.5 of the Water Industry Rules in General Order (GO) 96-B, requires excess funds to be refunded to customers as soon as possible. In addition, UAFCB instructed HWC to determine and update a) the amount of excess funds in its trust account, net of the accumulated reserve requirement and b) to propose how the surcharge rates should be adjusted to have sufficient funds for future annual payments of the loan and reserve.

On December 31, 2014, based on updated information, HWC filed AL No. 103 for a one-time refund of \$109,224 of excess funds in the SRF Trust Account. AL No. 103 was approved January 29, 2015.

By letter dated February 2, 2015, UAFCB requested the SWRCB to give written instruction to HWC's fiscal agent, California Bank and Trust, to release \$109,224 of excess funds in HWC's trust account. On April 14, 2015, SWRCB informed UAFCB that according to the bank, HWC's SRF Trust Account had only \$128,515, and it could not release the \$109,224. The amount of \$88,863.74 (14 payments x \$6,347.41) represented the reserve requirement, which only left an available balance of \$39,651.26 (\$128,515 less \$88,863.74).

HWC explained that it maintains an SRF Surcharge Savings account in addition to the SRF Trust Account and there were sufficient funds in the two accounts to maintain the reserve, have funds on hand for the next semi-annual payment, and do the refund. As

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reported in HWC's 2014 annual report, these two accounts have a total balance of \$267,357 as of December 31, 2014.

On April 29, 2015, HWC informed UAFCB that it transferred \$120,000 from the SRF Surcharge Savings account to the SRF Trust Account, leaving \$2,000 of SRF funds in its savings account for the required minimum balance.

HWC asserts that surcharge receipts are deposited daily to its SRF surcharge savings account and loan payments are transferred from this account to the SRF Trust Account. HWC claims that these two accounts are dedicated solely for SDWSRF transactions.

On May 1, 2015, SWRCB informed UAFCB that California Bank and Trust would be sending out the refund check to HWC. As of July 14, 2015, HWC properly refunded \$101,722.88 via surcredit and checks and has \$7,501.12 in refund checks still uncashed or returned.

## **D. 2015 Review of the SRF Trust Account**

In 2015, UAFCB completed a more extensive review of HWC's SDWSRF surcharges and determined that HWC should have more funds in its accounts.

On July 9, 2015, HWC informed UAFCB that after its new billing program was placed in service sometime in 2008, the system did not properly identify the surcharge payments that were received by HWC. HWC estimates that for about 84 months, \$200 to \$400 per month of SDWSRF surcharges went to its operating account and was not accounted for as SDWSRF surcharge.

Consequently, according to HWC, approximately \$28,515 of SDWSRF surcharge payments ended up in HWC's operating account instead of the SRF Trust Account and HWC under-reported its SDWSRF funds in its annual reports. On August 10, 2015, HWC determined that \$28,515 of surcharges accumulated in its operating account would be transferred to the SRF Trust Account.

On September 23, 2015, HWC informed UAFCB that HWC had exempted a few customers from paying the SDWSRF surcharge in return for providing easement rights. However, the Commission never authorized such an exemption. For 2014, these exemptions resulted in a shortage of \$1,058 in surcharge collection. UAFCB is not aware of the number of exemptions that HWC has provided. UAFCB recommends that

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HWC should determine the total amount of exemption from the surcharge it provided and deposit those funds into the SRF Trust Account.

As shown in the following table, in addition to surcharge and interest revenue, HWC receives other revenue, including CoBank Patronage Refund and SRF Service Fee that it deposits to the SRF Trust Account.<sup>7</sup> Beginning in 2008 through September 18, 2015, based on information supplied by HWC, HWC collected \$37,476.77 from the SRF Service Fee. In addition, beginning in 2012 through September 30, 2015, HWC collected \$25,536.66 in CoBank Patronage Refund. Based on the information provided by HWC as of September 18, 2015, HWC has collected approximately \$4,685 per year in SRF Service Fee and \$6,384 in CoBank Patronage Refund.<sup>8</sup>

**Table 4**  
**Additional SDWSRF Related Revenue**  
**Per HWC**

<b>Year</b>	<b>Service Fees</b>	<b>CoBank Patronage Refunds</b>
2008	\$15,094.69	-
2009	2,774.96	-
2010	2,141.60	-
2011	2,562.38	-
2012	2,745.22	\$ 6,690.95
2013	4,118.26	6,567.97
2014	2,551.81	6,298.89
2015 <sup>(1)</sup>	<u>5,487.85</u>	<u>5,978.85</u>
Total	<u>\$37,476.77</u>	<u>\$25,536.66</u>

(1) As of September 18, 2015

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<sup>7</sup> The CoBank Patronage Refund will continue until the estimated \$23,000 balance of surcharge-related CoBank stock is fully retired. Other items permitted to be funneled through the SRF Trust Account include fiscal agent fees and interest earned on the account balance. However, these latter items have a minimal impact on the overall balance and aren't shown here.

<sup>8</sup> Total SRF Service Fee of \$37,477/ 8 years = \$4,685 per year on average. Total CoBank Patronage Refund of \$25,537/ 4 years = \$6,384 per year on average.

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With the additional information received from HWC, UAFCB did a re-evaluation of the SRF Trust Account that resulted to an estimated trust account balance of \$164,802.03 as of September 30, 2015. This includes the refund amount of \$109,224.

**Table 5**  
**UAFCB Estimated Trust Account Balance**  
**(September 30, 2015)**

Trust Account Balance per Annual Report 12/31/14	\$267,357.00
Amount to be Refunded (AL # 103)	(109,224.00)
Estimated Surcharge Collection (01/01/15 -09/01/15)	93,373.56
Estimated Interest Earned	127.00
Estimated Bank Charges	(135.00)
Loan Payments (01/01/15 & 07/01/15)	(126,948.23)
Amount to be transferred from Operating Account	28,515.00
Co-Bank Dividend (2015)	5,978.85
Service Fee (01/01/15 -09/18/15)	<u>5,487.85</u>
Estimated Trust Account Balance at 09/30/15	<u>\$164,802.03</u>

Considering the estimated balance in the SRF Trust Account, and using other information provided by HWC, UAFCB projected the amount of excess funds in the SRF Trust Account, as of September 30, 2015. UAFCB estimated the excess to be \$31,769 after accounting for funds needed for the next loan payment, as shown in the following table.

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**Table 6**  
**Estimated Excess Funds in SRF Trust Account**  
**September 30, 2015**

Estimated Trust Balance	\$164,802.03
Accumulated Reserve <sup>9</sup>	(100,500.50)
Estimated Surcharge Collection Nov. –Dec.	30,942.00
Jan. 1, 2016 Loan Payment	( <u>63,474.12</u> )
<b>Excess Funds</b>	<b>\$ <u>31,769.41</u></b>

However, UAFCB is unable to determine precisely the amount that should be in the trust account or the total amount of excess funds without conducting a full audit of the surcharges collected and their application, due to HWC: mishandling the funds by not properly accounting for them; applying the funds for improper purposes such as for easements; and not depositing all of the surcharge into the SRF Trust Account. Consequently, UAFCB recommends that the amounts in Table 5 and 6 be subject to an audit.

## **CURRENT ADVICE LETTER SURCHARGE INCREASE REQUEST**

On December 31, 2014, HWC filed AL No. 102, requesting authority to increase the monthly SDWSRF surcharge rates in its OSL service area.

In AL No. 102, HWC points out that it needs to make loan payments of \$126,948.24 and collect a Reserve Requirement of \$12,694.80 per year (for the first 10 years of the loan) for a total of \$139,643.04. As shown in the following table, HWC indicates that it only collects approximately \$123,768.00 per year, leaving an annual shortfall of approximately \$15,875.04.

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<sup>9</sup> Calculated from November 2007, the date the surcharge rates were first collected and not when the first semi-annual loan payment became due in Jan. 2009.

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**Table 7**  
**Surcharge Shortfall**

Annual Loan Payment	\$126,948.24
Annual Reserve Requirement	<u>12,694.80</u>
Total Annual Revenue Requirement	\$139,643.04
Estimated Current Surcharge Collection	<u>123,768.00</u>
Requested Increase in Annual Surcharge	<u>\$ 15,875.04</u>

In order to eliminate the \$15,875 shortfall and provide sufficient funds to make the loan payments and the Reserve Requirement, HWC requests authority to increase its surcharge rates by approximately 12.7%, as shown in the following table.

**Table 8**  
**Proposed Surcharge Rates**

<b>Metered Service Size of Service Or Meter</b>	<b>Present Monthly Surcharge</b>	<b>Proposed Monthly Surcharge</b>	<b>Increase</b>	<b>Percent</b>
¾"	\$ 7.56	\$ 8.52	\$ 0.96	12.7%
1"	\$ 12.60	\$ 14.20	\$ 1.60	12.7%
1-1/2"	\$ 25.20	\$ 28.40	\$ 3.20	12.7%
2"	\$ 40.32	\$ 45.44	\$ 5.12	12.7%
3"	\$ 75.60	\$ 85.20	\$ 9.60	12.7%
4"	\$126.00	\$142.00	\$16.00	12.7%
6"	\$252.00	\$284.00	\$32.00	12.7%

With the proposed surcharge increase, a ¾-inch metered customer's monthly surcharge would increase by \$0.96 from \$7.56 to \$8.52 or by 12.7%.

## **NOTICE AND PROTESTS**

Pursuant to G.O. 96-B, Water Industry Rule 4.1, on December 31, 2014, HWC served its AL No. 102 on its service list. Notice of AL No. 102 was made by publication in the Commission's Daily Calendar of January 7, 2015. No protests have been received.

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On January 28, 2015, HWC notified its OSL customers by mail of the proposed surcharge increase that is needed to have sufficient funds for future loan payments and reserve requirement. In the Sierra Star, HWC published a public notice on January 29, 2015, describing the proposed surcharge increase, with the estimated rate change expressed in both dollar and percentage terms. The Sierra Star is a local newspaper circulated in Madera County, California. No protests have been received.

## DISCUSSION

As discussed in the Background Section, HWC is estimated to have \$31,769 of excess funds as of September 30, 2015, net of the accumulated reserve and the amount accumulated for the SDWSRF payment due in January 2016. Normally, pursuant to § 8.5 of the Water Industry Rule in G.O. 96-B, these excess funds would need to be returned to customers as soon as possible. However, there are several factors that should be considered when evaluating HWC's current excess funds for refund:

1. Only a short period of time will elapse before HWC's reserve would be fully collected. HWC's accumulated reserve is \$100,500.50 as of September 30, 2015 and needs \$26,447.73 to complete the SRF Reserve Requirement of \$126,948.23.
2. Requiring a surcharge increase now to finish funding the reserve only to have to decrease the surcharge rates in a short time in the future after the reserve is fully funded would be administratively burdensome to the Commission and HWC, and could cause confusion for HWC's customers.
3. HWC just refunded \$109,224 in excess funds, at its expense, to customers. Requiring an additional refund so soon could also result in customer confusion and would be administratively burdensome.
4. Refunding excess funds that will result in minimal refunds to each customer would be administratively burdensome to the Commission and HWC and could also cause confusion for HWC's customers.

In consideration of the above, within 10 days of the effective date of this Resolution, we will require HWC to deposit the \$28,515 it owes into the SRF Trust Account and apply \$26,447.73 of excess funds to the SRF Reserve Requirement.<sup>10</sup> After HWC applies these

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<sup>10</sup> After funding the reserve, excess funds remaining in the SRF Trust Account, at September 30, 2015 based on information supplied by HWC, should be approximately \$5,322.

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funds to the SRF Reserve Requirement, the reserve will be fully funded. No further surcharge collection will be needed to fund the reserve. Consequently, a short-term rate increase to fund the reserve will be unnecessary.

After funding the reserve, excess funds remaining in the SRF Trust Account, based on information supplied by HWC, should be approximately \$5,322 as of September 30, 2015. A refund of this amount would only provide a minimal amount of refund to each customer.

With the SRF Reserve Requirement fully funded, HWC will only need \$126,948.23 of surcharge collection, SRF Service Fee, and CoBank Patronage Refund each year to meet its annual loan payment obligations. According to AL No. 102, HWC estimated an annual surcharge collection of \$123,768. As shown in Table 4, on average, HWC collected approximately \$4,685 per year in SRF Service Fee and \$6,384 in CoBank Patronage Refund, for a total of \$11,069 on average per year. The receipt of these additional funds each year is expected to continue for at least the next several years. Consequently, in 2016, HWC is expected to receive \$123,768 in surcharge collections, \$4,685 per year in SRF Service Fee and \$6,384 in CoBank Patronage Refund, for a total of \$134,837. Therefore, receipts in 2016 should be adequate to fund the semi-annual payments of \$126,948.23, without an increase in rates and we will require the approximately \$5,322 of excess funds to remain in the SRF Trust Account in the event the additional funds are less than expected. Consequently, we will deny HWC's request to increase the surcharge rates and we will not require the excess funds to be refunded at this time.

With a collection of approximately \$134,837 in 2016 and loan disbursements of \$126,948.23, approximately an additional \$7,889 will accumulate as excess funds. That amount plus the approximately \$5,322 of excess funds remaining after funding the reserve will result in approximately \$13,221 of excess funds by the end of 2016. Since the amount of SRF Service Fee and CoBank Patronage Refund received in 2016 can only be estimated at this time, we will not reduce the surcharge now to ensure there are adequate funds on hand for HWC to make both semi-annual payments. However, HWC should be required to file an advice letter by September 30, 2016 to refund any excess funds, or if they are not substantial, to reduce the surcharge rates for 2017.

The Commission's Uniform System of Accounts, Accounting Instructions – Safe Drinking Water Bond Act Loans (USOA), which applies to SDWSRF loans, requires that all surcharge revenue collections will be 1) credited to Account 470.5, Safe Drinking

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Water Bond Surcharge – Metered Revenue or Account 460.5, Safe Drinking Water Bond Surcharge – Unmetered Revenue; 2) deposited monthly with the designated Fiscal Agent; and 3) reported in Account 132 Special Deposits.

The Commission in D.02-11-015, ordered HWC to deposit all SDWSRF rate surcharges and SRF Service Fee with the Fiscal Agent within 30 days of receipt. The SDWSRF Loan Contract and the Department of Water Resources' Fiscal Services Agreement between HWC and the Fiscal Agent also require that HWC deposit the surcharges for the reserve and the principal and interest payments into the SRF Trust Account each month. Both the Commission and the loan documents require the SDWSRF surcharge be dedicated for paying the SRF loan payments and any fiscal agent fees.

HWC is in violation of these requirements in three ways. The first way is that HWC failed to adequately design its accounting system to account for all SDWSRF surcharge to be properly recorded. By its own admission beginning in 2009, HWC failed to record and deposit approximately \$200 to \$400 per month of SDWSRF surcharge into its SRF Trust Account, totaling \$28,515. Secondly, HWC has been improperly using surcharge funds to compensate customers for easements. Thirdly, HWC has been delaying or failing to deposit surcharge and related funds into the SRF Trust Account by maintaining these funds in its SDWSRF savings account in violation of the USOA, D.02-11-015 and the SDWSRF Loan Requirements.

Failing to properly account for and remit surcharges and related revenue to the SRF Trust Account within 30 days of receipt will not be tolerated and could result in HWC being considered in default of the loan and Commission directives. HWC needs to ensure that it deposits into the SRF Trust Account, within 30 days of collecting the following: 1) all SDWSRF surcharge; 2) all SRF Service Fee; and 3) all CoBank Patronage Refund.

HWC needs to: immediately cease providing exemptions from the surcharge for easements; determine the total amount of exemptions from the surcharge it has provided customers since the inception of the surcharge; and deposit that amount into the SRF Trust Account within 30 days from the effective date of this Resolution.

HWC should establish procedures to ensure that all SDWSRF surcharge, SRF Service Fee, and CoBank Patronage Refund are properly recorded in its accounting system and deposited into the SRF Trust Account within 30 days of collection. Within 30 days of the effective date of this Resolution, HWC should submit a letter to the Director of the

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DWA demonstrating that it has corrected its accounting deficiencies and provide its procedures to ensure that all SDWSRF surcharges and related funds are deposited into the SRF Trust Account within 30 days of collection. With the letter, HWC should also provide documentation and an accounting to demonstrate that it has deposited into the SRF Trust Account all surcharge exemptions it provided to certain customers.

In addition to the above accounting and surcharge handling discrepancies, HWC likely violated Public Utilities Code § 581 when it submitted its annual reports with incorrect information. Public Utilities Code § 581 requires that utilities answer fully and correctly each question asked by the Commission. From its 2009 annual report through 2014 annual report, HWC failed to report the correct amount of SDWSRF surcharge that it collected from its customers.

Within 30 days of the effective date of this resolution, HWC shall correct and refile the 2014 State Revolving Fund Data sheet (page 32 of the 2014 annual report) to reflect other deposits not previously reported, going all the way back to 2009, with footnotes explaining the adjustments.

Lastly, HWC failed to submit to DWA the SRF Trust Account statements on a monthly basis as required by Res. W-4633 and the two semi-annual reports required by D.02-11-015.

We remind HWC of the provisions of §§ 2106, 2107, 2108, 2110 and 2113, which state:

§ 2106 - Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom. If the court finds that the act or omission was willful, it may in addition to the actual damages, award exemplary damages. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person. No recovery as provided in this section shall in any manner affect a recovery by the State of the penalties provided in this part of the exercise by the commission of its power to punish for contempt.

§ 2107 - Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not

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otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

§ 2108 - Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

§ 2110 - Every public utility and every officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the California Constitution or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or abets any public utility in the violation or noncompliance in a case in which a penalty has not otherwise been provided, is guilty of a misdemeanor and is punishable by a fine not exceeding five thousand dollars (\$5,000) , or by imprisonment in a county jail not exceeding one year, or by both fine and imprisonment.

§ 2113 - Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

The Commission should conduct an audit to ascertain the correct balance that should be in the SRF Trust Account because of: HWC's failure to properly account for the surcharge revenue, improper use of the funds, and failure to deposit all SDWSRF related funds within 30 days of collection into the SRF Trust Account. UAFCB should audit: HWC's collection of SDWSRF surcharge since the inception of the surcharge in 2007; HWC's accounting system with respect to the SDWSRF surcharge and related funds; and the remittance of its surcharge and related collections to the SRF Trust Account. Within one year from the effective date of this Resolution, UAFCB should submit its audit report to the Executive Director of the Commission and the Director of the Division of Water and Audits.

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## SAFETY

In this filing, DWA's UAFCB thoroughly reviewed HWC's request to adjust the surcharge rates and updated its calculation of HWC's trust account balance. There is no safety implications associated with AL No. 102. The purpose of the SDWSRF funds is to provide utilities with grants or no or low cost financing for infrastructure improvements to correct system deficiencies and improve water quality.

## COMMENTS

Public Utilities Code Section 311(g) (1) generally requires that draft resolutions be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

Accordingly, this proposed resolution is being mailed to all parties and made available for public comment on October 16, 2015.

## FINDINGS

1. HWC, a California corporation, is a Class C water utility subject to the jurisdiction of this Commission.
2. The CoBank loan coupled with surcharge rates and service fee was used to finance construction projects in the OSL water system.
3. In D.02-11-015, the Commission authorized HWC to borrow \$3,408,477 under the SDWSRF to finance construction of new wells and other water system improvements in the OSL water system and authorized a surcharge and SRF Service Fee to repay the loan.
4. In Res. W-4633, the Commission authorized HWC to secure an additional \$400,000 under the SDWSRF loan program to complete its OSL water system improvements.
5. When HWC requested the additional \$400,000 loan it did not seek an increase in the surcharge rates, but instead requested to implement the surcharges approved in D.02-11-015 at an earlier date.

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6. On September 16, 2009, HWC paid the CoBank surcharge loan account from its surcharge collections without using the refinance loan authorized by D.05-09-031, as modified by D.09-01-018.
7. On September 30, 2009, HWC deposited \$69,445 of the refinance loan proceeds to the SRF Trust Account for the benefit of the OSL ratepayers.
8. On October 23, 2009, HWC terminated the CoBank surcharge and transferred \$27,812 surcharge surplus in the CoBank trust account to the SRF Trust Account for the benefit of the OSL ratepayers.
9. HWC also transferred a \$23,800 surplus from the SDWBA surcharge account to the SRF Trust Account for the benefit of the OSL ratepayers.
10. HWC also deposited \$19,558 of CoBank Patronage Refund and \$31,899 of SRF Service Fee collected from 2008 to 2014 from new customers to the SRF Trust Account.
11. HWC's billing program that was instituted in 2008 did not properly identify the surcharge payments received in the previous month; consequently, the surcharge payments were not deposited to the surcharge trust account. \$28,515 of surcharges accumulated in HWC's operating account, which HWC needs to transfer to the SDWSRF trust account.
12. On December 31, 2014, HWC filed AL No. 103 to refund \$109,224 of excess funds in the SRF Trust Account.
13. Notice of AL No. 102 appeared on the Commission's Daily Calendar on January 7, 2015. No protests have been received.
14. On January 28, 2015, HWC notified its customers by mail of the proposed increase in surcharge rates. No protests have been received.
15. On January 29, 2015, HWC published a public notice containing the proposed surcharge increase in the Sierra Star, a local newspaper circulated in Madera County. No protests have been received.
16. On August 10, 2015, HWC determined that \$28,515 of surcharges accumulated in its operating account would be transferred to the SDWSRF trust account.

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17. HWC did not collect surcharges from a few customers that provided easement rights to HWC, resulting in a shortage of \$1,058 in 2014.

18. HWC failed to record and deposit some surcharge and related funds into its SRF Trust Account and improperly used surcharge funds to compensate customers for easements.

19. HWC's current annual revenue requirement to meet loan repayment conditions is \$139,643.04.

20. UAFCB estimated that as of September 30, 2015, HWC would have approximately \$31,769 of excess funds in the SRF Trust Account, net of the reserve requirement and provision for the next loan repayment.

21. HWC should be authorized to apply \$26,447.73 of excess funds to maintain the SRF Reserve Requirement of \$126,948.

22. UAFCB estimates that HWC collects an average of \$4,685 of SRF Service Fee per year.

23. UAFCB estimates that HWC received an average of \$6,384 of CoBank Patronage Refund per year.

24. By completing the 10% reserve requirement of \$126,948, the annual revenue requirement will decrease from \$139,643.04 to \$126,948.

25. With additional cash from the CoBank Patronage Refund and SRF Service Fee, HWC will be able to meet its loan payments in 2016 without increasing the surcharge rates.

## CONCLUSIONS OF LAW

1. HWC has adequate funds to complete the SRF Reserve Requirement and meet future loan payments.

2. HWC should be authorized to apply \$26,447.73 of excess funds to complete the SRF Reserve Requirement of \$126,948.

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3. At this time, HWC's request to increase the surcharge rates should be denied.
4. UAFCB should audit HWC's collection of the SDWSRF surcharge since the inception of the surcharge in 2007; HWC's accounting system with respect to the SDWSRF surcharge and related funds; and the remittance of its surcharge and related collections to the SRF Trust Account.
5. HWC should correct and refile the 2014 State Revolving Fund Data sheet (page 32 of the 2014 annual report) to reflect other deposits since 2009, not previously reported, with footnotes explaining the revisions.

### **THEREFORE, IT IS ORDERED THAT:**

1. Hillview Water Company Inc.'s request in Advice Letter No. 102 to increase the surcharge rates in the Oakhurst and Sierra Lakes service area is denied.
2. Hillview Water Company Inc.'s current surcharge rates shall remain in effect.
3. Within 10 days from the transaction date, Hillview Water Company Inc. shall notify and provide proof to the Division of Water and Audits' Utility Audit, Finance and Compliance Branch, of the transfer of the \$28,515 of surcharges accumulated in its operating account, to the Safe Drinking Water State Revolving Fund trust account.
4. Within 10 days from the effective date of this Resolution, Hillview Water Company Inc. shall apply \$26,447.73 of excess funds in the Safe Drinking Water State Revolving Fund Trust Account to maintain the 10% Reserve Requirement.
5. Within 30 days from the effective date of this Resolution, Hillview Water Company Inc. shall correct and refile the 2014 State Revolving Fund Data sheet (page 32 of the 2014 annual report) to reflect other deposits since 2009 that were not previously reported, with footnotes explaining the adjustments.
6. Within 30 days from the effective date of this Resolution, Hillview Water Company Inc. shall submit a letter to the Director of the Division of Water and Audits detailing the procedures it established to ensure that all Safe Drinking Water State Revolving Fund surcharge, SRF Service Fee and CoBank Patronage Refund amounts are properly recorded in its accounting system and deposited into the SRF Trust Account within 30 days of collection. The letter shall include the accounting and documentation that show

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all surcharge exemptions it provided to customers have been deposited into the SRF Trust Account.

7. To ascertain the correct balance in Hillview Water Company Inc.'s SRF Trust Account, the Division of Water and Audits' Utility Audit, Finance and Compliance Branch shall audit: Hillview Water Company Inc.'s collection of the Safe Drinking Water State Revolving Fund surcharge from 2007 to the present; the utility's accounting system with respect to surcharge and related funds; and the remittance of its surcharge and related collections to the SRF Trust Account.

8. Within one year from the effective date of this Resolution, the Division of Water and Audits' Utility Audit, Finance and Compliance Branch shall submit its audit report to the Executive Director of the Commission and the Director of the Division of Water and Audits.

9. On or before September 30, 2016, Hillview Water Company Inc. shall file an advice letter to refund any excess funds in the SRF Trust Account, or if these excess funds are not substantial, to adjust the surcharge rates accordingly.

10. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 19, 2015; the following Commissioners voting favorably thereon:

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TIMOTHY J. SULLIVAN  
Executive Director

# CERTIFICATE OF SERVICE

I certify that I have by either electronic mail or postal mail, this day, served a true copy of Proposed Resolution No. W-5030 on all parties in these filings or their attorneys as shown on the attached lists.

Dated October 16, 2015 at San Francisco, California.

/s/DANIEL SONG

Daniel Song

Parties should notify the Division of Water and Audits, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on which your name appears.

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**SERVICE LIST**

Bass Lake Water Company  
Attn: Steve Welch, President  
P.O. Box 109  
Bass Lake, CA 93604-0109

Yosemite Spring Park Utility  
Attn: Steve Payne, Gen. Manager  
30250-B Yosemite Springs Parkway  
Coarsegold, CA 93614-9051