

# PROPOSED RESOLUTION

Resolution W-5064  
DWA

Agenda ID #14316 (Rev. 1)  
Item #15

## PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS  
Water and Sewer Advisory Branch

RESOLUTION W-5064  
October 22, 2015

### RESOLUTION

**(RES. W-5064). SAN GABRIEL VALLEY WATER COMPANY.  
ORDER APPROVING REQUEST TO AMORTIZE THROUGH  
A TEMPORARY SURCHARGE THE DECEMBER 31, 2014  
BALANCE IN ITS FONTANA DIVISION'S WATER  
QUALITY LITIGATION MEMORANDUM ACCOUNT.**

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### SUMMARY

By Advice Letter 459, filed on March 4, 2015, San Gabriel Valley Water Company (San Gabriel), a Class A water utility, seeks Commission authorization to amortize the December 2014 balance of \$2,992,274 in the Water Quality Litigation Memorandum Account for its Fontana Water Company Division (Fontana WQLMA).

This Resolution authorizes San Gabriel Valley Water Company to amortize \$2,259,469 through a surcharge of \$0.1394 per hundred cubic feet (Ccf) on all metered potable water customers for 12 months.

### BACKGROUND

Memorandum accounts to track litigation expenses associated with water contamination were authorized for certain water utilities, including San Gabriel, in Resolution W-4089, dated January 21, 1998. Such accounts were subsequently authorized for all Commission-regulated water utilities by Res. W-4094, dated March 26, 1998. San Gabriel advised the Commission's Office of Ratepayer Advocates (ORA) via an informal letter mailed on October 10, 2002 that it had established the Fontana WQLMA, to which the first entry had been made on March 31, 2002. Several of Fontana's wells had been contaminated by perchlorate, nitrate, and/or volatile organic chemicals. The company established the WQLMA to record expenses incurred in identifying and pursuing claims, for the cost of water supply restoration and other damages, against parties responsible for this groundwater contamination.

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San Gabriel was previously allowed to amortize balances in the Fontana WQLMA four times: via Decision 04-07-034 (\$1,027,047 as of July 31, 2003), Advice Letter No. 353 (\$3,039,343 as of February 28, 2007), Advice Letter No. 374 (\$2,595,399 as of June 18, 2009), and Decision 14-05-001 (\$1,244,598 as of March 31, 2011). Decision 10-12-058 allows a utility to request cost recovery of the balance in a contamination-related litigation expense memorandum account by Tier 3 advice letter whenever the balance exceeds 2% of the authorized revenue requirement. San Gabriel filed Advice Letter No. 459 on March 4, 2015 to request amortization of the December 31, 2014 balance of \$2,992,724 in its Fontana WQLMA; the requested balance represented 4.9% of the Fontana division's most recently authorized revenue requirement.

Standard Practice U-27-W Rule 64.b. states that memorandum account amortization surcharges shall be spread over one year for undercollections of less than 5% of gross revenues. Therefore the WQLMA balance that is approved for recovery shall be amortized through a surcharge that is effective for 12 months.

Standard Practice U-27-W Rule 55 states that surcharges for recovery of memorandum accounts should be spread across all utility services that have benefitted from the money spent and booked to the account. Because recycled water comes from a different source than drinking water, recycled water customers should not be subject to a surcharge related to the supply of potable water. Although flat rate customers do benefit from the expenses booked to the WQLMA, San Gabriel did not propose to include them in the recovery of these expenses because they only account for 2.7% of Fontana's water service revenues; therefore, the balance approved for recovery was reduced by that percentage prior to calculating the surcharge for metered customers. Thus the tariffs that will be affected by the WQLMA surcharge are FO-1, FO-1C, and FO-CARW, representing all of Fontana's metered potable water customers.

San Gabriel was authorized by D.14-05-001 to implement a 12-month surcharge to recover the approved balances in a number of memorandum accounts, including the WQLMA. The surcharge was implemented by Advice Letter No. 436 effective May 6, 2014. As of the expiration of this surcharge in May of 2015, San Gabriel had recorded an overcollection on the WQLMA of \$45,612.85. The December 2014 WQLMA costs which are approved for recovery shall be offset by this amount.

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## NOTICE AND SERVICE

San Gabriel served AL 459 on March 4, 2015 in accordance with General Order 96-B, Water Industry Rule 4.1. In accordance with Water Industry Rule 3.3, San Gabriel also posted the advice letter on its Fontana Water Company website. San Gabriel will give its customers at least 30 days' notice prior to surcharge implementation, as required by Water Industry Rule 3.1 and General Rule 4.2 of General Order 96-B, by bill insert.

## RESPONSE AND PROTESTS

Three protests were received to AL 459. Two were received by the original protest deadline of March 24, 2015: one from the City of Fontana and the other from Fontana Unified School District. Both requested investigation and confirmation of the nature and extent of San Gabriel's participation in water quality litigation with respect to the claimed amount sought for reimbursement via surcharge.

On March 24, 2015 the Office of Ratepayer Advocates (ORA) requested and was granted by the Division of Water and Audits (DWA) a one month extension until April 24, 2015 to review data request responses and request additional information as needed. On April 2, 2015 DWA suspended AL 459 to accommodate ORA's request. On April 24, 2015 ORA filed a protest to AL 459 on two grounds: (1) that the relief requested in the advice letter is unreasonable, based on the fact that the information San Gabriel had provided was insufficient for ORA to evaluate the costs contained in the WQLMA; and (2) that the calculations in the advice letter contain omissions, based on the absence of complete information regarding water contamination proceeds.

San Gabriel submitted timely replies to all three protests on May 1, 2015 in compliance with General Rules 7.4.3 and 7.4.4 of General Order 96-B. Prior to submitting these replies, San Gabriel responded to ORA data requests which were still outstanding at the time ORA filed its protest. In response to inquiries from DWA, ORA stated that it had not had time to review data request responses which were received after the protest deadline. ORA's protest indicates that it would prefer to review the WQLMA as part of San Gabriel's next general rate case. As part of its review of the WQLMA, DWA attempted to address the concerns raised in the protests.

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## DISCUSSION

### *WQLMA Background*

Memorandum accounts for water contamination litigation expenses were originally authorized in anticipation of lawsuits that might be brought against water utilities for providing water that did not meet water quality standards due to groundwater contamination which may not be the fault of the water company. In addition, Resolution W-4089 encouraged Southern California Water Company to “aggressively pursue legal action for recompense from the original polluters.” San Gabriel, which was authorized to establish a water contamination litigation memorandum account in that same Resolution, has been following that directive since then by retaining attorneys and consultants to pursue litigation against parties responsible for pollution of groundwater in the basins serving its Fontana district.

### *Groundwater Contamination*

Fontana’s groundwater supply has been impacted by perchlorate, nitrate, and volatile organic carbon (VOC) contamination. Most of the litigation expenses incurred during the period in question (2011-2014) are related to perchlorate.

Perchlorate is a regulated drinking water contaminant in California with a maximum contaminant level (MCL) of 6 micrograms per liter ( $\mu\text{g/L}$ ). Scientific research has shown that perchlorate may have adverse health effects related to disruption of thyroid function. Although there is currently no federal drinking water standard for perchlorate, the United States Environmental Protection Agency (US EPA) is in the process of developing one. The California EPA’s Office of Environmental Health Hazard Assessment recently lowered the public health goal (PHG) for perchlorate to 1 part per billion (ppb), which is equivalent to 1  $\mu\text{g/L}$ . This could lead to a reduction in the state MCL for perchlorate.

Although it can be naturally occurring, most perchlorate found in the environment is the result of human activity. Perchlorate salts are used as propellants for rockets, missiles, fireworks, and other explosives. Several sites of industrial and defense manufacturing have been associated with perchlorate contamination of drinking water in California.

### *Impact on FWC Water Supply*

Fontana’s 2014 Water Quality Report indicates that approximately 71% of its water supply comes from groundwater sources in four subbasins: Chino Basin, Rialto Basin,

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Lytle Basin, and a basin known as No Man's Land. Groundwater contamination has impacted wells in all but the Lytle Basin.

Of Fontana's 35 active wells, two have been removed from service because perchlorate contamination levels near or over the MCL prevent use without wellhead treatment. In addition, four wells are inactive, meaning they have been disconnected from the distribution system, and two have been destroyed, all due to high concentrations of perchlorate and/or nitrate. Of the 15 active wells in service in the Chino Basin, several have been impacted by perchlorate contamination:

- three have had wellhead perchlorate treatment systems installed,
- one is limited to use for meeting peak daily demands,
- two are subject to daily perchlorate monitoring, and
- three others have detectable perchlorate but their use has not yet been impacted.

In all, at least 16 of Fontana's 23 Chino Basin wells have been adversely impacted due to perchlorate contamination. In addition, low but increasing levels of perchlorate contamination have been detected at one of the Rialto Basin wells. Fontana believes that perchlorate originating from property owned by the County of San Bernardino has contaminated or threatens to contaminate Fontana wells in both the Rialto and Chino Basins.

VOC contamination of two wells in No Man's Land is discussed in the section on contamination-related proceeds.

## *Expenses Booked to the Fontana WQLMA*

San Gabriel booked \$2,978,767 in expenses to the Fontana WQLMA from April 2011 through December 2014. Payments were made to two law firms, two engineering consulting firms, a public relations consulting firm, one scientist and a related lab, and two other consulting firms. San Gabriel states that outside legal expenses have been for representation of Fontana before various state and federal courts and agencies. Scientific and engineering consultants have performed isotope analysis and groundwater modeling to help determine the source of the perchlorate that poses a threat to Fontana's wells.

## *Contamination-Related Proceeds*

Prior to issuance of Decision 14-05-001 in Fontana Division's most recent General Rate Case, costs incurred and proceeds received for treatment of groundwater

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contamination were tracked in a separate memorandum account, the Water Quality Memorandum Account (WQMA), which was established in Decision 04-07-034. The WQMA was combined with the WQLMA in the May 2014 Decision; therefore, this Resolution refers to the combined account. The combination of the two accounts did not affect the balance in the WQLMA because none of the contamination-related income received was used to offset expenses. Instead, it was immediately removed from the memo account and assigned to operating expenses or contributions in aid of construction (CIAC).

Contamination-related income was received from two sources from 2011-2014. First, San Gabriel received monthly payments totaling \$1.1 million from the County of San Bernardino for costs related to the operation of a wellhead treatment system to remove VOC contamination originating from the County's Mid-Valley Sanitary Landfill. This income dates to a 1998 settlement agreement related to the Santa Ana Regional Water Quality Control Board's Cleanup and Abatement Order 98-96. The agreement predates the establishment of the WQLMA and is used to directly offset operations expenses. Second, a wellhead treatment facility to remove perchlorate was designed and installed in 2014 with funding from the Department of Defense (DOD); Fontana did not receive any direct funding from DOD, so the \$1.5 million value was recorded as CIAC.

Any future income resulting from litigation or mediation regarding water contamination should be booked to the WQLMA to offset expenses incurred in the pursuit of these funds.

### *Criteria for Review*

Resolution W-4094 states that water utilities are authorized to establish memorandum accounts for recording expenses resulting from water contamination litigation and are authorized to file for recovery of reasonable expenses recorded in the account. The Findings and Conclusions of Resolution W-4089 note that "the establishment of a memorandum account does not necessarily guarantee full recovery of the expenses booked to that account," and that a water utility "should be required to justify the reasonableness of all expenses associated with the memorandum account" prior to being granted rate relief.

Resolution W-4930, which establishes a groundwater contamination memorandum account for California American Water Company's San Marino Service Area, establishes evaluation criteria for the amortization of that account. Ordering

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Paragraph #3 states that the utility “shall show that: (a) it acted prudently when it incurred these costs; (b) the level of booked costs is reasonable; (c) the costs incurred are not covered by other authorized rates; and (d) it is appropriate for ratepayers, as a matter of policy, to pay for these categories of costs in addition to otherwise authorized rates.” These criteria are used to evaluate the expenses booked to the Fontana WQLMA.

In addition, the following requirements, based on Standard Practice U-27-W, were addressed:

- expenses booked to a memorandum account must benefit ratepayers;
- the balance requested for recovery must be just, reasonable and correct;
- all charges booked to memo accounts must be less than three years old unless the costs are fully justified for being older; and
- legal expense memo accounts where the utility is the plaintiff may be recovered prior to closure of the case, subject to refund.

### *Results of DWA Review*

In its original filing, San Gabriel submitted 180 invoices from nine different companies. The majority (98%) of the expenses were paid to four companies who invoiced San Gabriel on roughly a monthly basis, including two law firms, an engineering consulting firm, and a public relations consulting firm. These invoices contain no information to support the invoice amounts.

ORA submitted three data requests to which San Gabriel responded, though not always in a timely manner. These data requests and responses were all shared with DWA; DWA subsequently made several informal requests for further information to which San Gabriel timely replied. However it took three separate requests of increasing urgency before DWA was eventually provided with unredacted copies of detailed billing statements. San Gabriel is reminded that it is the utility’s responsibility to fully justify all expenses booked to a memorandum account, and that Commission staff have the right to any information they deem necessary to review a utility’s request for relief.

DWA requested and was provided with six detailed billing statements from each of the four main companies for randomly selected months throughout the accounting period (2011-2014). A review of these detailed statements found only expenses incurred in pursuit of litigation against and/or settlements with parties responsible for contamination of Fontana’s groundwater supply. Following is a discussion of whether these expenses meet the criteria used for review.

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### **San Gabriel acted prudently when it incurred these costs**

San Gabriel retained legal support to investigate, develop, and pursue claims on the company's behalf against parties responsible for contamination of Fontana's water supplies. They also engaged outside assistance in securing funding from federal agencies to remediate perchlorate contamination of company wells. Given the impact of perchlorate contamination on Fontana's water supply and the Commission's directive in Resolution W-4089 to "aggressively pursue legal action for recompense from the original polluters", DWA finds that San Gabriel acted prudently when it incurred these expenses, with the exceptions noted below.

### **The level of booked costs is reasonable with the following exceptions**

When reviewing a request for recovery from a memorandum account, the Commission's primary focus is on whether the utility has demonstrated that the expenses recorded in the memorandum account are reasonable. In Resolution W-4253, we stated as follows:

A memorandum account is not a guarantee of eventual recovery of expenses, nor is it carried as a regular account under the uniform system of accounts for water utilities. It is carried "off the books", as a memorandum account. Commission policy on memorandum account treatment has always been that the burden of proof of the reasonableness of expenses charged to the account is the responsibility of the utility requesting reimbursement of such expenses.

DWA examined the sample of detailed invoices and found that San Gabriel had provided sufficient evidence to demonstrate that most of the hourly attorney and consultant rates, travel expenses, and miscellaneous fees included in the Fontana WQLMA were reasonable. We agree. There are two exceptions.

The first is a monthly retainer of \$12,500 plus expenses paid by one of the law firms to a political consultant starting in August 2011. Because the consultant is subcontracted through a law firm, there is a lack of transparency regarding the relationship of the consultant to San Gabriel and the nature of services provided. In addition, the level of the fees is not tied to the amount of work the consultant performed in a given month. It is inappropriate to bill ratepayers a blanket fee for unspecified consultant services, as there is no way for the Commission to determine whether the costs are reasonable. The accumulated total of \$523,516.36 for 41 months of this retainer plus expenses, plus interest, will be excluded from the balance approved for recovery.

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The second is the public relations expense. The Discussion section of Resolution W-4089 notes that a water utility “may want to reconsider the inclusion of public relation fees in the memo account.” This does not constitute a prohibition of public relations expenses in a water contamination litigation memorandum account, but it does suggest that the company needs to provide strong justification for such expenses in this context. San Gabriel was given the opportunity to explain how ratepayers have benefitted from the services provided by the public relations firm it has been using, but failed to do so. Due to the lack of sufficient evidence of the reasonableness of those fees, their sum total of \$94,652, plus interest, shall be excluded from the balance approved for recovery.

The exclusion of fees paid to the political consultant and the public relations firm does not necessarily imply a judgment that those costs were unreasonable. Rather it is a judgment that San Gabriel did not meet its burden of proof of the reasonableness of those expenses.

### **The costs incurred are not covered by other authorized rates**

In response to a data request from ORA, San Gabriel stated in writing that the company is not recovering water contamination litigation expenses in rates, as the Commission does not allow recovery of costs tracked in the WQLMA in the design of base rates. San Gabriel also provided a copy of a workpaper produced by DWA in support of D.14-05-001 showing that, while expenses had been booked to the WQLMA in recorded years 2006-2010, WQLMA expenses were not included in forecasts for 2011, 2012, and 2013 in GRC proceeding A.11-07-005. Further, San Gabriel pointed to the Direct Testimony of Michael L. Whitehead from that same GRC proceeding, in which Mr. Whitehead, CEO of San Gabriel Valley Water Company, describes that the company intends to continue recording expenses related to perchlorate litigation to the WQLMA for future recovery, consistent with Commission policy.

### **It is appropriate for ratepayers, as a matter of policy, to pay for these categories of costs in addition to otherwise authorized rates**

Resolution W-4094 ordering paragraph 4 states that water utilities are “authorized to establish memorandum accounts for recording expenses resulting from water contamination litigation” and “authorized to file for recovery of reasonable expenses recorded in the memorandum account”. Resolution W-4089 orders companies for which water contamination litigation memorandum accounts are authorized to “use every means possible... to seek restitution from the polluters of the basin”. Thus the Commission has indicated that it is appropriate, as a matter of policy, for ratepayers to

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pay for costs a utility has incurred in pursuit of litigation that seeks restitution for contamination of its groundwater, in addition to otherwise authorized rates.

### **Expenses booked to the memorandum account must benefit ratepayers**

As discussed above, several of Fontana's wells have been impacted by perchlorate contamination. In order to provide sufficient water that meets state water quality regulations, Fontana has had to stop using some wells, install treatment systems on others, and drill new wells. Fontana believes that the risk of perchlorate contamination of its wells is increasing, and therefore expects to continue to incur costs related to remediation and/or replacement wells. Fontana is pursuing recompense from those responsible for the contamination in order to reduce the financial burden on its customers. If Fontana is successful in compelling responsible parties to reimburse Fontana for legal, consulting, and remediation costs related to water contamination that have been or otherwise would be paid by the ratepayers, the expenses booked to Fontana's WQLMA will benefit ratepayers.

### **The balance requested for recovery must be just, reasonable and correct**

The expenses booked to the Fontana WQLMA were incurred in pursuit of legal action against parties responsible for contamination of the company's water supply. As San Gabriel has been following the Commission's directive to seek restitution from polluters, the WQLMA balance is considered to be lawful and just. As discussed above, the level of most of these expenses is considered to be reasonable. All charges booked to the WQLMA were supported by invoices provided with the advice letter, and interest calculations and other adjustments were verified by DWA; therefore, the balance is considered to be correct.

### **Charges booked to memo accounts must be less than three years old unless the costs are fully justified for being older**

The expenses requested here for recovery were incurred from April 2011 through December 2014. The earliest expenses were therefore incurred more than three years prior to filing of the advice letter in March 2015. However because the previous amortization through March of 2011 was not approved until May of 2014, the Commission is willing to grant an exception in this case, allowing expenses as far back as April 2011.

### **Legal expense memo accounts where the utility is the plaintiff may be recovered prior to closure of the case, subject to refund**

San Gabriel is pursuing water contamination litigation in which it would be the plaintiff, therefore recovery of related expenses is allowable even though final

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judgment has not been issued. In the event that damages due to this litigation are subsequently awarded to San Gabriel, these proceeds should be booked to the WQLMA so that ratepayers can be reimbursed for litigation-related expenses they have paid.

## **Final assessment**

DWA found that the legal and consulting fees booked to the WQLMA, excluding the public relations fees and the monthly fees for the subcontracted political consultant, a total of \$2,360,598.19, meet the criteria listed above and are therefore eligible for recovery. The total approved for recovery, including interest accrued at the federal 90-day nonfinancial commercial paper rate through October 2015, is \$2,369,045.70, which represents 3.9% of Fontana's currently authorized revenue requirement. This was reduced by 2.7% (\$63,964.23) to exclude the flat-rate customers' portion, and then by the \$45,612.85 overcollection from the previous WQLMA amortization. The net balance to be amortized is \$2,259,468.62. A surcharge of \$0.1394 per hundred cubic feet (ccf) should be applied for 12 months to all metered potable water customers to recover this amount.

## **SAFETY**

Water that is provided for human consumption is required to comply with state and federal water quality laws to ensure that it is not harmful to human health. Fontana Water Company has had to shut down some of its wells and has installed treatment systems on others in order to meet state regulations. San Gabriel has been pursuing financial compensation from parties responsible for contamination of Fontana's wells in order to fund new wells and treat water from contaminated wells. This litigation is intended to help ensure that its customers have sufficient supplies of safe drinking water.

## **COMMENTS**

Public Utilities Code § 311(g) (1) generally requires that resolutions be served on all parties and be subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft Resolution was mailed to the utility and ORA, and made available for public comment on September 22, 2015. Timely comments were received from ORA and from San Gabriel; late comments were received from Fontana Unified School District. These comments are discussed below.

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### *Office of Ratepayer Advocates*

ORA's comments reflected two sets of concerns: the recording of water contamination related proceeds in the WQLMA and San Gabriel's responsiveness to their data requests. Regarding the first item, dollar amounts were added to the relevant section of this Resolution and minor rewordings were made to Findings and Conclusions #21 and to Ordering Paragraph #5 to clarify the fact that all proceeds related to water contamination litigation should be tracked in the WQLMA. Regarding the second item, the description of San Gabriel's responses to ORA's data requests was modified to indicate that they were not all timely and to state that unredacted copies of detailed billing statements were only provided to DWA, not to ORA.

### *San Gabriel Valley Water Company*

San Gabriel's comments argue against four items: the exclusion of fees and expenses paid to the political consultant, the 2.7% reduction in balance approved for recovery, subtraction of the overcollected balance from the previous WQLMA amortization, and a 30-day delay in surcharge implementation.

In support of their request to recover expenses paid to the political consultant, San Gabriel describes the qualifications of this individual and his overall contributions to the litigation process, and states that the subcontracted fee arrangement is standard practice. This may be true, however this business arrangement means that no record exists of specific time spent or work completed. The Commission recently reaffirmed in Decision 15-10-025 that for recovery of expenses booked to a memorandum account, the utility bears the burden to prove the reasonableness of those expenses. The assessment that sufficient information was not provided to verify the reasonableness of these expenses still stands.

Regarding the second point, San Gabriel argues that flat-rate customers should not bear any of the expenses booked to the WQLMA. Standard Practice U-27-W Rule 55 states that surcharges for recovery of memorandum accounts should be spread across all utility services that have benefitted from the money spent and booked to the account. In response to DWA inquiry, San Gabriel did not present any justification for the exclusion of flat rate customers from WQLMA recovery; rather the company indicated that additional work needed to be done to allocate the balance to flat-rate customers was not worth the effort. San Gabriel was given the opportunity during the Advice Letter review process to devise an allocation for flat rate customers, but declined to do so. The 2.7% reduction in balance approved for recovery serves to place

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the appropriate burden on metered customers rather than asking them to also bear the costs that ought to be allocated to flat rate customers.

San Gabriel presents a number of arguments against subtracting the over-amortization of the previously approved WQLMA balance from the current balance to be recovered; however, none of these arguments precludes this treatment. San Gabriel points out that its tariff preliminary statement lists amortization revenues as an item to be recorded in the WQLMA. However, according to Standard Practice U-27-W, when an amount in a memorandum account is approved by the Commission as reasonable, it is moved to a balancing account for recovery. In order to bring the Fontana WQLMA in line with Commission standard practice, a request to modify San Gabriel's relevant preliminary statement has been added to the Ordering Paragraphs. As of July 23, 2015, pursuant to Advice Letter No. 453 and Resolution W-5043, San Gabriel has a new balancing account for each division to track amortization of balances that have been approved by the Commission for recovery. Therefore the balance approved for amortization in this Resolution shall be transferred to the new Previously Authorized Balances Balancing Account (PABBA) for the Fontana Water Company Division.

San Gabriel argues that the implementation of surcharges approved by this Resolution should not be delayed 30 days, because all required customer notification has already been completed. Because the approved surcharge is less than the amount customers were informed of, the Commission agrees that additional customer notification is unnecessary. Accordingly, that requirement has been removed from the ordering paragraphs.

### *Fontana Unified School District*

Fontana Unified School District opposes reimbursement of all of these expenses on the grounds that, because San Gabriel has not been successful in obtaining settlement funds, these expenses have not benefitted ratepayers. San Gabriel has been following Commission orders in pursuing restitution from polluters of its groundwater basin and is being authorized to surcharge ratepayers for those expenses which it showed to be reasonable. Standard Practice U-27-W states that legal expense memorandum accounts where the utility is the plaintiff may be recovered prior to closure of the case, subject to refund. San Gabriel continues to work toward a settlement which would enable the company to fund remediation as well as reimburse ratepayers for these expenses. As reaffirmed in D.15-10-025, the utility will bear the burden of proof of reasonableness of all expenses requested for recovery in the future.

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## FINDINGS AND CONCLUSIONS

1. Resolution W-4089, approved on January 21, 1998, authorized Southern California Water Company to establish a memorandum account for litigation expenses related to contaminated water, and ordered the company to use every means possible to seek restitution from parties responsible for water contamination.
2. Resolution W-4089 further authorized San Gabriel Valley Water Company to seek similar memorandum account coverage.
3. San Gabriel established the Water Quality Litigation Memorandum Account for its Fontana Water Company division in 2002.
4. San Gabriel's Fontana WQLMA was previously amortized for balances as of July 31, 2003; February 28, 2007; June 18, 2009; and March 31, 2011.
5. On March 4, 2015 San Gabriel filed Advice Letter 459 requesting authorization to amortize the December 31, 2014 balance of \$2,992,724 in the Fontana WQLMA.
6. The balance requested for recovery exceeds 2% of the most recently authorized revenue requirement for Fontana Water Company, which meets the criteria for amortization of such a memorandum account via advice letter.
7. Three protests to Advice Letter 459 were received, to which San Gabriel Valley Water Company filed timely responses.
8. Upon review of all charges including a detailed review of selected invoices from each company, DWA found that the expenses recorded in the WQLMA from April 2011 through December 2014 were related to the pursuit of claims against parties responsible for groundwater contamination affecting Fontana Water Company wells.
9. San Gabriel did not provide sufficient documentary evidence in support of the reasonableness of its request to amortize \$523,516.36 in political consultant fees, plus interest, in the Fontana WQLMA.

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10. San Gabriel did not provide sufficient documentary evidence in support of the reasonableness of its request to amortize \$94,652 in public relations fees, plus interest, in the Fontana WQLMA.
11. Excluding the two exceptions noted above, DWA found that San Gabriel provided sufficient justification for the reasonableness of the expenses booked to the Fontana WQLMA.
12. The total WQLMA expenses approved for recovery through December 31, 2014, plus interest through October 31, 2015, is \$2,369,045.70, which represents 3.9% of the most currently authorized operating revenues at the time Advice Letter 459 was filed.
13. San Gabriel chose not to determine how to allocate a portion of the WQLMA expenses to flat rate customers; therefore their portion (2.7% or \$63,964.23) was subtracted from the approved balance.
14. San Gabriel recorded an over-collection of \$45,612.85 as of May 31, 2015 from the 12-month surcharge that was implemented by Advice Letter 436 in May 2014 to amortize the previously approved balance in the Fontana WQLMA.
15. San Gabriel's preliminary statement describing the Water Quality Litigation Memorandum Account for the Fontana Water Company Division includes amortization revenue among the list of monthly entries to the account. This accounting treatment is in conflict with Commission standard practice, and should be modified to state that balances approved for amortization shall be transferred to a balancing account.
16. The amount approved for recovery, less the 2.7% that would have been allocated to flat rate customers, less the over-collected amount from the previously approved surcharge, results in a net approved balance of \$2,259,468.62.
17. Because the under-collected balance is less than 5% of gross revenues, the memorandum account amortization surcharges shall be spread over one year.
18. The surcharge to recover the net approved balance shall be imposed on all utility services benefitting from the expenses booked to the WQLMA, excluding the flat rate customers as noted above, which includes all metered

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potable water customers in the Fontana district consistent with the tariff schedules in Appendix A to this Resolution.

19. A surcharge of \$0.1394 per hundred cubic feet applied to all metered potable water customers for 12 months will allow San Gabriel to amortize the net approved balance in the Fontana WQLMA.
20. San Gabriel should continue to pursue legal action against parties responsible for contamination affecting wells in the Fontana district, in order to seek financial compensation for remediation expenses and legal fees.
21. All proceeds resulting from legal action against groundwater polluters shall be booked to the WQLMA, as described in San Gabriel's Tariff Preliminary Statement.
22. Fontana customers should be reimbursed for the expenses approved for recovery in this Resolution by any contamination proceeds San Gabriel receives due to settlements or legal decisions.

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

1. San Gabriel Valley Water Company is authorized to amortize the approved December, 31, 2014 balance in the Water Quality Litigation Memorandum Account for its Fontana Water Company district, plus interest through October 31, 2015, less the portion that would have been applied to flat rate customers and less the over-collected amount from the previously approved amortization, a net total of \$2,259,468.62.
2. San Gabriel Valley Water Company shall transfer \$2,259,468.62 to the Previously Authorized Balances Balancing Account (PABBA) for the Fontana Water Company Division for recovery over a period of twelve months. San Gabriel Valley Water Company is authorized to earn interest on the balance in this account, at the 90-day nonfinancial commercial paper rate, from the effective date of this Resolution.
3. The January 1, 2015 starting balance in the Fontana WQLMA is \$0.
4. San Gabriel Valley Water Company shall, within five days of the effective date of this Resolution, file a Tier 1 Advice Letter implementing a 12-month surcharge of \$0.1394 per hundred cubic feet on all metered potable water customers by modifying tariff schedules FO-1, FO-1C, and FO-CARW consistent with the tariff schedules shown in Appendix A. In addition, San Gabriel shall revise the preliminary statement describing the Water Quality Litigation Memorandum Account for the Fontana Water Company Division to remove amortization revenues from the list of entries to the account and state that balances approved for amortization shall be moved to the Previously Authorized Balances Balancing Account (PABBA) for the Fontana Water Company Division.
5. San Gabriel Valley Water Company is expected to continue to pursue litigation against parties responsible for contamination of wells in its Fontana Water Company district, for which expenses and proceeds will be recorded in the Fontana Water Quality Litigation Memorandum Account, so that compensation received from responsible parties can be used to offset legal expenses and be returned to ratepayers.

## PROPOSED RESOLUTION

Resolution W-5064  
DWA

October 22, 2015 (Rev. 1)

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 October 22, 2015; the following Commissioners voting favorably thereon:

---

TIMOTHY J. SULLIVAN  
Executive Director

# PROPOSED RESOLUTION

Resolution W-5064  
DWA

October 22, 2015 (Rev. 1)

## APPENDIX A

**SCHEDULE NO. FO-CARW**  
Fontana Water Company  
**CALIFORNIA ALTERNATIVE RATES FOR WATER**  
*(continued)*

**SPECIAL CONDITIONS** (continued)

2. Application and Eligibility Declaration: An application and eligibility declaration on a form authorized by the Commission is required for each request for service under this schedule. Renewal of a customer's eligibility declaration will be required every two years and may be required on an annual basis. Customers are only eligible to receive service under this rate schedule at one residential location at any one time, and the rate applies only to the customer's permanent primary residence. The schedule is not applicable where, in the opinion of the Utility, either the accomodation or the occupancy is transitory.
3. Commencement of Rate: Eligible customers shall be billed on this schedule commencing no later than one billing period after receipt and approval of the customer's application by the Utility.
4. Verification: Information provided by the applicant is subject to verification by the Utility. Refusal or failure of a customer to provide documentation of eligibility acceptable to the Utility, upon the request of the Utility, shall result in removal from this rate schedule.
5. Notice from Customer: It is the customer's responsibility to notify the Utility if there is a change in the customer's eligibility status.
6. Customers may be re-billed for periods of ineligibility under the applicable rate schedule.
7. All bills are subject to the reimbursement fee set forth on Schedule No. AA-UF.
8. A surcredit of \$0.2165 per Ccf is to be applied to the quantity rates for thirty-six months beginning on August 1, 2014 and ending on July 31, 2017 to refund an overcollection associated with the Sandhill Water Treatment Facility Plant.
9. A surcharge of \$0.1440 per Ccf is to be applied to the quantity rates for thirty-one months beginning February 13, 2015 and ending on September 12, 2017 to recover an undercollection recorded in the Interim Rates Memorandum Account.
10. A surcharge of \$0.1257 per Ccf is to be applied to the quantity rates for twenty-four months beginning on May 6, 2015 and ending on May 5, 2017 to recover the March 2015 undercollection recorded in the Water Production Balancing Account.
11. A surcharge of \$0.1394 per Ccf is to be applied to the quantity rates for a 12-month period beginning on the effective date of Advice Letter No. 459 to amortize the undercollection in the Water Quality Litigation Memorandum Account (WQLMA).

(N)  
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(N)

**(Continued)**

# PROPOSED RESOLUTION

Resolution W-5064  
DWA

October 22, 2015 (Rev. 1)

## APPENDIX A

**SCHEDULE NO. FO-1C**  
Fontana Water Company  
**GENERAL METERED SERVICE - CONSERVATION RATES**

**APPLICABILITY**

Applicable to all metered Residential customers, excluding apartments, trailer parks, and any other facility in which Residential customers receive service through a master meter.

**TERRITORY**

Portions of Fontana, Rancho Cucamonga, Rialto, and vicinity, San Bernardino County.

**RATES**

Quantity Rates:

For the first 16 Ccf of water used, per 100 cu. ft.....	\$ 2.5032
For all Ccf greater than 16 Ccf, per 100 cu. Ft.....	\$ 2.8789

Service Charges:

	<u>Per Meter</u> <u>Per Month</u>
For 5/8 x 3/4-inch meter .....	\$ 14.53
For 3/4-inch meter .....	21.80
For 1-inch meter .....	36.34
For 1-1/2-inch meter .....	72.67
For 2-inch meter .....	116.30
For 3-inch meter .....	217.98

**SPECIAL CONDITIONS**

1. All bills are subject to the reimbursement fee set forth on Schedule No. AA-UF.
2. A surcredit of \$0.2165 per Ccf is to be applied to the quantity rates for thirty-six months beginning on August 1, 2014 and ending on July 31, 2017 to refund an overcollection associated with the Sandhill Water Treatment Facility Plant.
3. A surcharge of \$0.1297/Ccf is to be applied to the quantity rates of only non-CARW customers to recover the estimated benefits provided under the California Alternative Rates for Water (CARW) program.
4. A surcharge of \$0.1597 per Ccf is to be applied to the quantity rates of only non-CARW customers for a 12-month period ending September 20, 2015 to amortize the undercollection in the California Alternative Rates for Water (CARW) Memorandum Account.
5. A surcharge of \$0.1440 per Ccf is to be applied to the quantity rates for thirty-one months beginning February 13, 2015 and ending on September 12, 2017 to recover an undercollection recorded in the Interim Rates Memorandum Account.
6. A surcharge of \$0.1257 per Ccf is to be applied to the quantity rates for twenty-four months beginning on May 6, 2015 and ending on May 5, 2017 to recover the March 2015 undercollection recorded in the Water Production Balancing Account.
7. A surcharge of \$0.1394 per Ccf is to be applied to the quantity rates for a 12-month period beginning on the effective date of Advice Letter No. 459 to amortize the undercollection in the Water Quality Litigation Memorandum Account (WQLMA).

(N)  
|  
(N)

(Continued)

# PROPOSED RESOLUTION

Resolution W-5064  
DWA

October 22, 2015 (Rev. 1)

## APPENDIX A

<p><b>SCHEDULE NO. FO-1</b> Fontana Water Company <b><u>GENERAL METERED SERVICE</u></b> <i>(continued)</i></p>	
<p><b><u>RATES</u></b> (continued)</p>	<p style="text-align: center;"><u>Per Battery</u> <u>Per Month</u></p>
<p>For two 2-inch meters ..... \$ 222.00                  For three 2-inch meters ..... 333.00                  For four 2-inch meters ..... 444.00                  For two 3-inch meters ..... 417.00                  For two 4-inch meters ..... 696.00                  For one 8-inch meter, two 2-inch meters ..... 1,331.00                  For two 8-inch meters ..... 2,202.00</p>	
<p>The Service Charge is a readiness-to-serve charge applicable to all metered service and to which is added to the quantity charge computed at the Quantity Rates.</p>	
<p><b><u>SPECIAL CONDITIONS</u></b></p>	
<ol style="list-style-type: none"> <li>1. All bills are subject to the reimbursement fee set forth on Schedule No. AA-UF.</li> <li>2. A surcredit of \$0.2165 per Ccf is to be applied to the quantity rates for thirty-six months beginning on August 1, 2014 and ending on July 31, 2017 to refund an overcollection associated with the Sandhill Water Treatment Facility Plant.</li> <li>3. A surcharge of \$0.1297/Ccf is to be applied to the quantity rates of only non-CARW customers to recover the estimated benefits provided under the California Alternative Rates for Water (CARW) program.</li> <li>4. A surcharge of \$0.1597 per Ccf is to be applied to the quantity rates of only non-CARW customers for a 12-month period ending September 20, 2015 to amortize the undercollection in the California Alternative Rates for Water (CARW) Memorandum Account.</li> <li>5. A surcharge of \$0.1440 per Ccf is to be applied to the quantity rates for thirty-one months beginning on February 13, 2015 and ending on September 12, 2017 to recover an undercollection recorded in the Interim Rates Memorandum Account.</li> <li>6. A surcharge of \$0.1257 per Ccf is to be applied to the quantity rates for twenty-four months beginning on May 6, 2015 and ending on May 5, 2017 to recover the March 2015 undercollection recorded in the Water Production Balancing Account.</li> <li>7. A surcharge of \$0.1394 per Ccf is to be applied to the quantity rates for a 12-month period beginning on the effective date of Advice Letter No. 459 to amortize the undercollection in the Water Quality Litigation Memorandum Account (WQLMA).</li> </ol>	<p>(N)   (N)</p>

**END OF APPENDIX A**

# PROPOSED RESOLUTION

Resolution W-5064  
DWA

October 22, 2015 (Rev. 1)

## SAN GABRIEL VALLEY WATER COMPANY ADVICE LETTER NO. 459 SERVICE LIST

Daniel A. Dell'Osa  
Director, Rates and Revenue  
San Gabriel Valley Water Company  
11142 Garvey Avenue  
El Monte, CA 91733-2498

Danilo E. Sanchez  
Program Manager  
Division of Ratepayer Advocates  
California Public Utilities Commission  
505 Van Ness Ave.  
San Francisco, CA 94102

Lisa Bilir  
Supervisor  
Office of Ratepayer Advocates  
[Lisa.Bilir@cpuc.ca.gov](mailto:Lisa.Bilir@cpuc.ca.gov)