

DWA/RSK/BMD/JB5/SRW/jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS  
Water and Sewer Advisory Branch

RESOLUTION NO. W-4925  
July 12, 2012

R E S O L U T I O N

**(RES. W-4925) CALIFORNIA AMERICAN WATER COMPANY (CAL AM). ORDER APPROVING REQUEST TO IMPLEMENT A SURCHARGE TO RECOVER \$1,146,053.61 OF THE BALANCE IN THE WATER CONTAMINATION LITIGATION MEMORANDUM ACCOUNT FOR ITS LOS ANGELES DISTRICT.**

**SUMMARY**

This resolution grants Cal Am the authority to implement a surcharge of \$0.1156 per hundred cubic feet (Ccf) for 12 months to recover the balance of \$1,146,053.61 as of February 28, 2011, in the Water Contamination Litigation Memorandum Account (WCLMA) for its Los Angeles district.

Cal Am filed Advice Letter (AL) 905 on May 27, 2011, with a Tier 2 designation to recover the balance in the WCLMA. The Division of Water and Audits (DWA) informed Cal Am that this advice letter should be designated Tier 3 in accordance with General Order 96-B (G.O. 96-B), Water Industry Rule 7.3.3 (7).

**BACKGROUND**

Cal Am submitted AL 905 with a Tier 2 designation to recover the balance in the WCLMA. General Order 96-B, Water Industry Rule 7 - Disposition of Advice Letter - Rule 7.3.3 states that the following advice letters may not be deemed approved and generally will be disposed of by Commission resolution pursuant to General Rule 7.6.2. Specifically, Rule 7.3.3 (7) refers to Memorandum Account amortization as a Tier 3 advice letter. DWA determined that AL 905 should be designated Tier 3 based on G.O. 96-B, Water Industry Rule 7.3.3(7). DWA suspended this advice letter, informed Cal Am of the suspension to AL 905 and prepared this resolution for Commission consideration.

Water contamination litigation expense memorandum accounts were authorized by the Commission in Res. W-4094, dated March 26, 1998. Cal Am established the WCLMA via AL No. 523 filed on May 7, 1998. The WCLMA was established to track litigation

costs associated with water contamination cases across all of Cal Am's districts. In Res. W-4094, the Commission authorized all water utilities to establish memorandum accounts to track water contamination litigation expenses and to file for recovery of reasonable expenses in a subsequent general rate case application.

Cal Am filed for recovery of the expenses tracked in the WCLMA in Application (A.) 10-07-007, its current general rate case proceeding, and the Division of Ratepayer Advocates (DRA) audited the WCLMA as part of its review of Cal Am's A.10-07-007. Following the audit, Cal Am, DRA, and The Utility Reform Network (TURN) (together the Parties) settled this issue as part of a broader settlement of issues in A.10-07-007. In a July 28, 2011 Joint Motion in A.10-07-007, the Parties submitted the *Partial Settlement Agreement Between the Division of Ratepayer Advocates, The Utility Reform Network and California-American Water Company on Revenue Issues in the General Rate Case* (Settlement Agreement). Among the issues resolved in the Settlement Agreement is the issue of the amortization of the WCLMA. In Section 11.11.13 of the Settlement Agreement, DRA and Cal Am agreed that recovery of the balance in the WCLMA would be processed through a separate AL and that amortization would be requested through an advice letter filing (Settlement Agreement at p. 322). AL 905 is Cal Am's request to amortize the balance in the WCLMA.

DWA prepared a draft resolution addressing AL 905. This was draft Res. W-4889, which DWA mailed for 30-day public review and comment on September 23, 2011. Draft Res. W-4889 approved Cal Am's request to implement a surcharge to recover \$1,146,053.61 of the balance in the WCLMA.<sup>1</sup> DWA mailed draft Res. W-4889 for comment to Cal Am. No other person filed a protest to AL 905 and, accordingly, Cal Am was the only party that needed to have received notice of the draft resolution. Nevertheless, DWA also mailed draft Res. W-4889 for 30-day notice and comment to the parties on the service list to Application 10-07-007 because Cal Am initially filed for recovery of the WCLMA as part of A. 10-07-007. No comments were received to draft Res. W-4889.

DWA withdrew draft Res. W-4889 on November 10, 2011. The resolution was withdrawn pending the Commission's review and approval of the Settlement Agreement in A.10-07-007.

On June 7, 2012, the Commission issued D.12-06-016 in A.10-07-007, adopting the Settlement Agreement as set forth in that order. This included approval of the agreed process for recovering the balance in the WCLMA through AL 905.

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<sup>1</sup> Draft Resolution W-4889 did the same thing that this Resolution is doing. Both resolutions are essentially identical.

## **NOTICE, SERVICE, PROTESTS AND RESPONSES**

On May 27, 2011, Cal Am served AL 905 in accordance with General Order 96-B to adjacent utilities, parties of record in A.10-07-007, and persons on its general advice letter service list. Subsequently, Cal Am, at DWA's request, provided customer notice of AL 905, as required by Water Industry Rule 3.1 and General Rule 4.2 of General Order 96-B.<sup>2</sup> No protests were received to AL 905.

## **DISCUSSION**

Cal Am has a balance in the WCLMA of \$1,146,053.61 as of February 28, 2011. The balance represents 4.28% of the most current authorized operating revenues of \$26,773,302 approved in AL 865-W at the time AL 905 was filed. Standard Practice U-27-W, Rule 56.b., states that reserve and memorandum account amortization surcharges shall be spread over one year for under collections of less than 5% of gross revenues. Cal Am requests implementation of a \$0.1156 per Ccf surcharge for all customers in the Los Angeles District for 12 months to amortize the balance in the WCLMA.

Cal Am previously filed AL 580 on March 21, 2003, to increase rates by \$944,289 over a two year period to recover the under-collection in the WCLMA. Commission Resolution W-4528 dated April 21, 2005, authorized Cal Am to implement a surcharge of \$0.0492 per Ccf over a period of two years to recover the \$944,289. Cal Am states that \$64,481.73 of the \$944,289 contamination litigation expenses previously approved by Res. No. W-4528 are unrecovered. DRA's audit included confirmation of the uncollected balance of \$64,481.73 from the previous amortization of the WCLMA authorized by Res. No. W-4528.

In the settlement agreement between the DRA and Cal Am in the 2009 general rate case approved by Commission in Decision 10-06-038, the parties agreed that the \$1,000,600 balance in the Los Angeles district water contamination account should be audited before recovery. DRA audited the recorded balance of \$1,143,326 in the WCLMA as of May 31, 2010, as part of its review in the Cal Am general rate case, A.10-07-007. DRA's audit included the \$1,000,600 Cal Am requested in the 2009 general rate case and the difference between the \$1,000,600 and the current outstanding balance of \$1,143,326 as of May 31, 2010.

The results of DRA's audit are set forth in Exhibit 14 (dated January 21, 2011) in A.10-07-007. DRA found that the outstanding balance is related to the legal and consulting fees in the Adler water contamination lawsuit. DRA requested Cal Am to provide all documents which support the \$1,143,326 balance requested for recovery. DRA

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<sup>2</sup> Cal Am provided notice of the surcharge proposed in AL 905 in a notice printed on the customer's monthly bill.

requested Cal Am to provide invoices and supporting documents to support selected accounting records. DRA reviewed the invoices Cal Am provided and traced these amounts to Cal Am's supporting worksheets. DRA also traced trial balances to Cal Am's supporting work papers and documents.

DRA's audit recommends that the Commission approve the recovery of the \$1,143,326 balance consistent with Standard Practice U-27-W. DRA's audit finds that the costs booked to the WCLMA are associated with legal and consulting fees in the Adler water contamination lawsuit. DRA finds that Cal Am's action in incurring these costs is prudent. Further, DRA's audit finds that the legal and consulting fees that Cal Am incurred in defending itself were reasonable and, thus, that the costs booked in the WCLMA are reasonable. DRA finds that no outstanding matters came to the attention of DRA during its examination. Also, Cal Am provided documentation that the only costs it booked in the WCLMA are costs associated with water contamination lawsuits against the utility. Cal Am agrees with the conclusions in DRA's audit.<sup>3</sup>

DRA's audit concludes that for any future costs booked into the WCLMA, when Cal Am files for recovery of the balance, Cal Am should provide evidence of insurance against lawsuits including contamination lawsuits, documentation from its insurance company of the amount of all proceeds to offset these litigation costs, documentation of where Cal Am booked the proceeds from the insurance company, and documentation that Cal Am only booked costs in the account associated with water contamination lawsuits against the utility. In this instance, Cal Am provided the DWA evidence that Cal Am has insurance against lawsuits including contamination lawsuits. Cal Am provided the DWA documentation from its insurance company indicating that Cal Am has not received any insurance proceeds related to contamination lawsuits.

Based on the results of the Division of Ratepayer Advocates' audit we find that when Cal Am files for recovery of future balances in the Water Contamination Litigation Memorandum Account, Cal Am should provide evidence of insurance against lawsuits including contamination lawsuits, documentation from its insurance company of the amount of all proceeds to offset these litigation costs, documentation of where Cal Am booked the proceeds from the insurance company, and documentation that Cal Am only booked costs in the account associated with water contamination lawsuits against the utility.

In order to recover from ratepayers costs recorded in a memorandum account, a utility must show that (1) it acted prudently when it incurred these costs; (2) the level of booked costs is reasonable; (3) the costs incurred are not covered by other authorized

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<sup>3</sup> Additionally, DRA's audit was served on the parties to A.10-07-007, and no party in A.10-07-007 has filled comments or testimony disputing the results of DRA's audit or arguing that recovery of the WCLAMA should not be allowed.

rates; and (4) it is appropriate for ratepayers, as a matter of policy, to pay for these categories of costs in addition to otherwise authorized rates. (Res. W-4824, Ordering Paragraph 5.) As discussed below, Cal Am has made a showing on all these points.

We have reviewed the information Cal Am has provided in AL 905 and DRA's audit. We agree with the analysis and conclusions in DRA's audit. We find that Cal Am acted prudently when it incurred the costs in the WCLMA, as these costs relate to water contamination litigation initiated against Cal Am, and the utility needed to act to defend itself with respect to these allegations. As discussed above, DRA audited Cal Am's expenditures and concluded that Cal Am spent reasonable amounts in legal and consulting fees in addressing the Alder water contamination litigation. We agree with DRA's conclusions and find that the level of the costs Cal Am booked in the WCLMA is reasonable. We have determined that a portion of the recovery the Commission authorized in Res. No. W-4528 was never recovered and that the Commission has not authorized recovery of the costs in the WCLMA in any other past proceedings.

Accordingly, the costs Cal Am has requested to recover here are not covered by other authorized rates. Finally, we determined in Res. W-4094 that water utilities should be authorized to file for recovery of reasonable expenses recorded in water contamination litigation memorandum accounts. (Res. W-4094, Finding and Conclusion #4.) As such, we determine as a matter of policy that ratepayers should pay for reasonable water contamination litigation expenses in addition to otherwise authorized rates.

Cal Am has stated that \$2,727.61 of accrued interest from May 31, 2010, through February 28, 2011, has been added to the \$1,143,326 recorded balance as of May 31, 2010, for the WCLMA. DWA recommends that the \$1,143,326 recorded balance as of May 31, 2010, plus the accrued interest of \$2,727.61 from May 31, 2010, through February 28, 2011, for a total of \$1,146,053.61 in the WCLMA should be recovered pursuant to Standard Practice U-27-W. DWA recommends that a surcharge of \$0.1156 per Ccf for water usage during a 12-month period in Cal Am's Los Angeles District should be approved.

## **COMMENTS**

Public Utilities Code § 311(g) (1) generally requires that resolutions must 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, on September 23, 2011, the earlier draft Res. W-4889 was mailed for 30-day public review and comment to the utility. Res. W-4889 was also served for 30-day public review and comment on the service list to A.10-07-007 because Cal Am initially filed for recovery of the WCLMA as part of A.10-07-007. No comments were received. Draft Res. W-4889 was subsequently withdrawn as discussed above. This Resolution (W-4925) was not circulated for public comment as it is substantially

identical to draft Res. W-4889, which was circulated for comments and for which no comments were received. Pursuant to Public Utilities Code § 311(g)(2) the comment period for Res. W-4925 is being waived as AL 905 was not protested, the previous draft Res. W-4889 was not contested, and Res. W-4925 grants the relief requested.

### **FINDINGS AND CONCLUSIONS**

1. California American Water Company requests approval to recover the balance of \$1,146,053.61 as of February 28, 2011, in its Water Contamination Litigation Memorandum Account for its Los Angeles District pursuant to Standard Practice U-27-W.
2. California American Water Company filed Advice Letter 905 with a Tier 2 designation.
3. On May 27, 2011, Cal Am served AL 905 in accordance with General Order 96-B to adjacent utilities, parties of record in A.10-07-007, and persons on its general advice letter service list.
4. California American Water Company provided customer notice of AL 905 to adjacent utilities, parties of record in A.10-07-007, and persons on its general advice letter service list.
5. The Division of Water and Audits received no protests to Advice Letter 905.
6. The Division of Water and Audits determined that Advice Letter 905 should be designated Tier 3.
7. The Division of Water and Audits suspended Advice Letter 905 and informed California American Water Company that Advice Letter 905 was designated Tier 3.
8. California American Water Company has a balance in the Los Angeles District's Water Contamination Litigation Memorandum Account of \$1,146,053.61 as of February 28, 2011.
9. The Division of Ratepayer Advocates determined that California American Water Company has not recovered \$64,481.73 of the \$944,289 in the Water Contamination Litigation Memorandum Account for its Los Angeles District previously approved by Resolution No. W-4528.

10. The California American Water Company balance of \$1,146,053.61 represents 4.28% of the most currently authorized operating revenues at the time Advice Letter 905 was filed.
11. Standard Practice U-27-W, Rule 56.b., states that reserve and memorandum account amortization surcharges shall be spread over one year for under collections of less than 5% of gross revenues.
12. California American Water Company meets the requirements of Standard Practice U-27-W for a surcharge to amortize the balance in the Water Contamination Litigation Memorandum Account for its Los Angeles District over one year.
13. California American Water Company has requested a surcharge of \$0.1156 per hundred cubic feet for 12 months to amortize the balance in the Water Contamination Litigation Memorandum Account for its Los Angeles District.
14. California American Water Company has provided the Division of Water and Audits evidence that California American Water Company has insurance against lawsuits including contamination lawsuits.
15. California American Water Company has provided the Division of Water and Audits documentation from its insurance company that California American Water Company has not received any insurance proceeds related to contamination lawsuits.
16. California American Water Company provided documentation that the only costs it booked in the Water Contamination Litigation Memorandum Account are costs associated with water contamination lawsuits against the utility.
17. The Division of Ratepayer Advocates audited the recorded balance of \$1,143,326 in the Water Contamination Litigation Balancing Account for California American Water Company's Los Angeles District as of May 31, 2010.
18. In Exhibit 14 (dated January 21, 2011) in Application 10-07-007 sets forth the results of the Division of Ratepayer Advocates' audit.
19. In Exhibit 14 the Division of Ratepayer Advocates recommended that the Commission approve the recovery of the \$1,143,236 balance as of May 31, 2010, consistent with Standard Practice U-27-W.

20. The Division of Ratepayer Advocates' audit finds that the costs booked to the Water Contamination Litigation Memorandum Account are associated with legal and consulting fees in the Adler water contamination lawsuit.
21. Division of Ratepayer Advocates' audit finds that California American Water Company acted prudently when it incurred costs booked to the Water Contamination Litigation Memorandum Account.
22. The Division of Ratepayer Advocates' audit finds that the costs booked in the Water Contamination Litigation Memorandum Account are reasonable and that no outstanding matters came to the attention of the Division of Ratepayer Advocates during its examination.
23. Based on the results of the Division of Ratepayer Advocates' audit we find that Cal Am acted prudently when it incurred these costs and the level of the costs booked in the Water Contamination Litigation Memorandum Account is reasonable.
24. Based on the results of the Division of Ratepayer Advocates' audit we find that when Cal Am files for recovery of future balances in the Water Contamination Litigation Memorandum Account, California American Water Company should provide evidence of insurance against lawsuits including contamination lawsuits, documentation from its insurance company of the amount of all proceeds to offset these litigation costs, documentation of where California American Water Company booked the proceeds from the insurance company, and documentation that California American Water Company only booked costs in the account associated with water contamination lawsuits against the utility.
25. The costs requested in the Water Contamination Litigation Memorandum Account are not covered by other authorized rates.
26. Commission Resolution W-4094 found that water utilities should be authorized to file for recovery of reasonable expenses recorded in the Water Contamination Litigation Memorandum Account.
27. As a matter of policy it is appropriate for ratepayers to pay for water contamination litigation expenses in addition to otherwise authorized rates.
28. California American Water Company has shown that \$2,727.61 of interest has accrued from May 31, 2010, through February 28, 2011, in the Water Contamination Litigation Memorandum Account for the Los Angeles District.

29. The Division of Water and Audits recommends that the Division of Ratepayer Advocates audited balance of \$1,143,326 plus the accrued interest of \$2,727.61 in the Water Contamination Litigation Memorandum Account for California American Water Company's Los Angeles District should be approved for recovery.
30. The Division of Water and Audits determined that a surcharge of \$0.1156 per hundred cubic feet for a 12-month period should amortize \$1,146,053.61 and should be approved.
31. On September 23, 2011, draft Resolution W-4889 (an earlier draft of this Resolution), was mailed for 30-day public review and comment to the utility and to parties on the service list to Application 10-07-007. No comments were received.
32. The Division of Water and Audits withdrew draft Resolution W-4889 on November 10, 2011 pending the Commission's review and approval of the Settlement Agreement in A.10-07-007.
33. Resolution W-4925 was not circulated for comment as it is substantially identical to the draft Resolution W-4889, that was circulated for comment. No comments were received on draft Resolution W-4889, Advice Letter 905 was not protested, and Resolution W-4925 grants the relief requested in Advice Letter 905.

**THEREFORE, IT IS ORDERED THAT:**

1. California American Water Company's tariff sheets filed with Advice Letter 905 and attached to this Resolution that amortize \$1,146,053.61 in the Water Contamination Litigation Memorandum Account for its Los Angeles District through a 12-month surcharge of \$0.1156 per hundred cubic feet are approved. The effective date of the revised rate schedules shall be no sooner than five days after the effective date of this Resolution.
2. California American Water Company is authorized to transfer \$1,146,053.61 from its Water Contamination Litigation Memorandum Account to a balancing account for recovery over a period of twelve months. California American Water Company is authorized to earn interest on the balance in this balancing account, at the 90-day commercial paper rate, from the effective date of this Resolution.
3. California American Water Company is ordered to provide the following when it files for recovery of future balances in the Water Contamination Litigation Memorandum Account: evidence of insurance against lawsuits including contamination lawsuits; documentation from its insurance company of the amount of all proceeds to offset these litigation costs; documentation of where California

American Water Company booked the proceeds from the insurance company; and documentation that California American Water Company only booked costs in the account associated with water contamination lawsuits against the utility.

4. 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 July 12, 2012; the following Commissioners voting favorably thereon:

\_\_\_\_\_  
/s/ PAUL CLANON

Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners

**Tariff Sheets filed with Advice Letter 905**

**CALIFORNIA-AMERICAN WATER COMPANY** Original C.P.U.C. SHEET NO. 6193-W  
 1033 B Avenue, Suite 200  
 CORONADO, CALIFORNIA 92118 CANCELLING C.P.U.C. SHEET NO. NEW

Schedule No. LA-1 (Continued)  
 Los Angeles District Tariff Area  
GENERAL METERED SERVICE

SPECIAL CONDITIONS (Continued)

8. Per Advice Letter 905, a volumetric surcharge will be applied to each customer's bill to collect \$1,148,054 to fund the undercollected balance in the Water Litigation Memorandum Account for the Los Angeles District. This surcharge is applicable to all customers in the Los Angeles District and will remain in effect 12 months from the effective date of Advice Letter 905.

(N)  
 |  
 (N)

Service Area	Water Contamination Surcharge per ccf
Baldwin Hills	\$0.1156
Duarte	\$0.1156
San Marino	\$0.1156

(TO BE INSERTED BY UTILITY)	ISSUED BY	(TO BE INSERTED BY C.P.U.C.)
ADVICE LETTER NO. <u>905</u>	<u>D. P. STEPHENSON</u>	DATE FILED _____
DECISION NO. _____	NAME <u>DIRECTOR – RATES AND REGULATION</u>	EFFECTIVE RESOLUTION NO. _____
	TITLE	



**CALIFORNIA-AMERICAN WATER COMPANY**  
 1033 B Avenue, Suite 200  
 CORONADO, CALIFORNIA 92118

CANCELLING

Revised C.P.U.C. SHEET NO. 6195-W

Original C.P.U.C. SHEET NO. 5901-W

1	Schedule No. LA-3M (continued)  Los Angeles District Tariff Area  <u>MEASURED IRRIGATION SERVICE</u>  <u>SPECIAL CONDITIONS</u> (continued):								
	9. Per Advice Letter 885, a surcharge is applied to each bill to offset increases in purchased water costs effective July 1, 2010. This offset results in a needed revenue increase of \$922,037 or 3.57%. The surcharge listed below by service area is added to the quantity rate beginning the effective date of Advice Letter 885.								
	<table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: left;">Service Area</th> <th style="text-align: left;">Purchase Water Surcharge per ccf</th> </tr> </thead> <tbody> <tr> <td>Duarte</td> <td>\$0.0906</td> </tr> </tbody> </table>	Service Area	Purchase Water Surcharge per ccf	Duarte	\$0.0906				
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Duarte	\$0.1156								
San Marino	\$0.1156								

(N)  
 \_\_\_\_\_  
 (N)

(TO BE INSERTED BY UTILITY)	ISSUED BY	(TO BE INSERTED BY C.P.U.C.)
ADVICE LETTER NO. <u>905</u>	<u>D. P. STEPHENSON</u>	DATE FILED _____
DECISION NO. _____	NAME _____	EFFECTIVE _____
	<u>DIRECTOR RATES &amp; REGULATION</u>	RESOLUTION NO. _____
	TITLE _____	