

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



FILED
02-25-10
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In the Matter of the Updated and Corrected
Application of GREAT OAKS WATER CO.
(U-162-W) for an Order Authorizing an
Increase in Rates Charged for Water Service,
increasing the revenue requirement by
\$1,846,100 or 14.94% in 2010, by \$254,425 or
1.79% in 2011 and by \$165,822 or 1.14% in
2012.

Application No.: A.09-09-001
(Filed September 3, 2009)
(Updated and Corrected Caption filed
11/12/2009)

**GREAT OAKS WATER COMPANY'S
OPENING BRIEF**

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Dated: February 25, 2010

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Summary of Great Oaks Water Company's Recommendations

Based upon the clear and convincing evidence presented, Great Oaks recommends adoption of its positions on the following issues:

- 1) Water Sales and Revenues: Great Oaks' has properly used the water sales forecasting methodology of D.07-05-062, including its "Drought Adjustment" and DRA's methodology is without authority and evidentiary support and inconsistent with the Commission's conservation objectives.
- 2) Private Fire Protection Revenues: Great Oaks' forecast is consistent with proper forecasting methodology and the annual rate of increase.
- 3) Reconnection Charge: Great Oaks' evidence supports the increases in this charge; DRA agrees.
- 4) Unaccounted For Water: Great Oaks' evidence supports its projections; DRA agrees.
- 5) Labor Expenses – New Employee: Great Oaks has presented clear and convincing evidence of its need for a new Advanced Field Technician.
- 6) Labor Expenses – General Office Employees: Great Oaks' compensation for its General Office Employees is fair and reasonable; DRA's position is neither and based upon data it cannot explain or justify.
- 7) Labor Expenses – Management and Field Employees: Great Oaks' management and employees fulfill multiple functions, work long hours and are paid fair and reasonable compensation; DRA's compensation comparisons are invalid. No adjustments are required or appropriate.

- 8) Operations and Maintenance Expenses: Only groundwater charges and purchased power expenses are in issue, with the evidence supporting Great Oaks' water sales forecast (the factor driving these expenses) and therefore Great Oaks' forecast groundwater charge and purchased power expenses. All other O&M expenses are fully supported by the evidence.
- 9) A&G Expense – Uncollectables: Great Oaks' expense projections are based upon an experienced increase uncollectables; DRA's recommendations ignore current events and trends.
- 10) A&G Expense – Rate Case Expenses: Great Oaks' projections are based upon the realities of the current rate case plan requiring two formal proceedings; DRA's position ignores the current rate case plan.
- 11) A&G Expense – Litigation Expenses: Great Oaks' projections are fair and reasonable and reflect ongoing litigation for the benefit of ratepayers; DRA's position is contrary to the evidence and Commission rules. No memorandum accounts are required or appropriate under Commission rules.
- 12) Taxes Other Than Income: Great Oaks' projections are based upon proper application of tax rules; DRA's position relies upon inaccurate application of tax rules by an unqualified witness.
- 13) Income Taxes – DPAD: Great Oaks has properly applied Internal Revenue Code and revenue procedures in its handling of the issue; DRA's witness could neither explain nor support DRA's position.
- 14) Plant In Service and Capital Additions: The evidence supports Great Oaks' position; DRA agrees.

- 15) Recurring Routine Items and Developer/Customer Funded Projects: The evidence supports Great Oaks' position; DRA agrees.
- 16) Plant In Service: The evidence fully supports Great Oaks' plant in service calculations.
- 17) Depreciation Expense and Reserve: The evidence fully supports Great Oaks' depreciation calculations.
- 18) Ratebase: Great Oaks has accepted DRA's position.
- 19) Affiliate Transactions and Non-Tariffed Activities: No issues exist.
- 20) Customer Service: Great Oaks provides high quality customer service; DRA agrees.
- 21) Water Quality: Great Oaks meets all water quality standards; DRA agrees.
- 22) Conservation and Tiered Rate Design: Great Oaks recommends a comprehensive conservation programs with multiple components instead of DRA's partial program which fails to meet Commission conservation objectives.

I. Summary of Issues

The Scoping Memo established the general and specific issues to be decided in this proceeding as follows:

In the GRC proceeding, there is a comprehensive review of all aspects of a utility's operations, plant, capital budget, customer service, customer rates, and service quality. The Commission will adopt in this proceeding a revenue requirement and general rates for Great Oaks' fiscal test year July 1, 2010 – June 30, 2011, as well as 2011/2012, and 2012/2013, and authorize the establishment, discontinuance, or continuation of balancing and memorandum accounts to track specific expenses.

[Scoping Memo, p. 4; *see also* Transcript (“TR”), 398/25-399/12] In addition, ALJ Walwyn requested briefing on two additional issues:

No. 1. In the last GRC decision, which was by resolution, there were adjustments made to management salaries for ratemaking purposes. For this GRC should any adjustments be made and if so why and how, and specifically discuss in that management time spent in litigation and property management.

No. 2. What is the position of each party on the status and the eligible balances of litigation memorandum accounts that have been previously authorized and a position on should the Commission authorize use of any further or new memorandum accounts for litigation and if so under what terms and conditions.

[TR 399/20-400/3]

This Opening Brief will address each of the general and specific issues listed above, in the same order, followed by a discussion of the issues specifically requested by ALJ Walwyn. Procedural history and evidentiary matters pertaining to each issue will be addressed within the context of each issue as necessary. Citations to authorities, the Transcript and to evidence will be [bracketed] for ease of reference.

II. Legal Requirements and Burden of Proof

Great Oaks is mindful that all charges demanded or received by a public utility must be “just and reasonable” and that no public utility may raise any rate except upon a showing before the Commission and a finding by the Commission that the increase is justified. [Pub.Util.Code §§451, 454; *City of Los Angeles v. Public Utilities Commission* (1975) 15 Cal.3d 680]

It is equally true that the Commission may not order a utility to charge rates that are clearly unjust and unreasonable *as to the utility*, as rates and charges established by the Commission for water service must “[p]rovide revenues and earnings sufficient to afford the utility an opportunity to earn a reasonable return on its used and useful investment, to attract capital for investment on reasonable terms and to ensure the financial integrity of the utility.” [Pub.Util.Code §701.10(a); *see also Pacific Telephone & Telegraph v. Public Utilities Commission* (1965) 62 Cal.2d 634, 647]

Great Oaks has the burden of showing by clear and convincing evidence that it is entitled to the requested increase in rates. [D.00-02-046] Great Oaks may justify the reasonableness of its request and its operations by making a prima facie case of reasonableness. [D.87-12-067]

Great Oaks, however, is not the only party to this proceeding with a burden of proof. The Division of Ratepayer Advocates (“DRA”) has adopted various positions in opposition to those of Great Oaks, and with respect to those positions, DRA has the burden of going forward to produce evidence to support and explain its opposing positions. [*Re Pacific Bell* (1987) 27 Cal.P.U.C.2d 1, 21; D.08-01-022] While

DRA's burden is separate and distinct from that of Great Oaks, DRA may not raise doubt as to Great Oaks' requests by making arguments unsupported by evidence or by testimony from witnesses lacking in personal knowledge or qualifications.

III. Discussion of the Issues

A. Water Sales and Revenues

1) Relevant Testimony and Exhibits

The largest issue in this proceeding, in terms of dollars, involves projected water sales and resulting revenues. Great Oaks presented with its Application a Sales Forecast Report prepared by Wendy Illingworth, a highly qualified expert in the field.¹ The Sales Forecast Report was admitted into evidence.² In addition, Great Oaks presented rebuttal testimony of Ms. Illingworth on the issue of water sales and revenues [Exhibit 7 (Exhibit A thereof)]. Ms. Illingworth was subject to cross-examination [TR 103/14-111/11], redirect examination [TR 111/17-114/23], examination by ALJ Walwyn [TR 115/1-127/11], further redirect examination [TR 127/16-129/17], further recross-examination [TR 130/2-131/3], further examination by ALJ Walwyn [TR 131/8-134/3] and addition redirect examination [TR 134/12-135/1] at the January 21, 2010 hearing.

On the issue of water sales and revenues, DRA presented the testimony of Pat Esule. [Exhibit 16, Chapter 2] Ms. Esule's qualifications are provided in Exhibit 16,

¹ Ms. Illingworth's credentials may be found in [Exhibits 1 and 2, Report on Results of Operations, at Exhibit (Tab) E, Chapter 11].

² The Water Sales Forecast included with Great Oaks' Application was included in several exhibits admitted into evidence. The Water Sales Forecast is included as Chapter 4 of Exhibit (Tab) E, in Great Oaks' original Report on Results of Operations [Exhibit 2] served with its original Application, as well Great Oaks' Updated and Corrected Report on Results of Operations, Chapter 4 of Exhibit (Tab) E [Exhibit 1], served with Great Oaks' Updated and Corrected Application.

Appendix C. On this issue, Ms. Esule was subject to cross-examination [TR 316/19-333/21] and redirect examination [TR 342/8-343/6; 348-353]. On the issue of water sales and revenues, ALJ Walwyn asked no questions of Ms. Esule.³

As will be shown below, the evidence supporting Great Oaks’ water sales and revenue forecasts is clear, convincing and reasonable.

2) Areas of Disagreement Between Great Oaks and DRA

In terms of water sales projections, measured in Ccf per customer (for Residential, Multifamily Residential and Business customers) and per customer class (for Industrial, Public Authorities, Schools, Private Landscaping and Agricultural), the following table shows the dramatic differences between the positions of Great Oaks and DRA. The amounts are taken directly from the following exhibits: for Great Oaks – [Exhibit 20, page A-4]; for DRA – [Exhibit 16, pages 2-4 – 2-9].

Customer Class Use Per Customer	Great Oaks 2010-2011	DRA 2010-2011	Great Oaks 2011-2012	DRA 2011-2012	Great Oaks 2012-2013	DRA 2012-2013
Residential	152.40	173.0	154.75	173.0	155.90	173.0
Multifamily Residential	1,464.45	1,630.0	1,506.70	1,630.0	1,527.90	1,630.0
Business	1,037.33	1,165.6	1,060.63	1,165.6	1,072.30	1,165.6
Total Sales						
Industrial	102,836	115,546	105,147	115,546	106,302	115,546
Public Authorities	996.49	180,265	1,006.39	180,265	1,011.24	180,265
Schools	192,983	219,427	201,076	219,427	205,164	219,427
Private Landscaping	267,481	302,005	273,491	302,005	276,497	302,497
Agricultural	126,084	126,084	126,084	126,084	126,084	126,084

Water sales, of course, result in revenues, and disagreement between revenue requirements between Great Oaks and DRA are directly related to the issue of water sales forecasts. Resolving the issue of water sales forecasts will resolve the issue of

³ ALJ Walwyn’s examination of Ms. Esule related to other issues, as discussed below.

revenue requirements from water sales. The differences between Great Oaks and DRA on water service revenues are shown in the table below.⁴

Revenue Source	Great Oaks Revenue Request	DRA Position	Difference
Metered Water Service	\$13,886,000	\$12,751,500	\$1,134,500

The differences between the water sales projections by Great Oaks and DRA are in four main areas: the “drought adjustment” made by Great Oaks for the estimated water sales for each customer class except Agricultural; the sales forecasts for Schools and Private Landscaping; and Great Oaks’ methodology used in forecasting for test years 2011-2012 and 2012-2013.

With the exception of the “drought adjustment,” DRA specifically agreed that Great Oaks had performed a proper forecast for Residential, Multifamily Residential, Business, Industrial, Public Authority and Agricultural Customers. [Exhibit 16, pp. 2-4 – 2-9; *see also* Exhibit 7, p. 1] While Great Oaks used a regression analysis for School customers, DRA chose to use a different methodology (historical average) for its School customer forecasts without explanation. [Exhibit 16, p. 2-8] Both Great Oaks and DRA used historical averages for Private Landscaping customers, with the only area of disagreement being Great Oaks’ application of the “drought adjustment.” [Exhibit 16, p. 2-9; *see also* Exhibit 7, p. 5]

The disagreement over forecasts for test years 2011-2012 and 2012-2013 is between Great Oaks’ use of the “drought adjustment” and DRA’s use of the same

⁴ [Comparative Exhibit 27]

forecasts for the escalation years as for test year 2010-2011. [Exhibit 16, pp. 2-4 – 2-10] On these issues, Great Oaks’ evidence is clearly and convincingly correct.

3) Discussion of the Issues

a) *The “Drought Adjustment”*

The disagreement between Great Oaks and DRA on water sales forecasts lies mainly with Great Oaks’ application of the so-called “drought adjustment.” In making its water sales forecasts, Great Oaks’ expert made an adjustment for the effects of the Santa Clara Valley Water District’s requirement of mandatory 15% conservation by water users in Santa Clara County (the county in which Great Oaks’ service area is located). [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 4, pp. 2-4]. DRA argues that Great Oaks’ expert misinterpreted the accepted methodology for adjusting water sales forecasts. [Exhibit 16, p. 2-2] On this point, Great Oaks’ position complies with the methodology specified in D.07-05-062 and is entirely consistent with the Commission’s objectives related to conservation, while DRA’s position conflicts with the requirement to use the best available data.

In GRC proceedings, customers and water sales are to be forecast using the methodology provided in D.07-05-062⁵, which states in pertinent part:

Forecast customers using a five-year average of the change in the number of customers by customer class. Should an unusual event occur, or be expected to occur, such as the implementation or removal of limitation on the number of customers, then an adjustment to the five-year average will be made. Calculate customer consumption by

⁵ In its testimony [Exhibit 16], DRA commonly referred to D.04-06-018 as the authority for customer and water sales forecasting. In Great Oaks’ Rebuttal Testimony [Exhibit 7 (Exhibit A thereof, at p. 2), reference was also made to D.04-06-018. At the hearing, ALJ Walwyn inquired regarding the use of D.04-06-018, rather than the methodology provided in D.07-05-062. [TR 107] Thereafter, all parties made reference to the methodology in D.07-05-062 quoted above.

using a multiple regression (any commonly used multiple regression software could be employed, e.g., Eviews, SAS, TSP, Excel, Lotus), based on the material in the “Standard Practice No. U-2” and the “Supplement to Standard Practice No. Utilities-25” with the following improvements: (A) Use monthly data for ten years, if available. If ten years’ data is not available, use all available data, but not less than five years of data. If less than five years of data is available, the utility and DRA will have to jointly decide on an appropriate method to forecast the projected level of average consumption; (B) Use 30-year average for forecast values for temperature and rain; and (C) Remove periods from the historical data in which sales restrictions (e.g., rationing) were imposed or the Commission provided the utility with sales adjustment compensation (e.g., a drought memorandum account), but replace with additional historical data to obtain ten years of monthly data, if available. [D.07-05-062, A-23, fn. 4]

Forecast water sales for all classes of customers for utilities that are under government-mandated production limitations based on that limitation and consideration of unaccounted for water and historical production reserves while under the imposed limitation. Water sales for customer classes other than residential, multifamily, and business (such as industrial, irrigation, public authority, reclaimed, and other) will be forecast by total consumption by class using the best available data. [D.07-05-062, A-23, fn. 5]

Great Oaks utilized the methodology required by D.07-05-062 in making its customer and water sales forecasts. [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 4, pp. 1-2] DRA agreed that for test year 2010-2011, but for the “drought adjustment,” Great Oaks’ employed the proper methodology in forecasting customers and water sales for most customer classes. [TR 317-318; Exhibit 16, pp. 2-1 – 2-2, 2-4 (Residential), 2-5 (Multifamily Residential), 2-6 (Business), 2-7 (Industrial), 2-7 (Public Authority)] For School and Private Landscaping customers, DRA, without explanation, rejected the use of regression analysis as required by D.07-05-062. [Exhibit 7, Exhibit A thereof, at p. 4] DRA further disagreed with Great Oaks’ water sales forecasts for escalation years 2011-2012 and 2012-2013, with DRA simply recommending the same water sales for those years as for the 2010-2011 test year

[Exhibit 16, pp. 2-5 – 2-9], while Great Oaks used the best available data in making its forecasts for the escalation years. [Exhibit 7, Exhibit A thereof, at pp. 3-5]

Notably, while DRA disagreed with Great Oaks’ application of the so-called “drought adjustment,” DRA agreed that Great Oaks’ water sales forecast (including the “drought adjustment”) was consistent with the Santa Clara Valley Water District’s call for 15% mandatory conservation. [TR 322/14-19]⁶ The question, therefore, is not whether Great Oaks’ correctly forecast water sales using the “drought adjustment,” the question is whether the “drought adjustment” may be used in forecasting sales.

b) Water Sales Forecasts Pursuant to D.07-05-062

The center of the disagreement between Great Oaks and DRA on this issue is the proper application of the methodology prescribed by D.07-05-062 for water sales forecasts and, specifically, whether the D.07-05-062 methodology requires adjustments for the Santa Clara Valley Water District’s mandate for 15% water conservation.

It is Great Oaks’ position that the mandatory 15% water conservation required by the Santa Clara Valley Water District is precisely the kind of “unusual event” and government-mandated limitation incorporated into the D.07-05-062 methodology, which requires an adjustment to the water sales forecast. [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 4, pp. 1-2; Exhibit 7, Exhibit A thereof] It is DRA’s position that

⁶ The specific DRA testimony on this point was as follows:

Q. Is Great Oaks’ water sales forecast, including the drought adjustment, consistent with the Santa Clara Valley Water District’s call for 15 percent mandatory conservation?

A. (by Ms. Esule) According to the consultant that prepared it, I believe so.

the mandatory conservation required by the Santa Clara Valley Water District should not be considered in the water sales forecasts because the Santa Clara Valley Water District mandate is not the kind of mandate contemplated by the methodology of D.07-05-062. [Exhibit 16, pp. 2-2 – 2-3] At the same time, however, DRA takes the position that water users in Santa Clara County (Great Oaks’ service area) should obey the Santa Clara Valley Water District’s 15% water conservation mandate and the State of California’s call for 20% water conservation by the year 2020. [TR 318/17-28-319/1-10] On this issue, Great Oaks’ position is supported by clear and convincing evidence, while DRA’s position is in conflict with the evidence and is unsupported by any Commission decisions, resolutions or other authority.

i) Great Oaks’ Has Correctly Applied the Water Sales Forecasting Methodology of D.07-05-062.

The specific language of [D.07-05-062, at A-23, fn. 4 and 5], on this point is as follows:

Forecast customers using a five-year average of the change in the number of customers by customer class. Should an unusual event occur, or be expected to occur, such as the implementation or removal of limitation on the number of customers, then an adjustment to the five-year average will be made.

Water sales for all classes of customers for utilities that are under government mandated production limitations will be determined based on that limitation and consideration of unaccounted for water and historical production reserves while under the imposed limitations.

Water sales for customer classes other than residential, multifamily, and business (such as industrial, irrigation, public authority, reclaimed, and other) will be forecasted on total consumption by class *using the best available data.* (emphasis added)

This methodology clearly recognizes that water demand levels (sales) are genuinely affected by water supply shortages and specifies that data from periods

with water supply shortages should not be included in the regression analyses for forecasting. [Exhibits 1 and 2, Exhibit (Tab) E, p. 2] Thus, as a first step, it must be accepted that the Commission methodology requires adjustments when water sales are affected by water supply shortages.

Likewise, D.07-05-062 requires that “government mandated production limitations” be factored into water sales forecasts. The evidence in this case is undisputed that the Santa Clara Valley Water District has a mandatory requirement of 15% water conservation, and DRA agrees that Great Oaks’ customers should obey that mandate by using 15% less water. [TR 318/17-28-319/1-10] Also undisputed is that as of June 2009, Great Oaks’ water sales for non-agricultural customers were already 9% lower than water sales for the prior year [Exhibits 1 and 2, Exhibit (Tab) E, p. 2] and that Great Oaks’ water sales for the first six months of its current fiscal year (July through December, 2009) were down between 14% and 18% from the year prior. [TR 133/7-20] Finally, it is undisputed that the Santa Clara Valley Water District issued a press release on December 8, 2009 that stated, in relevant part:

Today, the Santa Clara Valley Water District Board of Directors adopted a resolution continuing the call for 15 percent mandatory conservation through June of 2010. The board’s original call for 15 percent mandatory conservation came last March after careful analysis of the county’s water supply conditions and contingency planning to factor in the potential of additional years of drought. Santa Clara County residents answered that call by achieving an 18 percent reduction in water use.

[Exhibit 7, Exhibit A thereof, at p. 4 (emphasis added)] Simply put, reality is that a government mandate for 15% conservation is currently in place and will remain in place into the future. And, this mandate is already resulting in greater than 15%

lower water use and sales in Santa Clara County and 14% to 18% lower water sales for Great Oaks.

The mandate by the Santa Clara Valley Water District is precisely the kind of unusual water shortage event that has occurred and is expected to continue, as well as the kind of government mandated production limitation, that require an adjustment in the water sales forecast under D.07-05-062. Any other position on this issue favors ignoring the purpose of the above-quoted language in D.07-05-062 and the reality of how the public reacts to government mandates. And so it is with DRA's position in this proceeding. DRA argues that the government 15% conservation mandate must be ignored in water sales forecasting, despite both DRA's position that it expects Great Oaks' customers to obey the mandate and the evidence that Great Oaks' customers are already obeying the mandate.

Great Oaks' position on this issue is supported by the language and intent of D.07-05-062 and the experience of its expert witness on water sales forecasts. Ms. Illingworth testified that she has personal knowledge of the process and rationale behind revising the water sales forecasting methodology in the 1990's. [TR 111/17-113/5] Therefore, the only evidence on this issue is that Great Oaks' water sales methodology, including the so-called "drought adjustment," is consistent with the language and intent of D.07-05-062:

Q. Is that reduction [the "drought adjustment"] that you used consistent with the methodology required by the rate case plan?

A. (by Ms. Illingworth) I believe it's consistent with the statement that you should use the best available information and reflect any known events happening in the future. But, of course, that's very general language, and you could argue about what is included in that general

language. But my belief is, and my professional opinion is, that that is reflective of the direction of the decision.

[TR 114/13-22]

DRA's position is based solely upon its own interpretation of D.07-05-062 and its predecessor decision, D.04-06-018. [TR 342/8-13] DRA's interpretation of the D.07-05-062 water sales forecasting methodology is that a "government mandated production limitation" shall not be considered in water sales forecasts if that government mandate is not enforceable. [Exhibit 16, p. 2-2] Using this interpretation, DRA completely removed the Santa Clara Valley Water District's mandatory 15% water conservation requirement from its water sales forecast, characterizing the "Santa Clara Water District's call for conservation" a "separate issue." [TR 320/5-15]

In order to arrive at the conclusion argued by DRA, it would be necessary to add language to the water sales forecasting method required by D.07-05-062 changing the phrase "government mandated production limitation" to "*enforceable* government mandated production limitation." The proper forum to address DRA's proposed interpretation or amendment of D.07-05-062 is not in this proceeding, but in a rulemaking proceeding or in a petition to modify the decision. [D.05-12-020, at p. 31⁷] However, under current authority, no Commission decision supports DRA's interpretation of D.07-05-062. Therefore, a decision adopting DRA's interpretation of D.07-05-062 would be based, not upon the evidence, but upon an unsupported

⁷ It also deserves mention that ALJ Long commented in D.05-12-020 that the "objective [of water sales forecasting] is to find the best estimate." [D.05-12-020, at p. 31]

interpretation of D.07-05-062 that deviates from the language of that decision to produce inaccurate water sales forecasts.

DRA's position on the issue of water sales forecasts and variable costs associated with water sales is quite odd. According to DRA's witness on this issue, if Great Oaks does not sell enough water to reach DRA's proposed adopted quantity, the rates paid by Great Oaks' customers would necessarily include amounts for variable expenses (pump tax and power) that Great Oaks did not incur. [TR 325/5-7] Somehow, DRA equates revenues lost due to lower water sales to variable expenses not incurred (but paid by Great Oaks' customers) to arrive at the conclusion that "the company really doesn't lose on that higher sales forecast." [TR 325/3-4] The evidence shows otherwise.

Looking to the evidence, Great Oaks projects water sales revenues of \$13,886,000 and combined pump tax and power expenses of \$5,848,600, resulting in \$8,037,400 in net water sales revenues.⁸ [Comparative Exhibit 27] DRA projects water sales revenues of \$12,751,500, with combined pump tax and power expenses of \$6,607,400, resulting in net water sales revenues of \$6,144,100. [Comparative Exhibit 27] Using DRA's logic, therefore, Great Oaks clearly does "lose," as it would receive \$1,893,300 less in net water sales revenues.

Accepting DRA's water sales forecast would also have the negative effect of causing Great Oaks' customers to pay for pump tax and power expenses not incurred by Great Oaks due to lost water sales, as those expenses would be built into water

⁸ It is well understood that more than water sales revenues and associated variable expenses are involved in ratemaking. This analysis is provided based upon the testimony related to water sales forecasting.

rates. [TR 327/18-23] Justifying a higher water sales forecast at the expense of Great Oaks' customers cannot be considered an acceptable ratemaking rationale.

While the rationale behind Great Oaks' position on this issue is clear – *water sales forecasts must take into account government mandated and obeyed water supply restrictions and make the best use of available data*, the rationale behind DRA's position appears only to be that the methodology of D.07-05-062 must be interpreted to include enforceability language not deemed necessary by the Commission when establishing the D.07-05-062⁹ water sales forecasting methodology, even if it is at the expense of Great Oaks' customers. When comparing the two water sales forecasts, however, while DRA may even agree that Great Oaks' forecast is more realistic and accurate than that of DRA, DRA would no doubt still argue that its less accurate forecasting methodology must be used regardless.

The Commission should at all times strive for fairness and accuracy in setting water rates. In this proceeding, based upon the clear and convincing evidence, the proper result is to accept Great Oaks' water sales forecasts as being the most accurate and in compliance with the D.07-05-062 methodology.

ii) The Evidence in Response to Questions by ALJ Walwyn Supports Great Oaks' Water Sales Forecast Adjustment.

Not only was Great Oaks' water sales forecast challenged by DRA, it was also the subject of pointed inquiry by ALJ Walwyn. ALJ Walwyn first inquired about the nature of the Santa Clara Valley Water District's conservation requirement, characterizing it as a "suggestion," rather than a mandatory requirement. [TR 120/4-

⁹ This analysis applies equally to the water sales forecasting methodology of D.04-06-018 as well.

8] In response, Ms. Illingworth testified that she understood that while the Santa Clara Valley Water District did not “have the power to make anyone’s conservation mandatory,” it was still called “mandatory conservation.” [TR 120/9-16]

ALJ Walwyn then turned her attention to D.09-12-032¹⁰, the Commission decision approving the *settlement* of San Jose Water Company’s general rate case. ALJ Walwyn advised Ms. Illingworth that D.09-12-032 determined that there was no dispute regarding or any adjustment to the water sales forecast of San Jose Water Company. [TR 120/23-25] This was, of course, true, but not because of a Commission determination on the issue. D.09-12-032 approved a settlement, so by the very nature of the Decision, no dispute on *any* issue existed.

ALJ Walwyn then produced a photocopy of one page¹¹ of San Jose Water Company’s Workpapers from its Application A.09-01-001 for her next series of questions to Ms. Illingworth. [TR 121/4-10] After learning that Ms. Illingworth had never before seen or had any participation in the preparation of the particular Workpaper excerpt of interest to ALJ Walwyn, ALJ Walwyn then asked Ms. Illingworth to explain why Great Oaks’ water sales forecast would be different than that of San Jose Water Company’s forecast. [TR 121/11-28] Ms. Illingworth testified that San Jose Water Company’s water sales forecast was prepared “at an earlier stage where less was known about the ongoing drought and because it was before Santa Clara Valley [Water District] had adopted mandatory conservation levels.” [TR 122/1-4] ALJ Walwyn took issue with Ms. Illingworth’s response,

¹⁰ The Decision was incorrectly referenced during ALJ Walwyn’s inquiry as Decision 09-11-032. [TR 120/21]

¹¹ Per ALJ Walwyn, the page from San Jose Water Company’s Workpapers was page WP7-1B. [TR 121/4-6]

indicating that the Commission Decision approving San Jose Water Company's settlement was only approved two months earlier. [TR 122/5-6] In response, Ms. Illingworth pointed out that San Jose Water Company's sales forecasts were actually performed in March of 2008 and not at the end of 2009. [TR 122/5-10] ALJ Walwyn continued, inquiring further about whether Ms. Illingworth was aware if San Jose Water Company "asked for anything different." [TR 122/11-13]

This line of inquiry by ALJ Walwyn is seemingly in support of a position that what's good for San Jose Water Company in water sales forecasting should be good enough for Great Oaks. Clearly, however, the position has nothing whatsoever to do with proper application of the D.07-05-062 methodology for forecasting water sales. San Jose Water Company settled all issues, including its water sales forecasts, as part of its general rate case proceeding. Proper application of the D.07-05-062 water sales forecasting methodology was simply not an issue decided in D.09-12-032.

In addition, as confirmed by Ms. Illingworth, the San Jose Water Company water sales forecast was made prior to Santa Clara Valley Water District's mandatory conservation requirement. [TR 122/1-10] Therefore, any attempt to equate the settlement entered into by San Jose Water Company to the issue of water sales forecasting in this proceeding would be arbitrary and clearly erroneous.

More importantly, however, that San Jose Water Company requested and received no form of "drought adjustment" in the settlement of its general rate case is wholly irrelevant in this proceeding. A "drought adjustment" for San Jose Water Company's water sales forecast was unnecessary, because San Jose Water Company has a "Mandatory Conservation Memorandum Account." San Jose Water Company's

Commission-approved tariffs¹² include a “Mandatory Conservation Memorandum Account” that tracks sales lost (and variable expenses not incurred) as a result of the Santa Clara Valley Water District’s mandatory conservation requirements.

Of significance here is that the Commission has clearly recognized the Santa Clara Valley Water District’s mandatory conservation requirement’s direct affect on future water sales. This is a complete repudiation of DRA’s position that the Commission should not consider the Santa Clara Valley Water District’s mandatory conservation requirement within the context of the D.07-05-062 methodology. Thus, the inquiry on this point by ALJ Walwyn led to clear and convincing evidence fully supporting the correctness of Great Oaks’ water sales forecasts.

It should also be noted that despite what DRA may argue, the Water Revenue Adjustment Mechanism (“WRAM”) proposed by DRA in connection with its conservation proposals (discussed below) does not in any way track sales lost (or variable expenses not incurred) due to the Santa Clara Valley Water District’s mandatory conservation requirement. Instead, DRA’s proposed WRAM account only tracks “the differences between the tiered rate structure and the uniform rate structure.” [TR 330/4-10]¹³

The statement in DRA’s written testimony that “[l]ower water sales resulting from conservation may be tracked in a water revenue adjustment mechanism

¹² See San Jose Water Company Tariff Sheets 1397-W and 1398-W, approved in response to San Jose Water Company Advice Letter 407-D. [TR 331/20-28, 332/1-5] (copies provided in Appendix).

¹³ The example provided at [TR 331/5-19] further evidences that DRA’s proposed WRAM does not address the Santa Clara Valley Water District’s mandatory conservation requirement, or any other non-rate design conservation effect on Great Oaks’ operations and revenues.

(WRAM) balancing account,” is simply untrue. [Exhibit 16, p. 2-3] DRA’s proposed WRAM does not address water sales at all, but only addresses revenues lost (or gained) due to conservation rate design. [TR 125/6-26; TR 128/13-21; TR 330/4-10]

ALJ Walwyn’s inquiries on this issue also brought forth additional evidence affirming the correctness of Great Oaks’ water sales forecasts. In response to an inquiry about the support for Great Oaks’ water sales forecasts, Ms. Illingworth testified that she recently was able to compare sales for the first half of Great Oaks’ fiscal year (July 1, 2009 through December 31, 2009) to her earlier forecast, and that Great Oaks’ actual sales were “between 14 and 18 percent below what we would forecast [without the adjustment for the Santa Clara Valley Water District’s mandatory conservation requirement].” [TR 133/7-20]

ALJ Walwyn’s inquiries thus led to clear and convincing evidence that Great Oaks’ water sales forecasts were performed correctly under the D.07-05-062, and further proved that the Commission recognizes the Santa Clara Valley Water District’s mandatory conservation requirements as “government-mandated production limitations.” Also clear and convincing is that the water sales forecast provided by Great Oaks was highly accurate when viewed against actual water sales subject to that government mandate. The evidence in favor of adopting Great Oaks’ water sales forecast elicited during and as a result of ALJ Walwyn’s inquiries was substantial and uncontested, meeting Great Oaks’ burden of proof on this issue.

The disagreement over this issue is both profound and confounding. Great Oaks’ water sales forecasts are clearly more accurate and make the best use of available data as compared to DRA’s water sales forecasts. Adopting Great Oaks’

water sales forecasts would produce rates that conform to the clear and convincing evidence presented in this proceeding. On the other hand, adopting DRA's forecast would promote water sales well in violation of the Santa Clara Valley Water District's mandatory conservation requirements, even while DRA wants Great Oaks' customers to obey those mandates. This begs the question: Why would DRA insist upon an interpretation of the D.07-05-062 methodology that is less accurate and which ignores highly relevant and available data?

iii) Great Oaks' Water Sales Forecasting Methodology is Consistent with the Commission's Water Conservation Objectives

Conservation of water is a stated objective of the Commission, and the Commission has recognized that to meet this objective, it is necessary to remove the natural disincentive to conserve inherent in the current ratemaking system.¹⁴ The Commission has recognized that in order to meet this objective it will be necessary to address conservation across multiple fronts, including water sales/consumption, rate design and memorandum cost balancing accounts. [D.08-02-036] In this proceeding, Great Oaks agreed to work together with DRA on the issue of conservation, but as the evidence shows, DRA is close-minded on the issues and has only proposed a tiered rate design with a "Monterey" Water Revenue Adjustment Mechanism ("WRAM").

Accepting Great Oaks' water sales forecast would be the proper first step in meeting the Commission's conservation objectives, as it accurately forecasts water sales in light of the Santa Clara Valley Water District's mandatory 15% conservation requirements. Not only is Great Oaks' water sales forecast consistent with the Santa Clara Valley Water District's mandatory 15% conservation requirements, the sales

¹⁴ See, e.g., California Public Utilities Commission Water Action Plan, December 15, 2005.

forecast is consistent with the most current water consumption data showing 14% to 18% reduced consumption by Santa Clara County residents in response to the mandatory conservation requirements. [TR 133/7-20; Exhibit 7, Exhibit A thereof, at p. 4]

Eliminating the disincentive to conserve, a Commission objective, requires not just a WRAM account; it requires accurate water sales forecasting that makes the best use of available data. If DRA's water sales forecast is adopted in this proceeding, Great Oaks will be greatly incentivized to sell all the way up to the adopted quantity – a disincentive to conserve. Thus, accepting DRA's water sales forecast would enhance the disincentive to conserve in direct conflict with the Commission's water conservation objectives

The next logical step in meeting the Commission's water conservation objectives would be the establishment of a WRAM account that tracks sales lost (and expenses not incurred) due to conservation. A full decoupling WRAM that permits the recovery or crediting of the difference between actual and adopted quantity is an appropriate WRAM for this purpose.¹⁵ While this will be discussed later in this brief, it must be noted that DRA has not proposed a full decoupling WRAM and has only proposed a Monterey style WRAM in this proceeding. [TR 330/4-331/19]

When comparing the positions on the issue of water sales forecasting, the evidence is clear and convincing that Great Oaks' water sales forecasts are consistent

¹⁵ See, e.g., D.08-02-036, at p. 7 (describing WRAM accounts agreed to in the conservation rate design settlements by Park Water Company and California Water Service Company).

with the Commission's objectives on water conservation, while DRA's water sales forecasts fail in this regard.

iv) Conclusion: Great Oaks Has Met Its Burden of Proof on the Issue of Water Sales Forecasts

Based on the testimony of Great Oaks' expert witness, Great Oaks' application of the D.07-05-062 water sales forecasting methodology, the evidence adduced from ALJ Walwyn's questions and the consistency of Great Oaks' water sales forecasting with the Commission's stated water conservation objectives, Great Oaks has met its burden of proof on this issue through clear and convincing evidence. Great Oaks requests that its water sales forecasts be adopted in this proceeding for ratemaking purposes.

c) Private Fire Protection Service Revenues

On this issue, Great Oaks accepts DRA's projected Private Fire Protection Revenues of \$53,800 in test year 2010-2011.¹⁶ For the years 2011-2012 and 2012-2013, the projected Private Fire Protection Service Revenues should increase by the average annual rate of increase in such revenues for the six-year period preceding this rate case (2003-2008). The evidence shows that this average annual rate of increase was 4.4%. [Exhibit 19, p. A-6; Exhibit 20, p. A-6] The following table conforms to the evidence on this issue and is clear and convincing proof of the correctness of Great Oaks' projected Private Fire Protection Revenues for the years covered by this GRC Application. DRA's position is also provided in the table.

¹⁶ Despite the efforts to eliminate errors in the Workpapers and in Comparative Exhibit 27, Great Oaks' revenue figure for Private Fire Protection is in error in Exhibit 20 and Comparative Exhibit 27. The correct Private Fire Protection revenue figure for test year 2010-2011 is \$53,800, the revenue figure recommended by DRA.

Year	2010-2011	2011-2012	2012-2013	DRA 2010-2013
Revenues	\$53,800	\$56,167	\$58,638	\$53,800

d) Other Revenue Issues

i) Reconnection Charge

Great Oaks has proposed to increase the reconnection charge during regular business hours from \$10 to \$25, and from \$15 to \$40 for service reconnections outside of regular business hours. [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 5, at p. 7] The evidence is uncontroverted that this request is consistent with Great Oaks' costs for reconnection of service and with the same service provided by other Class A water utilities. [Exhibit 16, p. 2-11 – 2-12]

ii) Credit Card Convenience Fee

Great Oaks has withdrawn this request from this GRC proceeding.

iii) Unaccounted For Water

The evidence shows that Great Oaks' unaccounted for water, based upon a five-year average, was 4.04%. [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 8, at p. 1; Exhibit 20, at p. A-5] DRA concurred with Great Oaks' estimate for unaccounted for water, as presented in the following table.

Year	2010-2011	2011-2012	2012-2013
Unaccounted for Water and %	\$200,994 4.04%	\$205,081 4.04%	\$207,109 4.04%

4) Conclusion: Water Sales and Revenues

Based upon the foregoing presented, Great Oaks' Water Sales and Revenues requests are supported by clear and convincing evidence and should be adopted in this GRC proceeding.

B) Operation and Maintenance Expenses

1) Relevant Testimony and Exhibits

Great Oaks' operating expenses for the five years preceding its GRC Application were detailed in [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 5] and Great Oaks' Workpapers [Exhibit 20]. Specific references to the Workpapers will be provided within the discussion of the issues below.

Great Oaks' Chief Financial Officer, Vicki Morse, testified on direct examination with respect to her preparation of the specific operation and maintenance expense data at the January 22, 2010 hearing. [TR 218/13-229/9] Cross-examination by DRA touched upon on several of the operational expense issues. [TR 229/16-249/17] ALJ Walwyn also inquired of Ms. Morse. [TR 249/21-264/1; 266/10-267/1] Specific references to the testimony of Ms. Morse will be provided within the discussion of the issues, below, when necessary.

Great Oaks' Chief Executive Officer and General Counsel also testified regarding certain portions of operational expenses, and specific references to such testimony will be provided when necessary within the discussion of the issues, below.

DRA presented several witnesses on the issues pertaining to operational expenses. Jenny Au testified on direct examination [TR 272/8-27], in response to questions by ALJ Walwyn [TR 273/11-278/23] and very briefly on cross-examination [TR 278/26-279/16]. DRA witness Lindsay Laserson also testified regarding operational expenses and taxes. [TR 378/7-26 (direct examination); TR 379/5-387/12 (cross-examination); TR 387/22-393/24 (redirect examination)] As with the

testimony of other witnesses on the operational expense issues, specific references will be made to such testimony when necessary.

2) Areas of Disagreement Between Great Oaks and DRA

Great Oaks and DRA disagree in the following areas related to operations and maintenance expenses: 1) Labor Expenses, including new employees, general office employee salaries and management and field employee salaries; 2) Groundwater Charges; and 3) Purchased Power. Each issue will be discussed separately below.

3) Discussion of the Issues

a) Labor Expenses

i) New Employees

Water conservation does not just happen; it requires time and effort.

Unrealistically high water sales projections, tiered rate design with unquantifiable conservation goals and inadequate conservation memorandum accounts, all of which are at the core of DRA's positions in this proceeding, will not meet the conservation objectives of the Commission and will actually defy the mandatory conservation requirements of the Santa Clara Valley Water District. Great Oaks fully expects that at least one outcome of this GRC Application will be additional, required conservation efforts and programs that are designed to meet the Commission's conservation objectives and the Santa Clara Valley Water District's water conservation mandate. To fulfill these requirements, Great Oaks has requested one new employee to provide conservation-related services, combined with regular field technician responsibilities. [Exhibit 1, Exhibit (Tab) E, Chapter 3, Section I.C; *see also* Exhibit 8, p. 7] DRA opposes this request.

DRA's opposition focuses on the past, arguing that no historical data supports the addition of an employee with any conservation responsibilities. [Exhibit 16, pp. 3-2 – 3-3] DRA's primary argument is that Great Oaks' request for a new employee is premature. [*Id.*] DRA's secondary argument is that any conservation programs and efforts "will only require customer education and promotion of [the Santa Clara Valley Water District's] conservation programs." [*Id.*] Thus, DRA proposes that existing Great Oaks employees take on additional responsibilities, including the support of programs and efforts of the Santa Clara Valley Water District.¹⁷ [*Id.*] Finally, DRA proposes that Great Oaks' employees take a pay cut to perform their existing and new responsibilities. [*Id.*]

If decisions on issues such as this require historical data evidencing utility expenditures for new services not yet performed, no new services would likely be provided. Utilities, like Great Oaks, would not likely take on new, important services (especially ones that do not generate revenues such as conservation) if the additional expenses cannot be recovered in rates. While it is instructive to review historical expenses for ongoing services when projecting into the future for ratemaking purposes, new services that generate new expenses should not be held to this standard. Instead, the reasonableness of the projected expenses in light of the services to be provided should be judged.

¹⁷ At this point it deserves mention that Great Oaks only has 0.92 total employees per 1000 customers, easily the lowest ratio of employees to customers of any Class A water utility. [Exhibit 20, p. A-7a] Therefore, it can accurately be said that among California Class A water utilities, never have so few done so much for so many as at Great Oaks, and Great Oaks' historically low rates prove this to be true.

In this regard, Great Oaks has requested one new employee whose responsibilities would be both conservation coordination and field technician duties at a salary of \$67,423 in test year 2010-2011. [Exhibit 20, p. A-7b (“NEW Advanced Field Technician”); *see also* Exhibit 8, p. 7] The proposed salary is consistent with the salaries paid to Great Oaks’ Field Technicians and recognizes the additional responsibilities related to conservation the new employee would have. [*Id.*] On this issue, the evidence is clear and convincing that, for the additional responsibilities that will come with conservation, a new employee is necessary at the requested salary.¹⁸

In the alternative, should the Commission order Great Oaks to perform additional services related to conservation, then Great Oaks should be granted the authority to include the expenses associated with all such additional services, including the expenses associated with any new employee or any added responsibilities for existing employees, within rates pursuant to an Advice Letter filing subsequent to this proceeding.

Great Oaks will address DRA’s position on the rate of annual labor increases below in regard to its General Office Employees.

ii) General Office Employees

The evidence is that Great Oaks’ general office employees perform multiple functions at a very high level of competence and are compensated fairly, but not extravagantly for their services. [Exhibit 8, pp. 15-17] Because Great Oaks’ five

¹⁸ Great Oaks’ organization chart, included in Exhibits 1 and 2, Exhibit (Tab) E, Chapter 3, Exhibit 3-2, actually listed every employee by name, further evidencing that Great Oaks’ organization is extremely small and without waste.

general office employees perform a variety of functions, they do not fit neatly into particular job descriptions. [*Id.*, p. 15] As stated in its Rebuttal Testimony:

Great Oaks' employees do more for less and Great Oaks' customers have benefitted as a result for decades. Great Oaks' payroll requests do not alter this customer benefit.

[*Id.*] The average salary for a customer service employee manager in Santa Clara County is significantly higher than the salary of Great Oaks' customer service manager. [*Id.*, at p. 16]

Despite this evidence, DRA maintains Great Oaks pays its general office employees too much. DRA takes no issue with the quality of services performed by Great Oaks' general office employees. Instead, DRA complains that Great Oaks over-compensates its high quality, while at the same time recommending that the same employees perform additional conservation-related services. [Exhibit 16, pp. 3-3 – 3-4]

The basis for DRA's complaints about general office salaries is an October 20, 2009 memorandum on annual rate of compensation change. [Exhibit 22, p. 2] This memorandum indicates that for the year 2009, the annual rate of compensation change (over the prior year compensation) should have been 0.4%. [*Id.*] DRA, however, knows nothing about how the memorandum's annual rate of compensation change is calculated and cannot explain how 2009 compensation rates referenced in the memorandum affect compensation rates in prior years. [TR 334/13-17; 335/9-28] DRA also cannot explain why the annual rate of compensation for 2009 changed from 4.0% in June 2009 to 0.4% in October 2009, other than to say that "in general the economy got worse." [TR 335/12-16]

To arrive at its recommendations, DRA first used the October 20, 2009 memorandum [Exhibit 22, p. 2] to adjust Great Oaks' employees' already existing 2009 salaries. [TR 334/6-10] In other words, DRA first cut the salaries of Great Oaks' employees before making its general office employee salary proposals for test year 2010-2011. [*Id.*] This revision of history, based upon data DRA does not understand and cannot explain, certainly fails to overcome the evidence that Great Oaks' general office employee salaries are clearly reasonable.

It deserves mention that DRA attempted to justify its use of the October 20, 2009 memorandum on annual rates of compensation change by pointing out that Great Oaks itself utilized the April 2009 version of the same memorandum to project salary increases for the three years covered by Great Oaks' GRC Application. [TR 348/4-8] The April compensation memorandum had different rates of compensation change than both such memoranda contained in Exhibit 22. What DRA has shown, however, does not support its position. Instead, DRA has successfully proved that the compensation memoranda it claims to be definitive are not hard and fast rules for setting compensation during ratemaking, but are merely a snapshot in time of an ever-changing statistic. The compensation memoranda relied upon by DRA apparently remain relevant only for as long as it takes the ink to dry (or for one month, whichever is longer). The real test on compensation is reasonableness, a standard Great Oaks has met in clear and convincing fashion based upon employee responsibilities, quality of work and targeted salary survey data. Great Oaks' general office employee compensation projections should be adopted in this proceeding.

iii) Management and Field Employees

Great Oaks presented evidence supporting its salary requests for management and field employees included live testimony from its Chief Executive Officer and General Counsel on the broad range of duties performed by each. [CEO: TR 135/22-25; TR 172/6-174/1; General Counsel: TR 175/15-176/18; TR 281/21-283/18] In addition, the qualifications of Great Oaks' management personnel is summarized in Exhibits 1 and 2, Exhibit (Tab) E, Chapter 11, Statements of Qualification] Great Oaks' Workpapers included not just projected salaries for management and field employees, but also historical data on the issue. [Exhibit 20, p. A-7b] Finally, Great Oaks' Rebuttal Testimony provided additional evidence supporting the requested management compensation. [Exhibit 8, pp. 17-20]

DRA argued that 2009 salary increases for management and field employees were too high, again using the October 2009 annual compensation rate of change memorandum discussed above. [Exhibit 16, pp. 3-4 – 3-5] In addition, DRA made a marginal attempt to compare Great Oaks' management salaries to management salaries for certain titled positions at San Jose Water Company and Valencia Water Company, although this effort included no evidence of job responsibilities at those other utilities.¹⁹ [*Id.*, pp. 3-5 – 3-6]

Any discussion of compensation requires more than a cursory look at job titles. John Roeder, Great Oaks' Chief Executive Officer, handles responsibilities that would ordinarily come under various job titles including project manager [TR 172/9-17 (“new construction, planning and engineering”)], chief operating officer [Id.

¹⁹ DRA's attempted compensation comparison was also highly inaccurate. [Exhibit 8, pp. 17-19.]

(“involved directly in operations day to day or almost hourly”), personnel management [TR 172/20-22 (“involved in hiring and firing and personnel management”)], customer and government relations [TR 172/25-173/2] and financial management [TR 172/11; TR 172/22-24]. Mr. Roeder works 90 to 100 hours per week, rarely leaving the office before midnight or 1:00 a.m. [TR 198/9-11] Obviously, the title “Chief Executive Officer” is only partially describes Mr. Roeder’s responsibilities.

The proposed compensation for Mr. Roeder of \$351,630 in test year 2010-2011, \$359,196 in 2011-2012 (an increase of 2.15%) and \$363,279 in 2012-2013 (an increase of 1.14%)²⁰ is well supported by the clear and convincing evidence of Mr. Roeder’s experience and job responsibilities. DRA’s evidence, to the contrary, fails to address the most important issue related to compensation – job responsibilities.

Great Oaks presented similar testimony with respect to its General Counsel, Tim Guster, providing detailed job responsibilities, and DRA similarly presented no such evidence to support its recommendations. Mr. Roeder testified that Mr. Guster, in addition to organizing and managing litigation,²¹ “is involved in nearly every aspect of the company. He’s involved with interactions with customers, in new main extensions, new services.” [TR 175/15-21] Mr. Roeder went on to describe additional responsibilities fulfilled by Mr. Guster, including interaction with government agencies, legislative affairs, corporate actions and regulatory matters. [TR 175/23-176/18]

²⁰ [Exhibit 20, p. A-7b]

²¹ Mr. Guster has “about 27 years” of litigation experience. [TR 288/16-17]

In response to questions from ALJ Walwyn, Mr. Guster described his responsibilities to include all legal and regulatory compliance issues, “legal counsel with respect to business, operational, financial decisions that are made on a day-to-day basis with the company, as well as for strategic business, operational and financial decisions that are made.” [TR 281/23-282/2] Also, Mr. Guster testified that he provides “management and business advice that is pertinent to both operations and strategic decisions made by the company.” [TR 282/3-6] In response to questions seeking further details into the matters on which Mr. Guster provides “strategic” advice and counsel, Mr. Guster indicated that matters of this nature include capital improvements, any major expenditure of funds, long-range regulatory issues and employee issues. [TR 283/1-12] In short, like all other employees at Great Oaks, Mr. Guster does not have singular responsibilities confined to a 40-hour workweek or even to the office. [TR 283/14-15; TR 289/6-7]

The evidence clearly and convincingly supports the compensation requests for Mr. Guster. Not only is Mr. Guster’s compensation reasonable in light of his experience and the services provided, but also his compensation is projected to remain *less* than the compensation authorized by the Commission in Great Oaks’ last rate case²² for Mr. Guster’s predecessor (Gardner) for the duration of the rate case cycle. [Exhibit 20, p. A-7b]

No evidence was presented by DRA related to qualifications or job responsibilities of Mr. Guster on the issue of compensation. Instead, DRA presented the same arguments based upon annual compensation rate of change and highly

²² [Resolution W-4594, issued May 11, 2006]

inaccurate comparisons with compensation at other utilities for persons holding similar titles. [Exhibit 8, pp. 18-19]

The evidence in support of the compensation for Great Oaks' Chief Financial Officer also includes her qualifications and experience, which extend beyond merely financial responsibilities. Ms. Morse's additional responsibilities include customer service, human resources, benefits administration, investments and more. [TR 218/18-25; Exhibits 1 and 2, Exhibit (Tab) E, Chapter 11, Statements of Qualification]

The evidence on the compensation of Mr. Loehr is equally clear and convincing. Mr. Loehr is an attorney who performs legal, regulatory and property management functions for Great Oaks. [TR 283/20-284/10] The undisputed evidence is that even in the absence of litigation, both Mr. Guster and Mr. Loehr would be fully utilized within Great Oaks' operations. [TR 290/5-15]

DRA has attempted to compare Mr. Loehr's compensation with that of persons holding the title "Reg. Affairs/Attorney" at other Class A water companies. [Exhibit 16, pp. 3-5 – 3-6] No evidence was presented by DRA, however, on the functions performed by persons holding such titles or even that such titles actually exist at the other water companies. Without such evidence, DRA's attempted comparison is probative of nothing and certainly does not address the issue of the reasonableness of Mr. Loehr's compensation.

DRA suggested comparisons between positions at Great Oaks and similarly titled positions at San Jose Water Company and Valencia Water Company in support of its management salary recommendations. [Exhibit 16, pp. 3-5 – 3-6] As with

DRA's other attempts to compare management compensation, not only was DRA's compensation comparison highly inaccurate²³, but noticeably absent from DRA's evidence was any discussion of the qualifications and job responsibilities for the persons holding those titles at the other utilities. Without such a comparison of job qualifications and responsibilities, DRA's evidence is meaningless, and any decision adopting DRA's compensation figures would be based upon the speculation that the comparison is valid on job qualifications and responsibilities.

With respect to Field Employees, Great Oaks has met its burden of proof through the presentation of evidence supporting the requested compensation. [Exhibit 20, p. A-7b] In opposition, DRA has again relied upon the October 2009 annual compensation rate of change memorandum discussed above to, first, cut the pay of Great Oaks' Field Employees and then recommend virtually no increase in compensation. [Exhibit 22, p. 2; Exhibit 16, p. A-7b] Moreover, DRA has used incorrect salary data for several Great Oaks' employees in making its recommendations. [Exhibit 16, p. A-7b (Rondeau: Actual 2008 Salary: \$56,956; DRA 2008 Salary: \$51,128; Aljouny: DRA used a partial year salary for 2008, rather than annualized salary); compared correct salary figures on Exhibit 20, p. A-7b] In every instance, DRA has first cut existing salaries of Great Oaks' Field Employees to make its recommendations without any evidence that Great Oaks is over-compensating its employees based upon actual job responsibilities.

²³ DRA represented that the 2008 salary for San Jose Water Company's Treasurer and Chief Financial Officer was \$158,279, when total compensation for the top finance positions at that utility was really \$965,458. [Exhibit 8, p. 18]

As discussed above, DRA's reliance upon the October 2009 annual compensation rate of change memorandum is inappropriate. The data is not just highly variable and, thus, not a reliable ratemaking tool, but DRA cannot even explain how the data was calculated or why the data changes so dramatically within very short time periods. [TR 334/13-17; 335/9-28] Instead, DRA simply says that the data is Commission-approved, thereby relieving itself of any responsibility for understanding the basis for DRA's own recommendations. This constitutes no evidence in support of DRA's position, leaving only Great Oaks' evidence that the compensation requests for its Field Employees is appropriate and reasonable.

iv) ALJ Walwyn Issue No. 1.

ALJ Walwyn has requested that Great Oaks and DRA brief two issues, with the first relating to management salaries. In particular, ALJ Walwyn stated:

In the last GRC decision, which was by resolution, there were adjustments made to management salaries for ratemaking purposes. For this GRC should any adjustments be made and if so why and how, and specifically discuss in that management time spent in litigation and property management. [TR 399/20-25]

Commission Resolution W-4594, issued May 11, 2006, is Great Oaks' "last GRC decision." In that Resolution, the Commission adopted "Net Payroll Expenses" of \$1,432,349, as compared to Great Oaks' request for \$1,551,566, a difference of \$119,217. [Res. W-4594, Appendix A] Great Oaks had requested \$907,272 in management salaries, while Water Division had estimated \$779,294. [*Id.*, at p. 4] In the discussion on this issue, the Commission noted that the difference was attributable to "WD's adjustment, for rate-making purposes, of the salary of the newly hired full-time attorney." [*Id.*] In making this adjustment, the salary of the new attorney was

compared to the cost of outside counsel for performing “CPUC filings and other legal matters.” [*Id.*] Therefore, the “adjustment” referenced by ALJ Walwyn was based upon a comparison of the salary of an in-house attorney to the expenses previously incurred by Great Oaks for outside counsel performing the same services. [*Id.*]

Using this same approach, the combined salaries of Great Oaks’ attorneys for 2008 were \$373,669. [Exhibit 20, p. A-7b] In 2008, Great Oaks’ incurred \$907,642 in outside legal services. [Exhibit 23] Therefore, for 2008, in-house and outside counsel services produced \$1,281,311 in expenses. For 2009, the combined salaries of Great Oaks’ in-house attorneys was projected to be \$417,284, while Great Oaks estimated outside legal services of \$206,846, for a total of \$624,130. Using the rationale of Res. W-4594, therefore, no adjustment is necessary or appropriate to management salaries for in-house attorney salaries, because 2009 “legal services” expenses are projected to be \$657,181 *less* than comparable expenses in 2008. Res. W-4594 made an adjustment when in-house attorney expenses exceeded the prior cost of outside counsel performing the same services. The situation has now reversed itself, with Great Oaks’ in-house attorneys costing far less than outside counsel when performing the same type of services.

Having addressed the issue of salary adjustment, the next issue is time spent on litigation and property management. The evidence is that Mr. Roeder and Mr. Guster spend time on litigation as part of Great Oaks’ operations, but that such time is not subject to any established schedule, but is instead dependent upon the particular litigation. For Mr. Roeder, he estimated that in the past he has spent approximately 30% of his time addressing litigation and that he typically works 90 to 100 hours each

week, rarely leaving the office before midnight or 1:00 a.m. [TR 198/3-12] Mr. Guster testified that there was no way of accurately estimating the time he spent on litigation in the past and that such time is not tracked. [TR 289/1-11] In addition, Mr. Guster indicated that the time spent on litigation varied depending upon the particular case and the stage in the proceedings of each case. [TR 288/11-15]

With respect to litigation and time spent by Great Oaks' management employees, no Commission requirement exists to track such time or to allocate such time to any particular litigated matter. Any action in this proceeding establishing such a requirement would be without Commission precedent and would be, at best, highly subjective.

ALJ Walwyn commented that the Commission would be faced with the question of Great Oaks' spending a great deal of resources on litigation and other water companies not. [TR 299/20-26] The evidence, however, tells a different story. The outside expenses forecast for litigation for test year 2010-2011, however, represent only four percent (4%) of total operating expenses. [Exhibit 20, p. A-9] That percentage goes down to 3.7% in 2011-2012 and slightly up to 3.76% in 2012-2013. [*Id.*] While the discussion on litigation expenses is provided below, the evidence is clear that Great Oaks does not spend "a great deal of resources on litigation," and the resources it does spend are likely to lead to significant customer benefits in the form of lower water rates in the future.

As for an accounting of Mr. Loehr's time, the evidence is that Mr. Loehr is involved in a wide variety of legal and regulatory matters for Great Oaks. [TR 283/20-284/10] His involvement with issues pertaining to the building (property

management) was also mentioned. [TR 177/15-178/3; TR 284/7-8] The evidence is that Mr. Roeder, not Mr. Loehr, does most of the work related to property management. [TR 178/4-5] No evidence suggests that Mr. Loehr's property management duties occupy a significant portion of his time.

The evidence provides no support for a determination that Mr. Loehr's time and/or compensation should in any way be tracked or attributed to non-regulated activities of Great Oaks.

b) Operations and Maintenance Expenses (Other than Labor)

Great Oaks' evidence on virtually all operations and maintenance expenses (other than labor) was unopposed by DRA. Only in the areas of Groundwater Charges (pump tax), Account 700, and Purchased Power, Account 726, was there disagreement between Great Oaks and DRA.

Great Oaks has met its burden of proof on the following projected expenses:

Expense	2010-2011	2011-2012	2012-2013
Maintenance of Pumping Equipment, Wells, Account 711	\$16,503	\$16,936	\$17,154
Chemicals and Filtering, Account 744	\$54	\$55	\$56
Meter Expense, Account 754	\$1,435	\$1,472	\$1,491
T&D Maintenance and Supervision, Accounts 753 and 758	\$773	\$793	\$803
Maintenance of Reservoirs and Tanks, Account 760	\$0	\$0	\$0
Maintenance of T&D Mains, Account 761	\$33,805	\$34,690	\$35,138
Maintenance of Services, Account 763	\$33,313	\$34,186	\$34,628
Maintenance of Meters, Accounts 764	\$7,309	\$7,500	\$7,597
Maintenance of Hydrants, Account 765	\$16,020	\$16,439	\$16,652
Maintenance of General Plant, Account 805	\$32,519	\$33,370	\$33,802

On the issues of Groundwater Charges and Purchased Power, the main area of disagreement results from the differing water sales forecasts, as these expenses are dependent upon water sales. Based upon the discussion of the evidence above on the

issue of water sales forecasts, Great Oaks requests that its projected expenses for Groundwater Charges, Account 700, and Purchased Power, Account 726, be adopted in this proceeding as follows:

Expense	2010-2011	2011-2012	2012-2013
Groundwater Charges, Account 700	\$5,242,307	\$5,351,705	\$5,398,068
Purchased Power, Account 726	\$606,333	\$618,663	\$624,782

DRA’s evidence supporting its recommendations for Groundwater Charges and Purchased Power contains mathematical errors producing inconsistent results. While DRA has recommended a 13%²⁴ increase in Total Water Produced [Exhibit 16, p. 2-16, Table 2-5] over Great Oaks’ projections, DRA’s projected Groundwater Charges and Purchased Power expenses are increased only 12% and 11%, respectively, over Great Oaks’ projected expenses in those categories. [Exhibit 16, p. 3-12, Table 3-1] Clearly, DRA’s evidence is inconsistent in this regard.

When examined, DRA’s errors are obvious: When estimating the percentage difference between Great Oaks and DRA on total water produced, DRA correctly rounded the result (.1268) up to 13%; when estimating the Groundwater Charge percentage difference, DRA erroneously rounded the result (.1301) down to 12%; and when estimating the Purchased Power percentage difference, DRA erroneously rounded the result (.1268) down to 11%. If DRA’s recommendations on Groundwater Charges and Purchased Power expenses are accepted, DRA’s percentage differences should be ignored, as they are erroneous. Since Groundwater Charges and Purchased Power expenses are a function of water production, any

²⁴ The actual percentage is 12.67%.

changes, up or down, from Great Oaks’ expense projections should be consistent with the change, up or down, in total water production.

Finally, in the event that DRA’s position on water sales forecasting is adopted, then, in the alternative, Great Oaks requests the establishment of a WRAM account that tracks sales lost (and Groundwater Charges and Purchased Power expenses not incurred) due to conservation.

c) Administrative and General (A&G) Expenses

Great Oaks and DRA disagree on only certain A&G expenses, discussed below. On all other A&G expenses Great Oaks has met its burden of proof and requests adoption of the following expenses:

Expense	2010-2011	2011-2012	2012-2013
Customer Records & Collection, Account 773	\$132,392	\$135,859	\$137,615
Office Supplies & Other Expenses, Account 792	\$45,104	\$46,286	\$46,884
Property Insurance, Account 793	\$76,183	\$78,178	\$79,189
Injuries & Damages, Account 794	\$49,179	\$50,467	\$51,119
Employee Pensions & Benefits, Account 795	\$415,077	\$431,550	\$464,802
Franchise Requirements, Account 796	\$211,400	\$215,293	\$217,601
Miscellaneous Expenses including CWA Dues, Account 799	\$69,866	\$71,696	\$72,622
Rents, Account 811	\$174,005	\$179,225	\$181,873
Transportation Expenses, Account 903	\$76,175	\$78,170	\$79,181

In addition, Great Oaks has withdrawn its request related to credit card processing. Instead, when sufficient information is available to present a complete program for Great Oaks’ customers to pay by credit card is available, Great Oaks will implement the program through an Advice Letter filing.

The areas of disagreement between Great Oaks and DRA on A&G Expenses are discussed below.

i) Uncollectables, Account 775

Great Oaks' and DRA's positions on the issue of Uncollectables are summarized in the table below.

	2010-2011	2011-2012	2012-2013
Great Oaks	\$43,148	\$44,278	\$44,279
DRA	\$40,000	\$40,000	\$40,000

Great Oaks experienced a dramatic increase in Uncollectables in 2008, as compared with any prior year. [Exhibit 20, p. A-12] Uncollectables jumped from \$19,478 in 2007 to \$39,928 in 2008, an increase of almost 105%. [*Id.*] With no end to the economic difficulties in sight, Great Oaks projected that Uncollectables would increase at a rate of 2.62%, the average increase of its operating expenses over the five year period from 2004 through 2008. [*Id.*] This evidence meets Great Oaks' burden of proof.

DRA disputes Great Oaks' projections, arguing apparently that the poor economy is not relevant to whether customers are able to pay their water bills. [Exhibit 16, p. 4-4] DRA then argues, based upon "recent research and reports of economists and financial experts on the recovery of the economy," that Uncollectables will decrease from their peak in 2010.²⁵ [*Id.*]

When pressed on this issue, DRA's witness acknowledged that the research alluded to in DRA's Report on Results of Operations was not actually included in DRA's testimony, but was "sitting on my desk." [TR 382/12-23] As a result, DRA's

²⁵ On this point it should be noted that DRA opined that the economy has become worse since Great Oaks filed its GRC Application. [TR 335/12-18]

argument on this point must be rejected. A decision adopting DRA's position on Uncollectables would clearly not be based upon any evidence in the record.

ii) Rate Case Expenses, Account 797

Great Oaks has projected \$75,000 per year for rate case expenses. [Exhibit 20, p. A-9] This is an increase over the \$25,000 per year for rate case expenses approved in Great Oaks' last rate case. [*Id.*] This is reflective of the fact that (1) now Great Oaks (and all other Class A water companies) are now required to undergo two major Commission proceedings for ratemaking purposes, rather than a single general rate case [D.07-05-062], and (2) Great Oaks' last general rate case was pursuant to a lower-cost advice letter process, whereas current and future rate cases are through the more expensive dual formal proceedings. As dual proceedings under D.07-05-062 are a new requirement, with procedural uncertainties and separate administrative hearings, Great Oaks has made a reasonable projection of its rate case expenses based upon D.07-05-062 and has met its burden of proof on this issue.

DRA's position on this issue does not address the new rate case plan, D.07-05-062, but instead compares Great Oaks' projections to expenses incurred during the time when the old rate case plan was in effect. [Exhibit 16, p. 4-6] This position ignores the present reality. Great Oaks and DRA are currently involved in two major proceedings before the Commission, the Cost of Capital Application, A.09-05-007, and this GRC Application, A.09-09-001. Logic dictates that two proceedings are more time consuming and costly than one. DRA has a full understanding that two proceedings are presently underway, yet DRA's evidence fails to acknowledge this fact. Simply comparing Great Oaks' and DRA's positions on this issue it is clear that

Great Oaks has properly projected the additional expenses required because of the dual proceedings, while DRA has not.

DRA's position on this issue also overlooks the fact that the \$25,000 per year projections for rate case expenses approved in Great Oaks' last general rate case were based upon the assumption that Great Oaks would continue rate case proceedings by advice letter. D.07-05-062 changed this assumption and requires dual formal proceedings to determine cost of capital and to set rates. Great Oaks' projections are therefore fully supported by the evidence that rate case expenses will exceed the prior amounts of \$25,000 per year and will greatly exceed that amount under the D.07-05-062 rate case plan.

iii) CPUC Fees, Account 797

Great Oaks agrees that CPUC fees are pass-through expenses and should be separated from revenues and expenses for ratemaking purposes.

iv) Litigation Expenses – Outside Services Account 798

For the Outside Services Account, Great Oaks has projected expenses related to litigation involving the City of San Jose and the Santa Clara Valley Water District, together with other outside services expenses for the three years covered by its GRC Application as indicated in the table below. DRA has agreed with \$221,900 of such outside services expenses, but has recommended no amounts for outside services related to litigation. DRA's position is also reflected in the table below.

Year	Great Oaks ²⁶	DRA ²⁷	Difference
2010-2011	\$396,588	\$221,931	\$174,657
2011-2012	\$379,884	\$203,272	\$203,272
2012-2013	\$383,269	\$205,667	\$177,602

Great Oaks’ position on this issue is simple: Great Oaks’ customers will benefit from the litigation through reduced rates for water service. DRA’s position is twofold: First, DRA argues that Great Oaks failed to follow Commission decisions requiring such costs to be tracked in a memorandum account; and second, DRA argues that Great Oaks’ incurred the projected outside services costs in the past and allowing such expenses would constitute retroactive ratemaking. [Exhibit 16, pp. 4-7 – 4-9] While Great Oaks’ projected expenses are supported by ample evidence, both of DRA’s arguments are without merit.

The amounts of Great Oaks projected litigation expenses are significantly less than expenses incurred in the past by Great Oaks. [Exhibit 20, p. A-9; Exhibit 23] In fact, DRA does not challenge the amount of the projected expenses, just the propriety of including such expenses in rates. [Exhibit 16, pp. 4-7 – 4-9] Therefore, as to the amount of projected expenses for outside services related to litigation, Great Oaks has met its burden of proof.

As to the propriety of including such expenses in rates, the evidence is also clear that such expenses are being incurred to benefit Great Oaks’ ratepayers in the form of lower rates for water service in the future. In the litigation involving the Santa Clara Valley Water District, if successful, Great Oaks projects that its ratepayers will pay significantly less in their water bills, by as much as 45%. [TR

²⁶ [Exhibit 20, p. A-9; Comparative Exhibit 27]

²⁷ [Exhibit 19, p. A-9; Comparative Exhibit 27]

293/22-294/2] In the litigation with the City of San Jose, if successful, regulated water system assets would be acquired by Great Oaks for the benefit of the company and its ratepayers. [TR 295/14-296/1] The only evidence on this issue is that ratepayers will benefit from such expenses; DRA has offered nothing to the contrary.

Instead of presenting evidence on this issue, DRA has exhibited its confusion. First, as to the City of San Jose litigation, DRA referenced D.03-12-039 and Res. W-4594, arguing that the Commission required Great Oaks to record expenses incurred in “contamination” litigation with the City of San Jose in a memo account. [Exhibit 16, p. 4-7 – 4-8]²⁸ However, the expenses at issue have nothing whatsoever to do with “contamination” issues, nor do either D.03-12-039 or Res. W-4594 address such expenses in any way. [Exhibit 8, pp. 10-11] Instead, the expenses projected to be incurred in litigation with the City of San Jose relate to a service area dispute the Commission itself has encouraged Great Oaks to resolve. [*Id.*]

DRA also falsely argued that the projected expenses were actually costs incurred in the past. [Exhibit 16, p. 4-8] In making this argument, DRA cited no evidence of any kind. [*Id.*] Great Oaks has not requested the recovery of past expenses in this or any other proceeding before the Commission. DRA’s accusation here is completely without merit or evidentiary support.

The same flawed arguments were made by DRA with respect to the Santa Clara Valley Water District litigation. DRA cited Res. W-4534 in arguing that “the

²⁸ Any suggestion by DRA that it was uninformed as to the nature of the litigation with the City of San Jose only goes to the issue of DRA’s failure to conduct relevant discovery. Great Oaks withheld no information from DRA and is not obligated to proactively discover areas of confusion experienced by DRA. *See, e.g.*, TR 392/24-28.

Commission required GOWC to record these amounts in the memo account for future recovery.” Again, DRA is confused and wrong.

Res. W-4534 was issued on May 5, 2005 and approved Great Oaks’ Tariff Sheet 465-W, a copy of which is attached hereto in the Appendix. Tariff Sheet 465-W provides the terms and conditions for the memorandum account established by Res. W-4534.

Tariff Sheet 465-W begins with this brief summary of the memorandum account:

The Company by this tariff has established a Santa Clara Valley Water District Memorandum Account to track the costs related to litigation against the Water District. The Memorandum Account is capped at a maximum of \$100,000. [Appendix A, paragraph 1]

This summary sets the background for the Memorandum Account. The purpose of the litigation is described in paragraph 1.a. of Tariff Sheet 465-W:

The purpose of the litigation is to end the Water District’s practices of: cross-subsidizing flood control from water production; cross-subsidizing treated water from ground water; and, discriminating against the Company and its ratepayers in how the Water District charges for water the Company pumps from the ground. These charges are imposed using a pump tax, and 100% of the pump tax is passed through to customers. The pump tax is assessed in two zones, north and south county. The south county zone pump tax is about 50% of the north county zone. The Water District’s rationale for the difference is that the north county zone has and uses treated water, which is not available in the south county zone. The Company’s territory bridges the zones. The Company has never been connected to or used treated water. All other north zone water retailers use or are connected to the Water District’s treated water. Despite this clear distinction the Water District has included most of the Company’s wells and territory in the north zone. Customers thereby pay 50% more for water in current dollars as a pass through expense than if the Company were fully within the south zone. Additionally, the Water District has misallocated costs from flood control to the water utility causing the pump tax to be higher. [Appendix A, paragraph 1.a.]

The terms and conditions of the Memorandum Account are set forth paragraphs 1.b., 2 and 3 of Tariff Sheet 465-W:

1.b. The Company agrees to cap the total litigation expense for a successful judgment at the \$100,000 in the Memorandum Account plus a maximum of \$300,000 which may have accrued at the Company's risk. If successful, the judgment could take several forms. If the Company is shifted into the south zone prospectively only or/and other misallocations are corrected with no cash money everything will be booked into the Memorandum Account and the Company will file an Advice Letter to recover the expense of the successful litigation – subject to a reasonableness review – and reduce rates, subject to full notice and review. If the judgment also includes a refund of cash money than the Company intends to offset the expense of the litigation first against the cash money – subject to a reasonableness review – with 100% of the balance going to ratepayers. The Company will book what it receives to the Memorandum Account and file an Advice Letter to initiate this review and rate reduction subject to full notice and review. If the litigation is not successful then the Company intends that customers repay the litigation expenses – subject to a reasonableness review – in future rates capped at a maximum of \$100,000 which is equivalent to one week of current pump tax or about \$5 per customer total.

2. The costs which will be booked to the Memorandum Account include attorney's fees, court fees, general litigation expenses and expert witness fees. None of these costs or this litigation were contemplated or included in the Company's last rate case D.0312039.

3. If any recovery of the expenses from the Memorandum Account is requested, it will be in an appropriate proceeding for which a new public notice to ratepayers will be provided. [Appendix A, paragraphs 1.b, 2 and 3 (emphasis added)]

Several aspects of the Memorandum Account's terms and conditions must be noted. First, Great Oaks' litigation²⁹ against the Santa Clara Valley Water District includes both claims covered by the Memorandum Account described in Tariff Sheet 465-W and claims not covered by the Memorandum Account. [Exhibit 8, pp. 3-4; TR

²⁹ The litigation referenced in this sentence is Great Oaks' initial lawsuit against the Santa Clara Valley Water District, challenging groundwater charges levied and collected for the time period from July 1, 2005 through June 30, 2006.

284/16-287/1] For example, claims made based upon the Santa Clara Valley Water District's violations of Article XIII D of the California Constitution (Proposition 218), together with litigation expenses incurred or to be incurred related to such Constitutional claims, were not the subject of Great Oaks Advice Letter 169-W and are not covered by the Tariff Sheet 465-W Memorandum Account. In addition, Santa Clara Valley Water District litigation expenses projected by Great Oaks involve more than one case, while Res. W-4534 and Tariff Sheet 465-W address only one case, Great Oaks initial lawsuit against the Santa Clara Valley Water District.

Second, the Tariff Sheet 465-W Memorandum Account is to be addressed by Advice Letter, not this or any other ratemaking proceeding. Several references were made to separate Advice Letter disposition of the Memorandum Account in paragraph 1.b. and 3 of Tariff Sheet 465-W, with appropriate safeguards, including a "reasonableness review," full notice and "an appropriate proceeding for which a new public notice to ratepayers will be provided." [Tariff Sheet 465-W, paragraphs 1.b. and 3] Forcing a disposition of the Tariff Sheet 465-W Memorandum Account in this GRC proceeding was clearly not contemplated when the Commission issued Res. W-4534.

Next, Great Oaks' Application A.09-09-001 seeks no recovery of Tariff Sheet 465-W Memorandum Account expenses. If or when Great Oaks seeks recovery, it must do so in an appropriate proceeding, but Great Oaks is not required to seek a recovery of the expenses tracked in the Tariff Sheet 465-W Memorandum Account. [*Id.*, paragraph 3]

The details of the Tariff Sheet 465-W Memorandum Account authorized by Res. W-4534 reveal the flaws in DRA's argument. No requirement exists for Great Oaks to book Santa Clara Valley Water District litigation expenses into the Memorandum Account unless or until Great Oaks seeks disposition of that Memorandum Account. Then, any disposition by Advice Letter would be subject to public notice and a reasonableness review. DRA's accusations that Great Oaks' has failed to comply with Res. W-4534 are baseless.

Moreover, DRA has ignored or overlooked the fact that Great Oaks' claims against the Santa Clara Valley Water District (and related expenses) are not all covered by the Tariff Sheet 465-W Memorandum Account. In fact, Great Oaks does not seek recovery of litigation expenses covered by the Tariff Sheet 465-W Memorandum Account in this GRC Proceeding, but instead has projected future outside legal services expenses for non-Tariff Sheet 465-W Memorandum Account expenses. [Exhibit 20, p. A-9; Exhibit 8, pp. 3-4; TR 284/16-287/1] DRA's claim that Great Oaks seeks recovery of past expenses is clearly untrue.

The litigation with the Santa Clara Valley Water District is not final. [Exhibit 8, pp. 3-4; TR 284/16-287/1] When the litigation becomes final, Great Oaks will then decide if litigation expenses and costs are sufficient for advice letter disposition. Until then, no action on the Tariff Sheet 465-W Memorandum Account is necessary or appropriate.

v) ALJ Walwyn Issue No. 2

What is the position of each party on the status and the eligible balances of litigation memorandum accounts that have been previously authorized and a position on should the Commission authorize use of any further or new

memorandum accounts for litigation and if so under what terms and conditions?

ALJ Walwyn's Issue No. 2 [TR 399/26-400/3] is appropriately discussed at this point, as it relates to litigation expenses and memorandum accounts. The only existing litigation memorandum account is the Tariff Sheet 465-W/Res. W-4534 Memorandum Account discussed immediately above. Great Oaks incorporates its discussion of such Memorandum Account herein. In summary, no action is required or appropriate in this proceeding related to the Tariff Sheet 465-W Memorandum Account.

On the question of whether the Commission should authorize use of any further or new memorandum accounts for litigation, Great Oaks states that it would be inappropriate to establish litigation memorandum accounts for any existing litigation, as doing so would violate the Commission's own conditions for granting memorandum accounts. In D.02-08-054, the Commission reiterated its position with respect to establishing memorandum accounts:

The Commission has determined that memorandum accounts are appropriate when the following conditions exist:

- a. The expense is caused by an event of an exceptional nature that is not under the utility's control;
- b. The expense cannot have been reasonably foreseen in the utility's last General Rate Case (GRC) and will occur before the utility's next scheduled rate case;
- c. The expense is of a substantial nature in the amount of money involved; and
- d. The ratepayers will benefit by the memorandum account treatment.

Litigation already underway by Great Oaks does not meet the Commission's conditions for establishing memorandum accounts. Instead, based upon the evidence in this proceeding, such expenses are more appropriately addresses as A&G expenses

(Outside Services Employed, Account 798)³⁰, as the Santa Clara Valley Water District's violations of the law are not exceptional, but are instead common and foreseeable. While the money is substantial, Great Oaks' ratepayers will benefit by reduced water rates when the illegal conduct of the Santa Clara Valley Water District is halted without the need for a memorandum account. As soon as a final judgment brings an end to the illegal groundwater charges imposed by the Santa Clara Valley Water District, Great Oaks will be able to file for a rate offset by advice letter, benefitting its customers with lower water service rates.

Litigation by Great Oaks against the Santa Clara Valley Water District has become routinely necessary due to the Santa Clara Valley Water District's chronic and regular failure to comply with the law of the State of California. After the initial lawsuit, subsequent lawsuits have been based upon the same character of claims and facts. [TR 291/18-292/18] Establishing a litigation memorandum account to track regularly-incurred and foreseeable expenses would contradict Commission requirements for memorandum accounts. Should the Santa Clara Valley Water District change its pattern of illegal conduct and comply with all applicable legal requirements, then litigation against the Santa Clara Valley Water District may then again become an exceptional event. But that is not the situation at present.

ALJ Walwyn inquired as to why San Jose Water Company has not joined Great Oaks in the effort to eliminate or reduce the Santa Clara Valley Water District's illegal groundwater charges. [TR 293/14-17] Certainly this is an interesting question, as San Jose Water Company customers would benefit greatly by such

³⁰ Per SP U-37-W (Uniform System of Accounts for Class A Water Utilities)

action, just as Great Oaks' customers will benefit greatly by Great Oaks' actions in this regard. [TR 293/18-294/2] However, the fact that San Jose Water Company has not yet initiated litigation with the Santa Clara Valley Water District is not relevant to the issue in this proceeding. Should Great Oaks ultimately prevail, San Jose Water Company would undoubtedly be required to take action to reduce its water rates at that time.

As for future litigation, the establishment of memorandum accounts should continue to be governed by the existing Commission guidelines. This proceeding should not result in changes to long-standing Commission practices concerning memorandum accounts.

d) Taxes Other Than Income

Great Oaks and DRA disagree rather significantly on the amount of taxes other than income. [Comparative Exhibit 27] The areas of disagreement relate primarily to application of the correct rates of taxation.

The evidence is Great Oaks' most current calculation of taxes other than income are correct [Exhibit 20, p. A-12c] and that DRA's calculations are "[a]bsolutely not even close." [TR 268/2-4] In particular, DRA made errors on depreciation, federal and state tax depreciation, failed to properly account for deductible contracts and failed to include a deduction for state income tax. [TR 268/5-14] That DRA made multiple mistakes in calculating taxes other than income cannot be surprising, as DRA's witness on the issue had no qualifications or experience in addressing any form of taxation. In fact, when asked to describe her

qualifications regarding her testimony concerning taxes other than income, the DRA witness replied, “I don’t know.” [TR 385/10-15]

On the issue of Taxes Other Than Income, Great Oaks has met its burden of proof and requests that the following amounts be accepted³¹:

Taxes Other Than Income	2010-2011	2011-2012	2012-2103
Property Taxes	\$223,013	\$227,473	\$232,023
Payroll Taxes	\$136,841	\$139,785	\$141,375
Payroll Expense	\$533	\$543	\$554
Licenses, incl. DMV	\$10,389	\$9,974	\$9,575
Totals	\$370,776	\$377,775	\$383,526

e) Income Taxes

The areas of disagreement on income taxes reflect the disagreement on the “DPAD” deduction, water sales forecasting, expenses and rate base. As will be discussed below, the disagreement on rate base has been resolved with Great Oaks’ acceptance of DRA’s rate base figures. However, the other areas of disagreement remain and are discussed below.

f) DPAD

The Domestic Production Activities Deduction, or DPAD, is for taxpayers with qualifying domestic production activities. [Internal Revenue Code, §199] First, it is necessary to establish whether the taxpayer has qualified production activities income or “QPAI.” [Rev. Proc. 2007-34] QPAI is defined as the excess of: “1. Domestic production gross receipts (DPGR) over, 2. The sum of: a. Cost of goods sold allocable to DPGR, and b. Other expenses, losses, or deductions (other than the DPAD) which are properly allocable to DPGR.” [Department of the Treasury, Internal Revenue Service, Instructions for Form 8903, Domestic Production

³¹ Exhibit 20, p. A-12c

Activities Deduction, p. 2] DPGR are gross receipts derived from activities which include the sale of potable water. [Internal Revenue Code §199, Section I.(4)(A)] DPGR, however, do not include gross receipts derived from the “transmission or distribution of ... potable water.” [*Id.*, Section (c)(4)(B)(ii)]

DRA argues that Great Oaks is entitled to the DPAD, even though its witness on the issue has no qualifications whatsoever related to the issue of taxation. When asked to describe her qualifications related to income taxes, the DRA witness replied: “I can’t speak to that.” [TR 385/23-25] When pressed regarding her qualifications, the DRA witness continued to say, “I can’t speak to that.” [TR 385/27-28] The DRA witness went on to characterize the DPAD as a “tax credit,” when it is in fact a tax deduction. [Internal Revenue Code §199] Then, when asked about whether Great Oaks had any Qualified Production Activities Income or QPAI, the DRA witness replied: “No.” [TR 387/7-9] The DRA witness provided the same response to the question of whether she knew if Great Oaks has any receipts from transmission and distribution activities. [TR 387/10-12] Obviously, DRA’s evidence on this issue is at best unpersuasive and in reality not competent.

Moreover, DRA’s DPAD calculation is based upon its erroneous calculation of federal taxable income. [Exhibit 8, p. 21; *see also* part ii), below] Accepting DRA’s position on this issue would result in a clearly erroneous finding on federal taxation.

Great Oaks does not take issue with DPAD if properly applied. [Exhibit 8, p. 21] However, DRA has demonstrated that it knows little or nothing about proper application of DPAD. Based upon the evidence, the proper action to take is to not

require Great Oaks to take a tax deduction for which there is, at best, uncertain applicability and, at worst, no legal basis. In the alternative, DRA and/or the Commission should be required to indemnify Great Oaks in the event Great Oaks violates the Internal Revenue Code related to DPAD.

ii) Income Taxes

As with the DPAD, DRA has presented a clearly erroneous on the issue of income taxes. Aside from the differences attributable to DRA’s water sales forecast and associated variable expense projections, DRA’s calculations do not include the proper deduction for the difference between CPUC depreciation and federal and state depreciation. [Exhibit 8, p. 21; TR 268/5-14] DRA also erroneously included \$301,000 in interest expenses, an error in net income of more than \$580,000 and an incorrect state tax deduction. [Exhibit 8, p. 21] DRA also deviated from Commission practice in its calculation of the CCFT Deduction. [Exhibit 16, p. 6-2] In summary, DRA’s evidence on income taxes is from a witness with no qualifications (or at least qualifications the witness is not willing to disclose) and is replete with multiple errors. DRA’s evidence on income taxes must be disregarded in its entirety and Great Oaks income tax projections [Exhibit 20, p. A-18], shown in the table below, must be accepted as having met the burden of proof.

Income Taxes	2010-2011	2011-2012	2012-2013
Deferred Tax Expense	\$70,165	\$72,270	\$73,338
State Income Tax	\$232,247	\$236,745	\$238,667
Federal Income Tax	\$743,376	\$759,045	\$765,562

f) Plant In Service and Capital Additions

Great Oaks and DRA disagree very little on requested plant additions. In fact, only two areas of disagreement existed prior to hearing, the Levin Tank Circulation

Equipment and the Bacteriological Lab. On the first issue, DRA has accepted Great Oaks' figures and on the second issue Great Oaks has agreed to withdrawal its request. The following table summarizes Great Oaks' plant addition requests supported by clear and convincing evidence and unchallenged by DRA.

Year	Description	Plant Addition
2009	Levin Tank Circulation Equipment	\$25,700 (\$18,000 replacement of equipment)
2009	Bacteriological Lab	\$0
2009	Security System	\$160,000
2009	GIS System	\$175,000
2009	Billing and Database Software	\$120,000
2009	Office Furniture	\$11,408
2009	Small Tools	\$1,878
2009	Storage Shelving	\$2,536
2009	Well Rehab (22 & 24)	\$17,712
2009	Calero Booster Pump Rehab & Replacement	\$6,354
2009	New Office Improvement	\$420,000
2010	Well Generators: W2; 12; 23	\$195,000
2010	Country View Dr. Pressure Reducer	\$26,000
2010	Ashmont repipe/refurbish tank	\$20,000

The only remaining issue is the Country View tank. Great Oaks' evidence supports the acceptance of this plant addition, and DRA agrees that such plant addition is supported by proper evidence. [Exhibits 1 and 2, Exhibit (Tab) G, p. 5; Exhibit 16, pp. 7-9 – 7-11] DRA recommended that the Commission approve the Country View tank project under an advice letter to be filed by Great Oaks, with the cost capped at \$385,000. [Exhibit 16, p. 7-11] Great Oaks requests the Commission authorize such an advice letter filing.

g) Recurring Routine Items and Developer/Customer Funded Projects

Great Oaks’ evidence on recurring routine items and its developer/customer-funded projects is also clear and convincing and unopposed by DRA. [Exhibit 20, pp. A-15, A-22; Exhibit 16, pp. 7-11 – 7-12] The projections for recurring/routine items are included in the table below.

Year	Description	Budget
2009-2012	Misc. Services	\$30,000/yr.
2009-2012	Replacement Meters	\$40,000/yr.
2009-2012	Replacement Hydrants	\$40,000/yr.
2009-2012	Replacement Computer Equipment	\$20,000/yr.
2009-2012	Replacement Vehicles	\$30,000/yr.

With respect to developer/customer funded projects, Great Oaks’ evidence established that it has complied in all respects with Tariff Rule 15, and DRA agrees with such compliance. [Exhibits 1 and 2, Exhibit (Tab) G; Exhibit 16, p. 7-12] Great Oaks’ requests a finding in this proceeding that it has complied with Tariff Rule 15.

h) Plant in Service

Great Oaks respectfully requests that the Commission accept Great Oaks’ Utility Plant in Service calculations as represented in Exhibit 20, pp. A-15 through A-16, all as summarized in the table below.

	2010-2011	2011-2012	2012-2013
Plant in Service Beginning of Year	\$37,945,662	\$38,045,313	\$38,141,682
Additions	\$160,000	\$160,000	\$160,000
Less: Retirements	\$60,349	\$63,632	\$59,518
Plant in Service End of Year	\$38,045,313	\$38,141,682	\$38,242,164

i) Depreciation Expense and Reserve

The differences between Great Oaks’ and DRA’s position on Depreciation Expense and Reserve are slight, as shown in Comparative Exhibit 27. The evidence

[Exhibit 20, p. A-16] supports Great Oaks’ calculations and Great Oaks requests adoption of its Depreciation Expense and Reserve figures as shown in the table below.

	2010-2011	2011-2012	2012-2013
Plant Accumulated Depreciation Beginning of Year	\$17,367,527	\$18,463,571	\$19,558,945
Depreciation During Year	\$1,156,392	\$1,159,006	\$1,161,989
Retirements During Year	\$60,349	\$63,632	\$59,518
Salvage During Year	\$0	\$0	\$0
Net Depreciation Expense	\$1,012,887	\$1,015,501	\$1,018,484
Plant Accumulated Depreciation End of Year	\$18,463,571	\$19,558,945	\$20,661,416

j) Ratebase

Great Oaks has accepted DRA’s recommended rate base for test year 2010-2011. [Exhibit 20, p. A-18] Ratebase for subsequent test years will be based upon application of proper accounting principles.

	2010-2011
Rate Base	\$11,069,738

k) Affiliate Transactions and Non-Tariffed Activities

No issues exist with respect to Great Oaks’ affiliate transactions and non-tariffed activities. [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 3, Item B] Great Oaks agrees that when the California Secretary of State provides a file-stamped certificate confirming dissolution of Great Oaks Wireless Inc., Great Oaks will provide appropriate notice to the Commission.

l) *Customer Service*

The evidence [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 3, Item H Service Quality] clearly establishes that Great Oaks' customer service department and its procedures provide high quality service. The planned improvements to Great Oaks' billing system will only improve the level of service.

However, Great Oaks is concerned that DRA's request to decrease the compensation of Great Oaks' customer service manager and employees will have a negative effect on the level of service to the detriment of Great Oaks' customers. If DRA's compensation recommendations are accepted, resulting in a decrease in the level of customer service, it would be a classic example of being penny wise but pound foolish. Adopting DRA's unsupported compensation recommendations would have consequences contrary to the best interests of Great Oaks' customers.

Great Oaks requests a finding that it is meeting all applicable customer service requirements at a high quality level.

m) *Water Quality*

The evidence [Exhibits 1 and 2, Exhibit (Tab) E, Chapter 3, Item G Water Quality] clearly supports a finding that Great Oaks is in full compliance with all water quality standards. DRA also recommends such a finding. [Exhibit 16, pp. 12-1 – 12-3]

n) *Conservation and Tiered Rate Design*

Despite agreeing with Great Oaks to work cooperatively on conservation issues, DRA instead chose to develop and present conservation rate design proposals without Great Oaks' input in an adversarial manner. [Exhibit 8, pp. 24-25] In

addition, when DRA did present its conservations proposals, the proposals failed to address the Commission's conservation objectives and the government-mandated 15% conservation required by the Santa Clara Valley Water District.³² DRA's entire approach to conservation appears designed to ignore not just existing the Santa Clara Valley's mandatory 15% conservation requirements, but Great Oaks' concerns and input on the issues. By way of contrast, Great Oaks has proposed water sales forecasts incorporating the Santa Clara Valley Water District's mandatory 15% conservation requirements, the first logical step in designing effective and genuine conservation programs.

Great Oaks opposes an incomplete conservation proposal that does not include an appropriate revenue decoupling mechanism that tracks revenues lost from lower water sales due to the Santa Clara Valley Water District's mandatory 15% water conservation requirements. In truth, DRA's proposed Monterey-style WRAM account is not a revenue decoupling mechanism and certainly does not match DRA's testimony that "[l]ower water sales resulting from conservation may be tracked for future recovery in a water revenue adjustment mechanism (WRAM) balancing account." [Exhibit 16, p. 2-3] A price-based mechanism (Monterey-style WRAM) does not fully decouple revenues from sales as a "full" water revenue adjustment mechanism (or "full WRAM") would. Instead, the Monterey-style WRAM adjusts revenues to reflect the difference between the proposed conservation rates and the current rates for the actual quantities sold. [D.08-08-030] This is an incomplete approach to conservation that defies Commission objectives.

³² See Section III, A., 3), b), iii), above.

In order to meet the Commission’s conservation objectives and comply with the Santa Clara Valley Water District’s mandatory 15% conservation requirements, the Commission should adopt the following: (1) Great Oaks’ water sales forecasts, including the so-called “drought adjustment;” (2) tiered rate design consistent with DRA’s trial program, with Great Oaks’ requested revenue requirement [Exhibit 16, pp. 14-1 – 14-15]; (3) a Monterey-style WRAM as proposed by DRA; (4) a true revenue decoupling WRAM account that tracks revenues and expenses lost or gained due to conservation programs; and (5) a memorandum account tracking administrative expenses incurred by Great Oaks in implementing new conservation programs. Any other, lesser approach, such as that proposed by DRA, would fail to comprehensively address the important issues of conservation.

IV. Conclusion

Based upon the clear and convincing evidence presented, the charges requested by Great Oaks are just and reasonable in accordance with Pub.Util.Code §451 and should be adopted.

/s/
Timothy S. Guster
General Counsel
Great Oaks Water Company

February 25, 2010

Great Oaks Water Co.
Service List

Municipal Water System
City of San Jose
3025 Tuers Road
San Jose, CA 95121

County Clerk
County of Santa Clara
70 W. Hedding Street
San Jose, CA 95110

Safe Drinking Water Office
Department of Water Resources
1416 9th Street, Room 804
Sacramento, CA 95814

Office of Regulatory Affairs
California Water Service Company
1720 North First Street
San Jose, CA 95112

Santa Clara Valley Water District
5750 Almaden Expressway
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