

**BEFORE THE PUBLIC UTILITIES COMMISSION**



**FILED**

02-13-09

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**OF THE STATE OF CALIFORNIA**

Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service in its Larkfield District by \$648,100 or 23.38% in the year 2010; and \$140,200 or 4.07% in the year 2011 and to Increase its Revenues for Water Service in its Los Angeles District by \$7,886,200 or 41.29% in the year 2010; and \$1,100,000 or 4.09% in the year 2011 and to Increase its Revenues for Water Service in its Sacramento District by \$17,537,800 or 51.29% in the year 2010; and \$5,339,800 or 10.25% in the year 2011.

A.09-01-013

**PROTEST OF THE MARK WEST AREA COMMUNITY SERVICES COMMITTEE TO THE FILING OF RATE CASE A.09-01-013 BY CALIFORNIA AMERICAN WATER COMPANY**

**JAMES M. BOULER**  
**MARK WEST AREA COMMUNITY**  
**SERVICES COMMITTEE**  
**133 Eton Court**  
**Santa Rosa, CA. 95403**  
**Telephone (707) 546-3097**  
**Email [jbouler@comcast.net](mailto:jbouler@comcast.net)**

**February 13, 2009**

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Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service in its Larkfield District by \$648,100 or 23.38% in the year 2010; and \$140,200 or 4.07% in the year 2011 and to Increase its Revenues for Water Service in its Los Angeles District by \$7,886,200 or 41.29% in the year 2010; and \$1,100,000 or 4.09% in the year 2011 and to Increase its Revenues for Water Service in its Sacramento District by \$17,537,800 or 51.29% in the year 2010; and \$5,339,800 or 10.25% in the year 2011.

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**BACKGROUND:**

On January 22, 2007 California American Water Company filed rate cases A.07-01-036, A.07-01-037, A.07-01-038 and A.07-01-039 for rate increases in its Coronado, Larkfield, Sacramento and Village Districts respectively.

The Scoping memo issued on April 11, 2007 combined these four rate cases into one proceeding.

A ruling by ALJ Rochester on May 1, 2007 granted DRA's motion to move consideration of Conservation Rates and Water Rate Adjustment Mechanism into phase 2 of the proceeding.

The Revenue Requirement for Cal-Am's Coronado and Village Districts was adopted in Decision D.08-03-022 on March 13, 2008.

The Revenue Requirement for Cal-Am's Larkfield and Sacramento Districts was adopted in Decision D. 08-05-018 on May 12, 2008 and the Conservation Rate Design for Cal-Am's

Coronado, Village and Larkfield Districts was adopted in Decision D.08-11-023 on November 8, 2008.

Cal-Am filed Rate Case A.09-01-013 requesting rate increases in its Larkfield, Los Angeles and Sacramento Districts on January 23, 2009.

## **GENERAL PROTEST**

The Mark West Area Community Services Committee registers the general protest that it is too soon after the previous rate case in which Cal-Am was granted a 36.66% increase in rates to allow another rate increase that will increase rates on the average customer by 40.28%.<sup>1</sup>

That it is too soon to consider a new rate case is evidenced by the fact that Mr. David P. Stephenson, in his testimony devotes nearly 5 full pages of his testimony to explain that Cal-Am has not implemented certain of the Commission's Orders, inquiries and Conditions because of insufficient time between closing on the previous rate case (November 6, 2008) and filing of the current rate case (January 23, 2009)<sup>2</sup>

In addition to the general protest the Committee registers five protests to specific aspects of the current and previous rate cases as follows:

### **PROTEST NO. 1**

Cal-Am's rate case A.09-01-013

The Nation's economy is in shambles. Congress has already provided a \$750 Billion stimulus package and is expected to add another \$789 Billion. Banks and other financial institutions and the automobile industry are begging for infusions of cash from the Government in order to avoid bankruptcy.

Businesses Nationwide are being forced to lay off their employees and close their doors.

Sonoma County's unemployment rate rose to 7% in December and is expected to rise to 8% in 2009. The Statewide unemployment rate is 9.3% and growing<sup>3</sup>.

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<sup>1</sup> Larkfield District, Exhibits A – F, Final Application, Exhibit A, Chapter 10, Table 10.1, 5/8" meter, Line 10 (15 ccf)

<sup>2</sup> Direct Testimony of David P. Stephenson, pp16 – 17 and pp 19 – 22.

<sup>3</sup> Santa Rosa Press Democrat, Saturday January 24, 2009 page 1

The economy is not expected to begin to improve before the year 2011. And CALIFORNIA AMERICAN WATER COMPANY WANTS A 40.28% RATE INCREASE?<sup>4</sup> INCREDIBLE!!!

Cal-Am's request for a 40.28% rate increase will act at counter purposes to the Government's stimulus package.

This rate case was filed out of the usual three year cycle because of a change in the schedule by the California Public Utilities Commission to allow the utilities to file rate cases for all of their divisions in one rate case.

It is time for the Commission to reconsider that change in schedule.

This is not the time to consider a rate increase of any magnitude, much less a rate increase of 40%.

Cal Am's request for a 40% rate increase is especially egregious coming on the heels of a 36.66% rate increase granted on May 15, 2008 in Decision D.08-05-018.

There is nothing in this rate case that is of such urgency that it could not be postponed until 2011 or until the economy shows a dramatic improvement.

We respectfully request that Cal-Am and the Commission delay this rate case until a more opportune time.

## **PROTEST NO. 2**

Faught Road Well.

In Decision D.08-05-018 California American Water company was granted authority to construct the Faught Road Well and to expand the Larkfield Water Treatment Plant. The total cost of the well and the treatment plant expansion was estimated to be \$2,048,000.

The existing treatment plant has two greensand filters each with a capacity of 600 gallons per minute for a total plant capacity of 1200 gpm.

The Faught Road well was estimated to have a capacity of 400 gpm. That capacity was used in all discussions of the well, in all testimony concerning the well and in the justification for the well.

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<sup>4</sup> Larkfield District, Exhibits A – F, Final Application, Exhibit A, Chapter 10, Table 10.1, 5/8” Meter, Line 10 (15 ccf)

Cal-Am purchases water from the Sonoma County Water agency at 800,000 gallons per day average during peak months. The water purchased from the water agency is treated water and does not pass through the treatment plant.

The only water treated at the treatment plant is water pumped from Cal-Am's own wells at 500 gpm. Adding 400 gpm from the Faught Road Well would have brought the amount of water to be treated to 900 gpm, well below the plant's 1200 gpm capacity.

While the Faught Road well was stated to have an estimated capacity of 400 gpm, the testimony of Shawn D. Sevey lists the capacity of the Faught Road Well as 150 gpm.<sup>5</sup>

Of course there has been no indication from Cal-Am that the cost to ratepayers will be reduced to reflect the reduction in capacity.

If this well is allowed to proceed an adjustment in cost should be made commensurate with the reduction in capacity.

Expansion of the treatment plant should be disallowed. Cal-Am is now treating only 500 gpm at the Larkfield Treatment plant. Addition of the Faught Road Well at 150 gpm brings the needed capacity to 650 gpm, barely more than half the current capacity of the plant. In addition, the amount allowed for drilling the well should be reduced to 3/8ths of the amount allowed in Decision D.08-05-018 to reflect the fact that the well capacity has been reduced to 3/8ths of the originally stated capacity.

### **PROTEST NO. 3**

Special Request #1. Conservation Rates in the Larkfield District.

In the settlement agreement signed by Cal-Am, DRA and the Mark West Area Community Services Committee the parties agreed to consider a five tier rate design for the Larkfield District in the next GRC.

Special Request no 1 proposes that the three tier conservation rates adopted in Decision D.08-11-023 remain in place.

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<sup>5</sup> Direct Testimony of Shawn D. Sevey, Larkfield and Sacramento Districts: 3. Advice Letter; a. 05610502: Larkfield treatment Plant – Production Improvements. Page 8

The conservation rates adopted in D.08-11-023 were only approved on November 6, 2008 and have not yet been implemented in the Larkfield District. In fact no notice has been sent to customers explaining the tiered rate design and its purpose.

Still, Cal-Am is not showing good faith in proposing to continue the rate design adopted in D.08-11-023. In accordance with the terms of the Settlement Agreement Cal-Am was to gather information on the number of apartment units and on water consumption in preparation for implementation of a 5 tier rate system.<sup>6</sup>

It is our position that Cal-Am has not lived up to the terms of the Settlement Agreement and should be held accountable.

#### **PROTEST NO. 4**

Special Request #7 Memorandum account to track, for future recovery, all costs relating with the development and placing in service, operating Well No. 6 in the Larkfield District.

Cal-Am states that there is no speculation as to the projects need or its cost, only timing. That is not a true statement. Well no. 6 was a major point of contention in rate case A.04-04-041 and was removed from consideration in Decision D.05-09-020 issued September 8, 2005.

Cal-Am purchased a 7.5 acre parcel of land, outside of their service area, near Mark West Station Road as a proposed site for Well No. 6.

In the Mark West Station Road/ Donna Drive area there are 90 or more homes who depend upon private wells to provide water. Residents of the area were upset at the prospect of a 450 gpm well in their neighborhood, they were fearful that Well No. 6 would adversely affect their private wells.

As a consequence Cal-Am promised at a meeting with local residents that pumping from Well No. 6 would be limited to 150 gpm. Further, Cal-Am promised that if Well No. 6 had an adverse affect upon local wells pumping from Well No. 6 would be stopped.

The Well No. 6 site is 1.5 miles from the current treatment plant making treatment of the water from the well problematical. The choices would be to pipe the raw water 1.5 miles along busy roadways and across Mark West Creek or to construct a second treatment plant at the site. Either option would probably cost in excess of one million dollars.

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<sup>6</sup> Decision D.08-11-023 p.9 footnote 7

The cost of the property for Well No. 6 was 1.2 million dollars which was not included in rate case A.04-04-041. It is certain that Cal-Am will want to recover the cost of the property when the well is placed in service.

Considering a cost of one million dollars to construct the well, one million dollars to provide treatment for the water and 1.2 million dollars for the property, the total cost of Well No. 6 is in excess of 3 million dollars<sup>7</sup> for a well with a capacity of only 150 gpm.

Special Request #7 is an attempt to gain approval for Well No. 6 without discussion or debate. When, and if, Well No. 6 is approved it should be only after a full and complete evaluation of its cost relative to its production capacity. Further, it should be approved only after a written, signed agreement between Cal-Am and residents of the Mark West Station Road/Donna Drive area spelling out responsibilities if private wells are affected.

#### **PROTEST NO. 5**

Attorney, consultant and advisor fees.

In his testimony, Mr. David P. Stephenson estimated the legal costs of this rate case to be \$1,500,000<sup>8</sup>. When questioned as to the reason for the high legal costs Mr. Stephenson placed the cause primarily upon the participation of intervenors in the Larkfield and Los Angeles Districts.

We have a different view of the high legal costs incurred by Ca-Am.

To process its rate cases California American Water Company regularly employs Manatt, Phelps and Phillips, one of the most expensive, if not the most expensive, law firms, in San Francisco.

We estimate that Manatt, Phelps and Phillips attorneys have a billing rate in the range of \$550 per hour. Add to that the cost of outside consultants and advisors a rate case can be an expensive process indeed.

Alco Water Service Co. was cautioned by the Commission in Decision D.08-11-035 (p22) as follows: “We caution Alco that it should use expensive attorneys only when absolutely necessary. Work performed by attorneys at a cost of \$550 per hour may be disallowed if the work can be accomplished through less expensive means.”

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<sup>7</sup> Direct Testimony of Shawn D. Sevey’ Larkfield and Sacramento Districts. Page 5 shows the cost of this well to be \$3,190,058

<sup>8</sup> Direct Testimony of David P. Stephenson, page 8, E> Legal Costs, Q16, A16.

While the Commission failed to define what constituted “absolute necessity” we take the position that Cal-Am has enough resources available to it that it should never use such expensive attorneys.

Cal-Am has staff attorneys on its payroll who would be perfectly capable of processing Cal-Am’s rate cases. It is certain that Cal-Am does not pay staff attorneys \$500 per hour.

Even if additional attorneys needed to be hired on a temporary basis there are numerous attorneys in the State of California who would work for far less than \$550 per hour.

There is something unseemly and unjust in requiring ratepayers to pay the cost of attorneys and consultants to lobby the Commission for the purpose of increasing rates that ratepayers must pay.

The California Public Utilities Commission places very stringent controls upon participation by intervenors including hours charged and rate per hour. With the possible exception of Alco, there seems to be no such limit on attorneys and consultants working for the utilities or upon the charges that the utilities make for rate case proceedings.

The California Public Utilities Commission collects a fee of 1.5% of the total bill to cover all of its costs in processing rate cases and in regulating the utilities. Even outside consultants and advisors are included in that 1.5% fee.

There appears to be no valid reason to allow the utilities to charge greater than 1.5% of the total bill for all work involved in rate case processing including staff time and outside attorneys, consultants and advisors.

The Commission is urged to end the “sweetheart” deals between the utility and its attorneys and consultants and to limit the amount of those fees that are passed on to ratepayers.

## **CONCLUSION**

It is the position of the Mark West Area Community Services Committee that this rate case should be delayed. It is too soon to consider a rate increase of any magnitude following so soon behind a 36.66% rate increase granted on May 15, 2008.

The state of the economy is not conducive to any rate increase at this time. Such an increase would impose an undue hardship upon many ratepayers.

Agreements and understandings reached in the previous rate case have not been met. In particular the Faught Road well was expected to have a capacity of 400 gpm. It is now stated to have a capacity of only 150 gpm. The amount added to the rate base for the Faught Road Well should be reduced to 3/8 of the originally estimated cost.

The Faught Road Well at a capacity of 400 gpm was used to justify expansion of the Larkfield Treatment Plant to 1800 gpm. This committee contended that expansion of the treatment plant was unnecessary even with the capacity at 400 gpm. Reduction of the well capacity to 150 gpm makes treatment plant expansion even less justifiable. With the reduced well capacity only 650 gpm of the plant's current 1200 gpm capacity will be utilized.

Cal-Am, agreed in the previous rate case, to give consideration to a 5 tier rate design for the Larkfield District in this rate case. By recommending that the rate design approved in Decision D.08-11-023 remain in place Cal-Am is ignoring that agreement.. They should be compelled to comply with the agreement.

Well No. 6 with a cost of \$3,190, 058 and a capacity of only 150 gpm is simply not economically feasible and the request for a balancing account to track the cost of constructing the well should be rejected.

Cal-Am should be instructed to reduce the cost of rate case proceeding. Ratepayers should not be forced to pay to hire expensive legal staff and consultants to lobby the CPUC to increase rates on ratepayers.

Respectfully Submitted

/S/ James M. Bouler

James M. Bouler

Member: Mark West Area Community Services Committee

CERTIFICATE OF SERVICE

I hereby certify that I have this day, February 13, 2009, served the within

**PROTEST OF THE MARK WEST AREA COMMUNITY SERVICES  
COMMITTEE TO THE FILING OF RATE CASE A.09-01-013 BY CALIFORNIA  
AMERICAN WATER COMPANY**

on the interested parties in this action by transmitting this document electronically from my home at 133 Eton Court, Santa Rosa, California 95403 to the electronic e-mail addresses listed on the attached service list.

In addition to the e-mail service list I have filed the above document, in PDF/A format, electronically by transmitting the same to the Docket Office of the California Public Utilities Commission at [HTTP://EFILE.CPUC.CA.GOV](http://efile.cpuc.ca.gov) .

I hereby certify that the original, signed copy of the above document is available for review and copying at the request of the Commission or any party.

Executed at Santa Rosa, California, February 13, 2009

      /S/ JAMES M. BOULER        
James M. Bouler

SERVICE LIST  
A.09-01-013

[LRR@CPUC.CA.GOV](mailto:LRR@CPUC.CA.GOV)

[JWS@CPUC.CA.GOV](mailto:JWS@CPUC.CA.GOV)

[JVC@CPUC.CA.GOV](mailto:JVC@CPUC.CA.GOV)

[RSK@CPUC.CA.GOV](mailto:RSK@CPUC.CA.GOV)

[VO2@CPUC.CA.GOV](mailto:VO2@CPUC.CA.GOV)

[FRL@CPUC.CA.GOV](mailto:FRL@CPUC.CA.GOV)

[NKS@CPUC.CA.GOV](mailto:NKS@CPUC.CA.GOV)

[FLC@CPUC.CA.GOV](mailto:FLC@CPUC.CA.GOV)

[LDOELQUEIST@STEEFEL.COM](mailto:LDOELQUEIST@STEEFEL.COM)

[SLEEPER@STEEFEL.COM](mailto:SLEEPER@STEEFEL.COM)

[DSTEPHEN@AMWATER.COM](mailto:DSTEPHEN@AMWATER.COM)

[DARLENE.CLARK@AMWATER.COM](mailto:DARLENE.CLARK@AMWATER.COM)

[TURNERKB@AMWATER.COM](mailto:TURNERKB@AMWATER.COM)

[JBOULER@COMCAST.NET](mailto:JBOULER@COMCAST.NET)

[PLESCURE@LESCURE-ENGINEERS.COM](mailto:PLESCURE@LESCURE-ENGINEERS.COM)

[MARKWEST@MARKWEST.ORG](mailto:MARKWEST@MARKWEST.ORG)

[JSPURGIN@TOAKS.ORG](mailto:JSPURGIN@TOAKS.ORG)

[JIM@MARKWEST.ORG](mailto:JIM@MARKWEST.ORG)