

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**03-22-10  
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March 22, 2010

Agenda ID # 9305  
Ratesetting

## TO PARTIES OF RECORD IN APPLICATION 09-07-011

This is the proposed decision of Administrative Law Judge (ALJ) Weatherford. It will appear on the Commission's April 22, 2010 agenda. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 14.6(c)(2), comments on the proposed decision must be filed on March 29, 2010, seven days of its mailing, and reply comments must be filed on April 5, 2010.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Weatherford at [gw2@cpuc.ca.gov](mailto:gw2@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ KAREN V. CLOPTON  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ WEATHERFORD  
(Mailed 3/22/2010)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of California Water Service Company (U60W), a California Corporation, for an Order authorizing the allocation of Net Proceeds from MTBE (methl tertiary-butyl ether) Groundwater Contamination Litigation.

Application 09-07-011  
(Filed July 8, 2009)

**DECISION FOR PHASE 1****1. Summary**

California Water Service Company seeks authority for the allocation of net proceeds from litigation pertaining to the contamination of groundwater by methl tertiary-butyl ether (MTBE). This decision adopts a settlement reached between the parties and allows the existing MTBE Litigation Memorandum Account to be amended to track the use of funds to construct treatment and replacement facilities. (See Appendix A to Phase 1 Settlement Agreement that is attached to this decision). Currently available funds from Part 1 of the MTBE litigation settlement are quantified as \$34,254,417.07, subject to adjustment based on specified contingencies. Under the Phase 1 settlement, all such funds available for investment or other purposes shall be used for the construction or purchase of MTBE treatment and replacement facilities. The proceeding remains open for resolution of the issues scoped for Phase 2.

## 2. Background and Procedural History

This proceeding began with California Water Service Company (Cal Water) filing an application on July 8, 2009, for an order authorizing the allocation of net proceeds from methyl tertiary-butyl ether (MTBE) litigation.<sup>1</sup> The Division of Ratepayer Advocates (DRA) filed a protest to the application on August 13, to which Cal Water replied on August 17, 2009.

The proceeding was assigned to Commissioner Bohn and Administrative Law Judge (ALJ) Gary Weatherford. By a ruling filed on August 21,<sup>2</sup> ALJ Weatherford set a prehearing conference (PHC) for September 10 and requested that the parties meet, confer and file a joint case management statement addressing specified topics by September 7. After ALJ Weatherford granted the parties more time, the joint case management statement was filed on September 9. The transcribed PHC was held on September 10, 2009.

The assigned Commissioner's Ruling and Scoping Memo, which bifurcated the proceeding into two phases and two sets of issues, was filed on September 29, 2009. The Ruling and Scoping Memo noted that there were two

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<sup>1</sup> Cal Water filed a lawsuit in 2005 to recover MTBE-related damages, California Water Service Company v. Atlantic Richfield Co., et al. (Superior Court of San Mateo County, No. CIV 443990). That case was consolidated with others in which water purveyors sought damages against oil companies to cover water well/aquifer cleanup costs related to the release of the gasoline additive MTBE into the environment. Cal Water entered a two-part settlement with 12 defendants in 2008 and the litigation continues as to three other defendants. Under Part 1 of the settlement Cal Water received a gross amount of \$49,788,734.99 for damages related to the contamination of 27 wells through April 11, 2008. Under Part 2 Cal Water is entitled to receive future payments for damages by MTBE contamination of other wells (potentially as many as 786) that may be detected during a 20 year period after April 2008.

<sup>2</sup> Administrative Law Judge's Ruling Setting Prehearing Conference and Requiring Joint Case Management Statement.

other proceedings, Rulemaking (R.) 09-03-014 (contamination proceeds) and Application (A.) 09-07-001 (Cal Water General Rate Case (GRC)),<sup>3</sup> pending before the Commission that were relevant for the instant proceeding.

Cal Water and DRA filed joint comments on October 30, 2009, that reflected an agreement on the Phase 1 issues.<sup>4</sup> On December 30, 2009, ALJ Weatherford asked the parties to translate and expand their comments into a Phase 1 settlement agreement and to move the adoption of such a settlement agreement by the Commission.<sup>5</sup> By a January 13, 2010 ruling,<sup>6</sup> he reset the date for mailing a proposed decision (PD) from January 15 to March 15, 2010, to accommodate for the additional time the parties needed to comply with his request concerning a formal Phase 1 settlement.

On February 16, 2010, Cal Water and DRA filed a joint motion for adoption of a Phase 1 Settlement Agreement dated February 15, 2010. By a February 25, 2010, e-mail to the parties, ALJ Weatherford identified some apparent calculation errors in that settlement agreement and the associated DRA audit report. The parties responded by e-mail that corrections were in order and would be made. The parties filed a joint motion for the adoption of a revised Phase 1 Settlement Agreement, with a revised DRA audit report attached, and for an order shortening the comment period on March 9, 2010. By a ruling on

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<sup>3</sup> The GRC was misnumbered as A.09-03-014 in the Ruling and Scoping Memo, at 3.

<sup>4</sup> Joint Comments of California Water Service Company and the Division of Ratepayer Advocates on Phase 1 Issues.

<sup>5</sup> Administrative Law Judge Ruling Requiring Information and Additional Filing for Phase 1.

<sup>6</sup> Administrative Law Judge's Ruling Modifying Schedule for the Proposed Decision in Phase 1.

March 11, 2010, the comment period was shortened to March 16 and the mailing date for the Phase 1 PD was rescheduled from March 15 to March 22, 2010. Since no evidentiary hearings were held for Phase 1 and the attached Settlement Agreement renders Phase 1 issues uncontested, the public review period for the PD was reduced from 30 to seven days.

### **3. Phase 1 Issues**

The issues scoped for resolution in Phase 1 are the following:

- a. Should Cal Water record the proceeds received from MTBE contamination litigation settlements in a memorandum account, either the existing Advice Letter (AL) No. 1707 account or a successor?
- b. What is the correct amount of proceeds from MTBE contamination settlements that should be available for investment or other purposes?
- c. How much of those proceeds should be expended in treatment and replacement plant, utility plant generally, operation and maintenance, and/or general administration?
- d. What issues, if any, regarding income tax treatment of proceeds should be considered in this proceeding?

While it was determined that there is a need for a hearing in the instant proceeding as a whole, the bifurcation and the subsequent negotiations among the parties leading to the attached Phase 1 Settlement Agreement have removed the need for a hearing as to the Phase 1 issues.

#### **4. Discussion and Resolution of Phase 1 Issues**

##### **4.1. Memorandum Account: “Should Cal Water Record the Proceeds Received from MTBE?”**

Cal Water and DRA answer in the affirmative.<sup>7</sup> Cal Water presently holds the Part One MTBE litigation settlement proceeds in a MTBE Litigation Memorandum Account (MTBEMA) established by advice letter in 2005.<sup>8</sup> Cal Water and DRA want Cal Water to be authorized to modify its Preliminary Statement, Paragraph F, “MTBE Litigation Memorandum Account,” by a Tier 1 advice letter filing, to: (a) incorporate the timing and intended use of the proceeds in this proceeding to construct treatment and replacement facilities; and (b) allow for memorandum account treatment of such proceeds to continue until the Commission determines the final accounting of such proceeds in Phase 2 of this proceeding. The amended version of Preliminary Statement Paragraph F that they are proposing is attached to the Phase 1 Settlement Agreement as Appendix A (the “Amended Preliminary Statement”).

Rather than require Cal Water to seek authority for a new memorandum account, we authorize Cal Water to modify the existing memorandum account to accommodate the current circumstances and the scope, as well as the range of foreseeable outcomes, of this proceeding. We find that it is reasonable and prudent as to the proceeds received by Cal Water from MTBE contamination litigation settlements, to allow Cal Water, pending the resolution

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<sup>7</sup> See attached Phase 1 Settlement Agreement, section 2.1, at 4-5.

<sup>8</sup> AL 1701, filed February 2, 2005, effective August 15, 2005, Resolution W-4094 (March 26, 1998), amending Preliminary Statement to cover water quality litigation memorandum account. See CPUC Sheet No. 6323-W in tariff schedule of California Water Service Company (U60W).

of issues posed in Phase 2, to track both its costs incurred and proceeds received and applied towards investments in replacement and treatment property. Such tracking is consistent with previously approved memorandum accounts and will provide a relevant record for addressing the issues awaiting us in Phase 2. We find that the amended version of Preliminary Statement Paragraph F proposed by Cal Water and DRA and attached to the Phase 1 Settlement Agreement as Appendix A (the “Amended Preliminary Statement”) embodies the changes needed to meet the foregoing tracking objectives. We specifically adopt that amended version in this Phase 1 decision.

Any request for recovery of costs tracked in the MTBE Litigation Memorandum Account shall be by formal application to the Commission.

Authorization for Cal Water to use the MTBE Litigation Memorandum Account to track adjustments to the available funds from Part 1 of the MTBE litigation settlement, and the use of those funds for the construction or purchase of MTBE treatment and replacement facilities does not mean that the Commission has decided that the tracked amounts are reasonable, or that any net costs should be recoverable in rates. Cal Water shall bear the burden when it requests approval of the tracked amounts and recovery of the recorded costs, to show that the tracked amounts are reasonable, that separate recovery of the types of costs recorded in the account is appropriate, that the utility acted prudently when it incurred these costs, and that the level of costs is reasonable.

**4.2. Available Proceeds: “What is the correct Amount of Proceeds from MTBE Contamination Settlements that Should Be Available for Investment or Other Purposes?”**

Cal Water and DRA agree that the correct amount of proceeds from MTBE contamination litigation settlements that are available for investment or

other purposes is \$34,254,417.07. They agreed upon this figure, which is the same figure they jointly presented in their October 30, 2009, comments, following the DRA audit report (Appendix B of the Attached Phase 1 Settlement Agreement). The figure<sup>9</sup> reflects the repayment of a state drinking water grant in December 2009<sup>10</sup> as well as recently operation and maintenance costs, and other costs.

We find it reasonable and prudent to accept and rely on the joint representation of Cal Water and DRA that, subject to change that may be occasioned by specified contingencies, the correct amount of MTBE litigation settlement proceeds currently available for investment and other purposes is \$34,254,417.07.<sup>11</sup> The specific contingencies that could cause a change in that figure are any or all of the following: a) outside professional costs to prepare and pursue an Internal Revenue Service private letter ruling; b) income taxes, if any, due on proceeds; c) interest accrued to the balance in the MTBE Litigation Memorandum Account; d) additional funds received from non-settling defendants, including potential litigation judgments or future settlements; e) additional funds received from settling defendants pursuant to Part 2 of the MTBE litigation settlement (relating to future contamination by MTBE at wells

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<sup>9</sup> See Table 3 of Appendix B of the Attached Phase 1 Settlement Agreement for a break-down of the debits and credits underlying the figure.

<sup>10</sup> \$463, 879.95.

<sup>11</sup> This amount reflects the deduction of attorney's fees, \$14,930,916.87, and related litigation costs, \$603,401.05, from the gross proceeds, \$49,788,734.99, received under Part 1 of the MTBE litigation settlement. The concurrence of the parties, both as to the correct amount of settlement proceeds currently available and the contingencies under which that amount can be adjusted, is without prejudice to either of those parties in terms of positions that may be taken on issues that await in Phase 2.

with no prior detection of MTBE); f) amounts refunded to the State of California to reimburse grant funding; and (g) Cal Water's outside professional costs to prepare and pursue the present application for allocation of MTBE litigation proceeds. As used herein, then, the phrase "available proceeds" means \$34,254,417.07 subject to appropriate adjustment under the foregoing specific contingencies.

**4.3. Expenditure of Available Proceeds: "How much of those proceeds should be expended in treatment and replacement plant, utility plant generally, operation and maintenance, and/or general administration?"**

Given the magnitude of the contamination damage and the resultant effect on Cal Water's operations and obligations, we find it reasonable and prudent to require, as provided in the Phase 1 Settlement Agreement,<sup>12</sup> that all of the aforementioned available proceeds be expended for the construction or purchase of MTBE treatment and replacement facilities. Such capital investment can increase the reliability of the water supply which is in the interest of customers in the affected ratepayer districts in particular and of the public in general. We are in accord, then, with the treatment in the Phase 1 Settlement Agreement of the issue as to how much of the available proceeds ought to be spent on MTBE treatment and replacement plant. The answer is all.

**4.4. Income Tax Treatment: "What issues, if any, regarding income tax treatment of proceeds should be considered in this proceeding?"**

Under the terms of the Phase 1 Settlement Agreement,<sup>13</sup> any relevant impact from the income tax treatment of proceeds will be taken into account as

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<sup>12</sup> Section 2.3, at 7.

<sup>13</sup> Sections 2.2 and 2.4, at 7.

an adjustment of the available proceeds, as indicated in the discussion of contingencies in section 4.2 above. In short, with no income tax impact, there will be no adjustment, and with an income tax impact, there will be an adjustment. Both possibilities being covered, no further attention to that tax contingency appears to be necessary in this phase of the proceeding.

## **5. Reduction of Comment Period**

Pursuant to Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, in an uncontested matter where the decision grants the relief requested, the 30-day public review and comment period required by Section 311 of the Public Utilities Code is reduced to seven days. Comments were filed on \_\_\_\_\_ and reply comments were filed on \_\_\_\_\_.

## **6. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Gary Weatherford is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. This decision resolves all of the Phase 1 issues between the parties, Cal Water and DRA.
2. Cal Water received gross proceeds of \$49,788, 734.99 for MTBE-related damages in Part 1 of the settlement of the lawsuit, California Water Service Company v. Atlantic Richfield Co., et al. (Superior Court of San Mateo County, No. CIV 443990).
3. Deduction of legal fees and costs, from the gross proceeds received in Part 1 of the MTBE litigation settlement leaves \$34,254,417.07, subject to adjustment, as funds available for investment or other purposes.
4. Cal Water has an existing MTBE Litigation Memorandum Account created under AL 1701, filed February 2, 2005, effective August 15, 2005,

Resolution W-4094, (March 25, 1998, amending Preliminary Statement to cover water quality litigation memorandum account). That memorandum account, if amended, is capable of accommodating the available proceeds for investment or other purposes of \$34,254,417.07, an amount subject to adjustment under specified contingencies.

5. The damage incurred from the MTBE contamination has left Cal Water with a need to make expenditures for the construction or purchase of MTBE treatment and replacement facilities.

### **Conclusions of Law**

1. Evidentiary hearings are not needed for Phase 1 of the proceeding.
2. The Phase 1 Settlement Agreement should be approved as it is reasonable in light of the whole record, consistent with law, and in the public interest.
3. The proceeds received by Cal Water in Part 1 of the MTBE litigation settlement, less legal fees and costs, and subject to adjustment, should be recorded in an amended MTBE Litigation Memorandum Account.
4. All of the available proceeds so recorded should be expended for the construction or purchase of MTBE treatment and replacement facilities.
5. Cal Water is not entitled to a presumption that adjustments to the available funds from Part 1 of the MTBE litigation settlement, as tracked in the MTBE Litigation Memorandum Account, are reasonable; that the types and levels of costs incurred for the construction or purchase of MTBE treatment and replacement facilities are reasonable; or that the costs should be recoverable in rates. Cal Water should bear the burden when it requests approval of the tracked amounts and recovery of the recorded costs, to show that the adjustments are reasonable, that separate recovery of the types of costs recorded

in the account is appropriate, that it acted prudently when it incurred the costs, and that the level of costs is reasonable.

6. The proceeding should remain open for resolution of the issues scoped for Phase 2.

## **O R D E R**

### **IT IS ORDERED** that:

1. California Water Service Company seeks authority for the allocation of net proceeds from litigation pertaining to the contamination of groundwater by methyl tertiary-butyl ether (MTBE). The parties have reached a settlement on Phase 1 of the proceeding and seek to have the existing MTBE Litigation Memorandum Account amended to track the use of funds to construct treatment and replacement facilities. The Phase 1 Settlement Agreement including its appendices, Attachment A to this decision, is approved.

2. Of the methyl tertiary-butyl ether (MTBE) litigation Part 1 settlement proceeds of \$49,788, 734.99 heretofore received by California Water Service Company (Cal Water) a net amount of \$34,254,417.07, subject to adjustment as specified in this paragraph, is available for investment or other purposes. The specific contingencies that may cause an adjustment in the foregoing amount are any or all of the following: a) outside professional costs to prepare and pursue an Internal Revenue Service private letter ruling; b) income taxes, if any, due on proceeds; c) interest accrued to the balance in the MTBE Litigation Memorandum Account; d) additional funds received from non-settling defendants, including potential litigation judgments or future settlements; e) additional funds received from settling defendants from Part 2 of the settlement (relating to future contamination by MTBE at wells with no prior detection of MTBE); f) amounts

refunded to the State of California to reimburse grant funding; and

g) Cal Water's outside professional costs to prepare and pursue the present application for allocation of MTBE litigation proceeds. No adjustment in the foregoing net amount shall be made without approval of the Commission.

3. California Water Service Company must file a Tier 1 Advice Letter within 10 days of the effective date of this decision to modify the Preliminary Statement of its existing memorandum account created under Advice Letter No. 1701, filed February 2, 2005, effective August 15, 2005, as authorized in Resolution W-4094 (March 26, 1998), to conform to the Preliminary Statement that is Appendix A of Attachment A of this decision. The amended methl tertiary-butyl ether (MTBE) Litigation Memorandum Account must be used to track the receipt and use of available proceeds, \$34,254, 417.07, as that amount may be adjusted under the contingencies set out in Ordering Paragraph 2. Any request for recovery of costs tracked in the MTBE Litigation Memorandum Account shall be by formal application to the Commission.

4. The net proceeds of \$34,254,417.07, as that amount may be adjusted under the specified contingencies set out in Attachment A must all be expended for the construction or purchase of methl tertiary-butyl ether treatment and replacement facilities.

5. California Water Service Company is not entitled to a presumption that adjustments to the available funds from Part 1 of the methl tertiary-butyl ether (MTBE) litigation settlement, as tracked in the MTBE Litigation Memorandum Account, are reasonable; that the types and levels of costs incurred for the construction or purchase of MTBE treatment and replacement facilities are reasonable; or that the costs should be recoverable in rates. California Water Service Company shall bear the burden when it requests approval of the tracked

amounts and recovery of the recorded costs, to show that the adjustments are reasonable, that separate recovery of the types of costs recorded in the account is appropriate, that it acted prudently when it incurred the costs, and that the level of costs is reasonable.

6. Other pending requests and motions, if any, are denied in Phase 1 of this proceeding for the allocation of net proceeds from litigation pertaining to the contamination of groundwater.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**ATTACHMENT A**

## **PHASE 1 SETTLEMENT AGREEMENT**

This PHASE 1 SETTLEMENT AGREEMENT (“Settlement”) is entered into by and between CALIFORNIA WATER SERVICE COMPANY (“Cal Water”) and the DIVISION OF RATEPAYER ADVOCATES (“DRA”) (each a “Party” and together, the “Parties”). This Settlement resolves certain issues relating to the allocation of net proceeds from MTBE (methyl tertiary-butyl ether) groundwater contamination litigation, and is intended to be effective as of the date recorded below.

### **INTRODUCTION**

**1.1** In 2005, Cal Water filed a lawsuit in California Superior Court to recoup MTBE-related damages, *California Water Service Company v. Atlantic Richfield Co., et al*, (San Mateo County Superior Court No. CIV 443990), alleging that groundwater on which Cal Water depended for its water supply had become contaminated with MTBE due to releases of gasoline into the environment.

**1.2** In 2008, Cal Water entered into a two-part Settlement with 12 defendants and received an initial settlement for damages by MTBE contamination to 27 Cal Water wells occurring through April 12, 2008 (“Part 1”). Future payments (“Part 2”) cover damages related to MTBE contamination of Cal Water wells occurring after April 12, 2008.

**1.3** On July 8, 2009, Cal Water filed this Application (A.) 09-07-011 for an order authorizing the allocation of net proceeds from MTBE litigation (“Application”).

**1.4** DRA filed a protest to this Application on August 13, 2009, to which Cal Water replied on August 17, 2009.

**1.5** In order to coordinate this Application with two other related proceedings pending before the Commission,<sup>1</sup> Administrative Law Judge (“ALJ”) Weatherford’s Ruling and Scoping Memo of September 28, 2009 (“Scoping Memo”) bifurcated the issues to be resolved in this proceeding into two phases.

**1.6** The Scoping Memo set forth the following issues to be addressed in Phase 1:

- a. Should Cal Water record the proceeds received from MTBE contamination settlements in a memorandum account, either the existing AL 1707 account or a successor?
- b. What is the correct amount of proceeds from MTBE contamination settlements that should be available for investment or other purposes?

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<sup>1</sup> Rulemaking (R.) 09-03-014 to Develop Rules and Procedures for Contamination Proceeds, including Damage Awards, and Public Loans received due to Water Supply Contamination, and Cal Water’s General Rate Case (GRC), A.09-07-001.

- c. How much of those proceeds should be expended in treatment and replacement plant, utility plant generally, operation and maintenance, and/or general administration?
- d. What issues, if any, regarding income tax treatment of proceeds should be considered in this proceeding?

Phase 2 of this proceeding will resolve additional issues relating to MTBE proceeds, including but not limited to, how to define “net” proceeds and how to allocate such proceeds between ratepayers and shareholders.

**1.7** On October 30, 2009, the Parties served joint comments reflecting their agreement with respect to the disposition of all Phase 1 issues. By a ruling issued December 30, 2009, ALJ Weatherford requested that the Parties translate and expand their joint comments into a Phase 1 settlement agreement, to be submitted together with a motion for its adoption by the California Public Utilities Commission (“Commission”). ALJ Weatherford’s ruling gave specific direction as to the showing that the Parties needed to provide in their settlement agreement.

**1.8** As a result of the events described above, the Parties have reached agreement on a set of terms to resolve the Phase 1 issues.

NOW, THEREFORE, in consideration of the foregoing, which is hereby incorporated into this Settlement by reference and made a part of the mutual

agreements, covenants and conditions set forth below, the adequacy of which are hereby acknowledged, Cal Water and DRA hereby agree as follows:

### **TERMS AND CONDITIONS**

#### **2.1 Memorandum Account Treatment.**

**2.1.1** Cal Water should be allowed to modify its Preliminary Statement, Paragraph F, "MTBE Litigation Memorandum Account," by a Tier 1 advice letter filing, to: (a) incorporate the timing and intended use of the proceeds in this proceeding to construct treatment and replacement facilities; and (b) allow for memorandum account treatment of such proceeds to continue until the Commission determines the final accounting of such proceeds in Phase 2 of this proceeding. A proposed amended version of Preliminary Statement Paragraph F is attached hereto and incorporated by this reference as Appendix A (the "Amended Preliminary Statement").

**2.1.2** Rate treatment of MTBE treatment and replacement plant in A.09-07-001 should be consistent with the proposed MTBE Litigation Memorandum Account language set forth in Appendix A, the Amended Preliminary Statement.

**2.1.3** The proposed revisions to the Preliminary Statement are consistent with previously approved memorandum accounts intended to record both costs

and receipts for subsequent review and potential reflection in rates. Adoption of the Amended Preliminary Statement and rate treatment of MTBE treatment and replacement plant in A.09-07-001 consistent with its terms are reasonable and in the public interest because such treatment will enable Cal Water to track both its costs incurred and the proceeds received and applied towards investments in replacement and treatment property until such time as the Commission determines the appropriate final allocation of such proceeds in A.09-07-011 or a separate proceeding.

## **2.2 Amount of Proceeds Available for Investment or Other Purposes.**

**2.2.1** After deduction of attorney's fees and costs associated with the MTBE litigation, Cal Water has received Part 1 settlement proceeds in the amount of \$34,254,417.07. This amount of proceeds is subject to adjustment based on any or all of the following: (a) outside professional costs to prepare and pursue an IRS private letter ruling; (b) income taxes due on proceeds, if any; (c) interest accrued to the balance in the MTBE Litigation Memorandum Account; (d) additional funds received from non-settling defendants, including potential litigation judgments or future settlements; (e) additional funds received from settling defendants pursuant to Part 2 of the settlement (relating to future contamination by MTBE at wells with no prior detection of MTBE); (f) amounts refunded to the State of California to reimburse grant funding; and

(g) Cal Water's outside professional costs to prepare and pursue the present application for allocation of MTBE litigation proceeds. The net amount of such funds after such deductions is referred to hereinafter as the "Available Funds."

**2.2.2** The amounts of the above-referenced adjustments that are known as of this date, while subject to change, are currently as follows:

- a. Outside professional costs re IRS private letter ruling: \$132,699.00.
- b. Income taxes due on proceeds: None to date.
- c. Interest accrued to MTBE Litigation Memorandum Account: \$160,265.34. (Note: This audited accrued interest may be overstated as potentially significant expenses in O&M and A&G have not been considered thus far.)
- d. Funds received from non-settling defendants: None to date.
- e. Funds received from settling defendants pursuant to Part 2 of the settlement: None to date.
- f. Grant amounts refunded to the State of California: \$463,879.95.
- g. Outside professional costs re the present application: \$23,930.10.

**2.2.3** DRA has audited Cal Water's records relating to the gross Part 1 settlement proceeds totaling \$49,788,734.99, and has confirmed Cal Water's calculations that attorney's fees of \$14,930,916.87 and related litigation costs of \$603,401.05 reduced such gross proceeds to the net Part 1 settlement proceeds

amount of \$34,254,417.07 to which the parties agreed in their joint comments filed October 30, 2009. See, Appendix B.

**2.3 Amount of Proceeds to be Expended In Treatment and Replacement Plant, Utility Plant Generally, Operation and Maintenance and/or General Administration.**

**2.3.1** All Available Funds should be used for the construction or purchase of MTBE treatment and replacement facilities.

**2.3.2** The Parties agree that use of all Available Funds for construction or purchase of MTBE treatment and replacement facilities is reasonable and in the public interest. Use of settlement proceeds for such capital investment: (a) will increase the reliability of the water supply; and (b) may not be subject to taxation, thereby increasing the net proceeds available for investment in utility plant and maximizing benefit to ratepayers.

**2.4 Income Tax Treatment.**

**2.4.1** The Parties acknowledge and agree that a determination of taxability may change the amount of Available Funds. However, as all Available Funds will be used to construct or purchase MTBE treatment and replacement facilities, a determination of taxability should not affect Commission consideration of Cal Water's Application.

**MISCELLANEOUS PROVISIONS**

**3.1** The signatories to this Settlement personally and independently verify that all elements, including the proposed Preliminary Statement attached hereto as Appendix A, are correct, complete, and internally consistent, to the best of their knowledge and belief.

**3.2** Entering into this Settlement or approval of this Settlement by the Commission shall not be construed as an admission or concession by any Party regarding any fact or matter of law in dispute in this proceeding. Neither Party shall be prejudiced in Phase 2 of this proceeding by any position taken by such Party in this Settlement.

**3.3** The Parties acknowledge and agree that, notwithstanding adoption by the Commission of this Settlement, the Proposed Preliminary Statement attached hereto as Appendix A, may be modified as a result of action taken by the Commission in Phase 2 of these proceedings.

**3.4** The Commission shall have jurisdiction over this Settlement. The Parties agree that no legal action may be brought by Cal Water or DRA in any state or federal court, or any other forum, against any individual signatory representing the interests of any of the Parties, or any attorneys representing any of the Parties involving any matter related to this Settlement.

**3.5** The Parties acknowledge that the positions expressed in this Settlement were reached after consideration of all positions advanced in prior testimony and

pleadings as well as during settlement negotiations. This Settlement embodies compromises of the Parties' positions.

**3.6** This Settlement sets forth the entire understanding and agreement between the Parties, and may not be modified or terminated except through written assent by both Parties.

**3.7** Each individual executing this Settlement on behalf of an entity hereby warrants that he or she is authorized to execute this Settlement on behalf of said entity. The Parties agree that no signatory to this Settlement, nor any officer, employee, or member of Cal Water or DRA, assumes any personal liability as a result of this Settlement.

**3.8** The Parties agree to support the Settlement and use their best efforts to secure Commission approval of the Settlement in its entirety and without modification.

**3.9** The Parties agree that if the Commission adopts a Decision with respect to the Settlement that fails to approve the Settlement in its entirety, the Parties shall convene a settlement conference within 15 days of such adoption to discuss whether they can resolve issues raised by the Commission's actions. If the Parties cannot mutually agree to resolve the issues raised by the Commission's actions, the Settlement shall be rescinded and the Parties shall be released from their obligation to support the Settlement. Thereafter, the Parties may pursue

any action they deem appropriate, but agree to cooperate to establish a procedural schedule.

**3.10** This Settlement shall be governed by the laws of the State of California as to all matters, including, but not limited to matters of validity, construction, effect, performance and remedies.

**CONCLUSION**

The Parties mutually believe that based on the terms and conditions stated above, this Settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

Dated: March 8, 2010

Approved as to Form:

**DIVISION OF RATEPAYER  
ADVOCATES**

By \_\_\_\_\_  
Selina Shek  
Attorney for the Division  
of Ratepayer Advocates

By \_\_\_\_\_  
Dana Appling  
Director

*Approved as to Form:*

**CALIFORNIA WATER SERVICE  
COMPANY**

By \_\_\_\_\_  
Martin A. Mattes

By \_\_\_\_\_  
Thomas F. Smegal

Attorneys for California Water  
Service Company

Vice President

**APPENDIX A**

## APPENDIX A

### Preliminary Statement (continued)

#### F. MTBE LITIGATION MEMORANDUM ACCOUNT (MTBEMA):

1. **PURPOSE:** The purpose of the MTBEMA is to track the costs incurred and proceeds received and applied with respect to litigation against manufacturers, refineries, and service station operators referred to as potentially responsible parties (PRPs), that produced and/or distributed products, which contained methyl tertiary butyl ether (MTBE). Cal Water will incur external costs to support its litigation effort. The MTBEMA will track actual costs. The MTBEMA will also track litigation awards and settlement proceeds. Finally, the MTBEMA will track application of funds received toward investments in replacement and treatment property and expenses (internal and external) to operate, manage, and maintain that property. The Commission will determine the disposition of the MTBEMA in connection with Cal Water's general rate cases or a separate proceeding.
2. **APPLICABILITY:** The MTBEMA applies in all Cal Water districts which pump groundwater potentially contaminated with MTBE. MTBEMA shall apply to the Bakersfield, Chico, Dixon, East Los Angeles, Hermosa-Redondo, Kern River Valley, King City, Livermore, Los Altos-Suburban, Marysville, Oroville, Salinas, South San Francisco, Stockton, Visalia, Willows, and Dominguez.
3. **MTBEMA RATES:** The MTBEMA does not currently have a rate component.
4. **ACCOUNTING PROCEDURE:** Cal Water shall maintain the MTBEMA until further order of the Commission authorizes it to be closed or modified. Entries will be made into the MTBEMA at the end of each month. The purpose of the entries described herein is to preserve the full range of regulatory options for the Commission and to coordinate this memorandum account with adopted revenue requirements. Entries shall be tracked separately as follows:
  - Investment entries
  - a. A credit or debit entry equal to the amounts recorded in Cal Water's Operations and Maintenance, and Administrative and General Expense Accounts for external costs incurred to support the MTBE litigation and for all costs (internal and external) incurred to operate, manage, and maintain facilities constructed with the MTBE proceeds.
  - b. A debit or credit entry equal to the amounts obtained in judgments or settlements in the subject litigation.
  - c. A debit or credit entry equal to the original cost of capital investments placed in service to replace MTBE contaminated property or to treat water for MTBE contamination, including such projects that have been completed prior to the adoption of this memorandum account. Cal Water shall record the capital investment by project and by district.

**APPENDIX A**

Revenue Requirement Entries (Note: These entries are not necessarily cumulative and are recorded in order to preserve the range of potential regulatory outcomes the Commission may elect.)

- d. A debit or credit entry equal to the revenue requirement of each capital investment recorded in (c.) as if it were shareholder-funded (including return on investment, income taxes, ad valorem tax, depreciation, other taxes and fees). Cal Water shall record the revenue requirement by project and by district.
- e. A debit or credit entry equal to the revenue requirement of each capital investment recorded in (c.) as if it were contributed (including only ad valorem tax, other taxes and fees). Cal Water shall record the revenue requirement by project and by district.

Preliminary Statement  
(continued)

F. MTBE LITIGATION MEMORANDUM ACCOUNT (MTBEMA) (continued):

- f. A debit or credit entry equal to the amount of revenue requirement for MTBE-related plant replacement or water treatment included in Cal Water's adopted revenue requirement. Cal Water shall record the revenue requirement by project and by district.

Interest

- g. A monthly debit or credit entry equal to the average balance in each segment of the account (as described in paragraphs a through f) multiplied by 1/12<sup>th</sup> of the most recent month's interest rate on Commercial Paper (prime, 90-day), published in Federal Reserve Statistical Release H-15.

**(END OF APPENDIX A)**

**APPENDIX A**



## APPENDIX B

### CALIFORNIA WATER SERVICES COMPANY AUDIT REPORT ON MTBEMA ENTRIES MTBEMA EFFECTIVE DATE: AUGUST 15, 2005

The Division of Ratepayer Advocates (“DRA”) conducted this audit to determine whether California Water Service Company (“Cal-Water”) has properly accounted for the net litigation settlement proceeds<sup>1</sup> and related Administrative and General (“A&G”) and Operation and Maintenance (“O&M”) expenses in its Methyl Tertiary-Butyl Ether Memorandum Account (“MTBEMA”). This report addresses the issues Administrative Law Judge Weatherford raised regarding MTBE proceeds in his ruling, dated December 30, 2009.

*(I) Whether the litigation proceeds and other costs recovery proceeds, if any, have been properly accounted for in the MTBEMA.*

One of the required accounting procedures of the MTBEMA is that Cal-Water is to record at the end of each month all recovery of costs.<sup>2</sup> DRA’s review of the documentation submitted by Cal-Water on January 21, 2010 indicated that the only cost recovery proceed which had been recorded in the MTBEMA was the MTBE litigation proceed (proceed) of \$34,216,907.17.<sup>3</sup> In **Table 1** DRA provides the detail of the entries into the accounting for the proceed in the MTBEMA.

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<sup>1</sup> Cal-Water’s MTBE settlement was part of an aggregate partial settlement of a federal multidistrict litigation. Under the terms, the total settlement was allocated among all the plaintiffs, which Cal-Water was a part of.

<sup>2</sup> Memorandum account at (F)(4)(b), effective August 15, 2005, in reference to the Advice Letter No.1707.

<sup>3</sup> The allocated portion applicable to Cal-Water was \$49,716,872 before related apportioned attorneys fees and other litigation expenses. Net of the allocated attorney fees of \$14,915,061.60 and other litigation expenses of \$584,903.23, Cal-Water, on October 22, 2008, received a net proceed of \$34,216,907.17.

DRA confirms the proceed with Cal-Water’s wire transfer record, the declaration of John S. Tootle (of Cal-Water) made before the Internal Revenue Service, and the actual “Settlement Statement” accompanied with a letter, dated October 22, 2008, from Baron & Budd, P.C., attorneys and counselors representing the plaintiffs in the collective MTBE action.

APPENDIX B

**CALIFORNIA WATER SERVICES COMPANY  
AUDIT REPORT ON MTBEMA ENTRIES  
MTBEMA EFFECTIVE DATE: AUGUST 15, 2005**

Moreover, based on DRA's further inquiries and subsequent reviews of Cal-Water's responses on February 4<sup>th</sup>, 2010, the records show that Cal-Water received a series of grant money provided under the State's Drinking Water Treatment and Research Fund in the sum of \$463,879.95 that are directly associated with the MTBE issue from the State of California, Department of Public Health ("DPH"). On December 22, 2009, Cal-Water fully reimbursed the amount received from DPH and has recorded the repayment as a reduction to the balance in the MTBEMA in January 2010. **Table 2** shows the entry into the MTBEMA and the remaining balance at that time. Although DRA agrees with Cal-Water's accounting treatment of the grant repayment, DRA asserts that the entry should have been made in the month Cal-Water received the settlement proceeds or on the "upon recovery" basis to comply with the applicable provisions of the Health and Safety ("H&S") Code, Section 116367.<sup>4</sup> Please refer to **Table 3** for DRA's recommended adjustment to reflect when entry should have been recorded for the repayment.

On February, 11, 2010, Cal-Water provided DRA with information regarding additional gross MTBE proceeds in the amount of \$52,850.91, from which were deducted subsequent attorney's fees of \$15,855.27 and other legal expenses of \$18,497.82, leaving additional net MTBE proceeds in the amount of \$18,497.82. The information Cal-Water provided at that time also indicated that \$19,012.08 in interest had been earned on the MTBE balance while deposited in escrow. The sum of \$19,012.08 in interest and \$18,497.82 in additional net MTBE proceeds is \$37,509.90. Adding this amount to the initial net proceed of net MTBE proceeds of \$34,216,907.17 indicates net proceeds and interest recorded in the MTBEMA thus far in the amount \$34,254,417.07. Refer to Table 3 for detailed MTBEMA balance.<sup>5</sup>

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<sup>4</sup> According to H&S Code, Section 116367, "... The public water system shall aggressively pursue cost recovery from responsible persons and, **upon recovery** ... shall reimburse the department for funds received pursuant to this section..." [H&S Code, Section 116367(f)(1)].

<sup>5</sup> The following summary provides a more comprehensive picture of all the proceeds:

*Footnote continued on next page*

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**CALIFORNIA WATER SERVICES COMPANY  
AUDIT REPORT ON MTBEMA ENTRIES  
MTBEMA EFFECTIVE DATE: AUGUST 15, 2005**

In summary, (1) Cal-Water on October 22, 2008 received total allocated net MTBE settlement proceeds of \$34,216,907.17, (2) as of March 2009 recorded \$19,012.08 of accrued interest, (3) as of June 2009 recorded an additional \$18,497.82 of net proceeds, and (4) has repaid all the funds it received from DPH in the amount of \$463,874.95. Regarding the repayment to DPH, DRA recommends that October 2008 should have been the month Cal-Water made the accounting entry in the MTBEMA.

***(II) Whether MTBE related Administrative and General ("A&G") and Operation and Maintenance ("O&M") expenses have been correctly accounted for in the MTBEMA.***

According to one of the MTBEMA requirements<sup>6</sup>, Cal-Water is to record, at the end of each month, all incurred O&M and A&G expenses associated with MTBE litigation activities in the MTBEMA. However, thus far no entries pertaining to such expenses have been recorded besides the three entries<sup>7</sup> noted in **Table 1**.

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1) A. Part 1 Gross settlement proceed (initial)	\$49,716,872.00
B. Additional Gross proceeds (subsequent)	52,850.91
C. Accrued interest earned on the proceed (subsequent)	<u>19,012.08</u>
D. Total Gross proceeds	\$49,788,734.99
2) A. Attorney's fees (initial)	\$14,915,061.60
B. Attorney's fees (subsequent)	<u>15,855.27</u>
C. Total attorney's fees	\$14,930,916.87
3) A. Other legal expenses (initial)	\$584,903.23
B. Other legal expenses (subsequent)	<u>18,497.82</u>
C. Total other legal expenses	\$603,401.05
4) Total attorney fees and other legal expenses	<u>\$15,534,317.92</u>
5) Total NET proceeds = (1D - 4)	\$34,254,417.07

<sup>6</sup> Memorandum account at (F)(4)(a), effective August 15, 2005, in reference to the Advice Letter No.1707.

<sup>7</sup> The three accounting entries are related to the external professional services retention regarding Cal-Water's request for a private letter ruling from the Internal Revenue

*Footnote continued on next page*

## APPENDIX B

### **CALIFORNIA WATER SERVICES COMPANY AUDIT REPORT ON MTBEMA ENTRIES MTBEMA EFFECTIVE DATE: AUGUST 15, 2005**

The lack of proper accounting entries for these categories of expenses would lead to a higher MTBEMA balance. Most likely, Cal-Water has incurred costs associated with internal A&G<sup>8</sup> and O&M<sup>9</sup> expenses due to MTBE activities since August 15, 2006, and these expenses have already been reflected in Cal-Water's service rates for the affected water systems. Because Cal-Water did not track internal O&M and A&G expenses in the MTBEMA, DRA has requested that Cal-Water provide this information to determine the impact on the MTBEMA balance. At this time, Cal-Water is in the process of gathering the cost data, and DRA believes that these costs will likely not be material. Once Cal-Water provides these costs, these expenses must be applied as a deduction against the proceeds in the MTBEMA. Otherwise, ratepayers will have assumed the burden of paying higher rates caused by the MTBE contamination and will have received no relief from successful MTBE litigation.<sup>10</sup>

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Service ("IRS"). The purpose of the request is to have the MTBE litigation proceeds be exempted from taxation based on an asset "involuntary conversion" provisions afforded under the Internal Revenue Code (IRC), Section 1033.

<sup>8</sup> All directly identifiable and allocable portions of A&G expenses incurred associated with the MTBE action should have been (be) included in the MTBEMA. For instance, Cal-Water's internal legal and administrative expenses (e.g. legal and other administrative departments staff salaries and benefits), working space (e.g. depreciation or rental expenses), utility, telephone, office supplies, and etc...).

<sup>9</sup> Also, all directly identifiable and allocable portions of O&M expenses associated with the MTBE activities should have been (be) recorded in the MTBEMA. For instance, due to the MTBE issue, greater monitoring activities have occurred, such as more sampling and testing which, as a consequence, require more laboratory activities and needs, greater use of transportation/automobiles, personnel, and etc... All these translate into higher costs related to O&M activities in general.

<sup>10</sup> The A&G and O&M expenses being discussed herein are not "capital" in nature, as the term used in the context of Cal-Water's request for the IRS's private letter ruling under IRC, Section 1033.

*Footnote continued on next page*

**APPENDIX B**

**CALIFORNIA WATER SERVICES COMPANY  
AUDIT REPORT ON MTBEMA ENTRIES  
MTBEMA EFFECTIVE DATE: AUGUST 15, 2005**

Furthermore, as a consequence of Cal-Water's omission of not recording the contamination related internal A&G and O&M expenses in the MTBEMA, the amounts of interest accrued thus far have also been overstated.<sup>11</sup>

Therefore, DRA recommends that: (1) all directly identifiable as well as the allocable portions of A&G and O&M expenses associated with the MTBE contamination issue incurred and to be incurred since August 15, 2005 need to be accounted for in the MTBEMA in order to arrive at a correct MTBEMA balance (and therefore a correct accrued interest amount); and (2) all supporting records pertaining to MTBE action-incurred expenses since August 15, 2005 will be subject to future audits.<sup>12</sup> Due to the critical timing that the MTBEMA be revised to allow the Company to track all the reinvestment of the MTBE proceeds, DRA recommends that the Commission move forward with the authorization of the revisions to the MTBEMA. Once the data is made available by Cal-Water for the past internal O&M and A&G costs, Cal-Water can make the entry to the revised

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However distinct the term may be, all parties involved herein ought to be mindful of the intent of the MTBEMA's required detailed accounting, which is to eventually dispose of costs and proceeds associated with the MTBE issue in an equitable manner in the context of a utility rate setting. Thus, a potential justification that by netting these A&G and O&M expenses against the proceeds in the MTBEMA will somehow jeopardize the basis of a tax exempt status of the litigation proceeds afforded under the involuntary conversion is certainly contradictory to the purpose of the MTBEMA.

Moreover, the intent of the MTBEMA is simply to keep detailed accounting memos of what go on comprehensively within the confine of the MTBE activities and within the context of a rate setting mechanism; thus it certainly has no direct relationship in other contexts.

<sup>11</sup> Memorandum account at (F)(4)(c), effective August 15, 2005, in reference to the Advice Letter No.1707

<sup>12</sup> Data Request, FL-001-MTBEMA, dated February 5<sup>th</sup>, 2010. Substantiation requirement applies to all related incurred expenses of A&G, O&M, and capital in nature.

## APPENDIX B

**CALIFORNIA WATER SERVICES COMPANY  
AUDIT REPORT ON MTBEMA ENTRIES  
MTBEMA EFFECTIVE DATE: AUGUST 15, 2005**

MTBEMA account. Any issues on the ratemaking treatment of past O&M and A&G expenses can be addressed in Phase II.

TABLE 1

California Water Service Company MTBE Memorandum Account GL Account 120100 Received from Cal-Water on: January, 21, 2010						
<u>month/year</u>	<u>(a)</u> <u>O&amp;M</u> <u>Costs</u>	<u>(b)</u> <u>Recovery</u> <u>of Costs</u>	<u>(c)</u> <u>Average</u> <u>Balance</u>	<u>(d)</u> <u>Rev Rate</u> <u>Recovery</u>	<u>(e)</u> <u>Transfer</u> <u>Recovery</u>	<u>(f)</u> <u>Interest</u> <u>Rate</u>
Oct-08	\$ -	\$ -	\$ 34,216,907.17	\$ -	\$ -	2.07%
Nov-08	-	-	34,258,252.60	-	-	1.45%
Dec-08	-	-	34,285,944.69	-	-	0.97%
Jan-09	-	-	34,294,801.89	-	-	0.31%
Feb-09	-	-	34,308,519.81	-	-	0.48%
Mar-09	\$ (13,900.00) *	-	34,305,198.27	-	-	0.37%
Apr-09	-	-	34,313,202.82	-	-	0.28%
May-09	\$ (78,751.00) *	-	34,241,028.51	-	-	0.23%
Jun-09	-	-	34,248,447.40	-	-	0.26%
Jul-09	-	-	34,256,438.71	-	-	0.28%
Aug-09	\$ (40,048.00) *	-	34,223,242.00	-	-	0.24%
Sep-09	-	-	34,228,660.68	-	-	0.19%
Oct-09	-	-	34,234,080.21	-	-	0.19%
Nov-09	-	-	34,238,359.47	-	-	0.15%
Dec-09	-	-	34,242,924.59	-	-	0.16%

\* Expenses of external professional services retained associated with the request for the Internal Revenue Service's private letter ruling regarding the taxability of the MTBE proceed

## APPENDIX B

**CALIFORNIA WATER SERVICES COMPANY  
AUDIT REPORT ON MTBEMA ENTRIES  
MTBEMA EFFECTIVE DATE: AUGUST 15, 2005**

TABLE 2

California Water Service Company  
MTBE Memorandum Account  
GL Account 120100

Received from Cal-Water on: February 4, 2010

<u>month/year</u>	<u>(a)</u> <u>O&amp;M</u> <u>Costs</u>	<u>(b)</u> <u>Recovery</u> <u>of Costs</u>	<u>(c)</u> <u>Average</u> <u>Balance</u>	<u>(d)</u> <u>Rev Rate</u> <u>Recovery</u>	<u>(e)</u> <u>Transfer</u> <u>or Recovery</u>	<u>(f)</u> <u>Interest</u> <u>Rate</u>
Oct-08	\$ -	\$ -	\$ 34,216,907.17	\$ -	\$ -	2.07%
Nov-08	\$ -	\$ -	\$ 34,258,252.60	\$ -	\$ -	1.45%
Dec-08	\$ -	\$ -	\$ 34,285,944.69	\$ -	\$ -	0.97%
Jan-09	\$ -	\$ -	\$ 34,294,801.89	\$ -	\$ -	0.31%
Feb-09	\$ -	\$ -	\$ 34,308,519.81	\$ -	\$ -	0.48%
Mar-09	\$ (13,900.00)	\$ -	\$ 34,305,198.27	\$ -	\$ -	0.37%
Apr-09	\$ -	\$ -	\$ 34,313,202.82	\$ -	\$ -	0.28%
May-09	\$ (78,751.00)	\$ -	\$ 34,241,028.51	\$ -	\$ -	0.23%
Jun-09	\$ -	\$ -	\$ 34,248,447.40	\$ -	\$ -	0.26%
Jul-09	\$ -	\$ -	\$ 34,256,438.71	\$ -	\$ -	0.28%
Aug-09	\$ (40,048.00)	\$ -	\$ 34,223,242.00	\$ -	\$ -	0.24%
Sep-09	\$ -	\$ -	\$ 34,228,660.68	\$ -	\$ -	0.19%
Oct-09	\$ -	\$ -	\$ 34,234,080.21	\$ -	\$ -	0.19%
Nov-09	\$ -	\$ -	\$ 34,238,359.47	\$ -	\$ -	0.15%
Dec-09	\$ -	\$ -	\$ 34,242,924.59	\$ -	\$ -	0.16%
<b>Jan-10</b>	<b>\$ (463,879.95) (a)</b>	<b>\$ -</b>	<b>\$ 33,782,754.29</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.13%</b>

(a) Cal-Water recorded the repayment of the grant in January 2010.

APPENDIX B

**CALIFORNIA WATER SERVICES COMPANY  
AUDIT REPORT ON MTBEMA ENTRIES  
MTBEMA EFFECTIVE DATE: AUGUST 15, 2005**

TABLE 3

California Water Service Company MTBE Memorandum Account ("MTBEMA") GL Account 120100 DRA's Recommended Month of The Accounting Entry							
Month/ Year	(a) O&M Costs	(b) Recovery of Costs	(c) Average Balance	(d) Rev Rate Recovery	(e) Transfer for Recovery	(f) Interest Rate	Interest Only
<b>Oct-08</b>	<b>\$ (463,879.95)</b>	<b>(a) \$ 34,216,907.17</b>	<b>\$ 33,753,027.22</b>	<b>\$ -</b>	<b>\$ -</b>		
Nov-08	-	-	33,793,812.13	-	-	1.45%	\$ 40,784.91
Dec-08	-	-	33,821,128.79	-	-	0.97%	27,316.66
Jan-09	-	-	33,829,865.92	-	-	0.31%	8,737.12
Feb-09	-	-	33,843,397.86	-	-	0.48%	13,531.95
Mar-09	(13,900.00)	19,012.08 **	33,858,944.99	-	-	0.37%	10,435.05
Apr-09	-	-	33,866,845.41	-	-	0.28%	7,900.42
May-09	(78,751.00)	-	33,794,585.56	-	-	0.23%	6,491.15
Jun-09	-	18,497.82 **	33,820,405.54	-	-	0.26%	7,322.16
Jul-09	-	-	33,828,296.97	-	-	0.28%	7,891.43
Aug-09	(45,143.40) *	-	33,789,919.23	-	-	0.24%	6,765.66
Sep-09	(7,177.50) **	-	33,788,091.80	-	-	0.19%	5,350.07
Oct-09	(8,719.60) **	-	33,784,721.98	-	-	0.19%	5,349.78
Nov-09	-	-	33,788,945.07	-	-	0.15%	4,223.09
Dec-09	(2,387.60) **	-	33,791,062.66	-	-	0.16%	4,505.19
Jan-10	(550.00) **	-	<u>\$ 33,794,173.36</u>	-	-	0.13%	<u>3,660.70</u>
	<u>\$ (620,509.05)</u>	<u>\$ 34,254,417.07</u>					<u>\$ 160,265.34</u> ***

(a) DRA's recommended month of accounting entry for the grant repayment

\* Part of this data and all of the data at \*\* are provided by Cal-Water on 2/11/2010

\*\*\* The accrued interest are overstated due to the overstatement of the MTBEMA balance. The overstatement of the balance is the result of not having accounted for the presumably significant amount of the internally incurred direct and indirect A&G and O&M.

(END OF APPENDIX B)

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated March 22, 2010, at San Francisco, California.

/s/ ANTONINA V. SWANSEN  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

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\*\*\*\*\* SERVICE LIST \*\*\*\*\*

**Last Updated on 22-MAR-2010 by: JVG  
A0907011 LIST**

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