

APPENDIX A

Appendix A

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of California Water Service Company (U60W) for Authority to Establish its Authorized Cost of Capital for the period from January 1, 2012 through December 31, 2014.	Application 11-05-001 (Filed May 2, 2011)
In the Matter of the Application of San Jose Water Company (U168W) for Authority to Adjust Its Cost of Capital and to Reflect That Cost of Capital in Its Rates for the Period from January 1, 2012 through December 31, 2014.	Application 11-05-002 (Filed May 2, 2011)
Application of California-American Water Company (U210W) for an Authorized Cost of Capital for Utility Operations for 2012 - 2014.	Application 11-05-003 (Filed May 2, 2011)
Application of Golden State Water Company (U133W) for Authority to Establish Its Authorized Cost of Capital and Rate of Return for Utility Operations for 2012 - 2014.	Application 11-05-004 (Filed May 2, 2011)

SETTLEMENT AGREEMENT

1.0 Introduction

This Settlement Agreement (“Agreement”) is made and entered into by and among California Water Service Company (“Cal Water”), San Jose Water Company (“San Jose”), California-American Water Company (“California American Water”), Golden State Water Company (“Golden State”), and the Division of Ratepayer Advocates (“DRA”) of the California Public Utilities Commission (“Commission”). Cal Water, San Jose, California American Water, Golden State and DRA are referred to jointly herein as the “Parties” or sometimes each individually as a “Party.”

2.0 **Recitals**

- 2.1 Decisions 07-05-062 and 10-10-035 directed each of Cal Water, San Jose, California American Water, and Golden State to submit by May 1, 2011, an application for an authorized cost of capital for its utility operations for the period from January 1, 2012, to December 31, 2014. Cal Water, San Jose, California American Water, and Golden State each submitted a separate application (collectively, “Applications”), supported by direct testimony. Golden State amended its application on July 27, 2011. The Applications were consolidated by ruling of Chief Administrative Law Judge Karen V. Clopton on May 20, 2011.
- 2.2 On August 31, 2011, DRA served testimony in response to the Applications. DRA’s testimony contested many of the positions taken by Cal Water, San Jose, California American Water, and Golden State in the Applications. Cal Water, San Jose, California American Water, and Golden State each served rebuttal testimony on September 21, 2011.
- 2.3 The Parties began settlement discussions in October 2011. On October 17, 2011, the Parties reached an agreement in principle concerning all issues related to the Applications. Pursuant to Rule 12.1(b) of the Commission’s Rules of Practice and Procedure, the Parties held a noticed settlement conference regarding the proposed settlement on October 26, 2011.
- 2.4 After conducting discovery, negotiating in person, and analyzing their respective interests, the Parties have determined that this Agreement is in their best interests, in the public interest, and more cost-effective than undertaking the expense, delay, and uncertainty of further litigation.

2.5 The Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo, issued September 13, 2011, identified the scope of this proceeding as being to determine a uniform cost of equity and individual costs of capital for Cal Water, San Jose, California American Water, and Golden State, to consider the risk consequences of a Water Rate Adjustment Mechanism and the Modified Cost Balancing Account on the operations of each of the applicants, and to address the costs of capital for these companies for interim years between proceedings. This Agreement resolves these issues solely for purposes of this proceeding and is not intended to have precedential effect.

NOW, THEREFORE, in consideration of the promises hereinafter set forth, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows.

3.0 Terms

3.1 Cal Water

Cal Water and DRA agree upon a rate of return on rate base of 8.24% for the period from January 1, 2012, through December 31, 2014, for Cal Water's operations. Cal Water and DRA further agree that Cal Water's rate-making capital structure shall consist of 46.60% long-term debt and 53.40% common equity and that Cal Water's return on equity shall be 9.99% and its weighted average cost of long-term debt shall be 6.24% for the period from January 1, 2012, through December 31, 2014. In addition, Cal Water and DRA agree that, effective with a final decision in A.11-05-001 et al., the Temporary Interest Rate Balancing Account, which was adopted by the Commission in D.09-05-019 ("TIRBA"), shall be discontinued and closed, with disposition of the remaining balance in the account of \$1,141,919 via a customer surcredit amortized over a twelve month period. Within

thirty days of the effective date of a decision in this proceeding approving this Agreement without modification or condition, Cal Water will file a Tier 1 Advice Letter implementing the customer surcredits. San Jose, California American Water, and Golden State take no position on the terms included in this Section 3.1.

3.2 **San Jose**

San Jose and DRA agree upon a rate of return on rate base of 8.38% for the period from January 1, 2012, through December 31, 2014, for San Jose's operations. San Jose and DRA further agree that San Jose's rate-making capital structure shall consist of 48.65% long-term debt and 51.35% common equity and that San Jose's return on equity shall be 9.99% and its weighted average cost of long-term debt shall be 6.68% for the period from January 1, 2012, through December 31, 2014. Cal Water, California American Water, and Golden State take no position on the terms included in this Section 3.2.

3.3 **California American Water**

California American Water and DRA agree upon a rate of return on rate base of 8.41% for the period from January 1, 2012, through December 31, 2014, for California American Water's operations. California American Water and DRA further agree that California American Water's rate-making capital structure shall consist of 47.00% long-term debt and 53.00% common equity and that California American Water's return on equity shall be 9.99% and its weighted average cost of long-term debt shall be 6.63% for the period from January 1, 2012, through December 31, 2014. In addition, California American Water and DRA agree that, effective with a final decision in A.11-05-001 et al., the TIRBA shall be discontinued and closed with immediate disposition of a customer charge of \$2,081,865. It is agreed that the recovery of the charge shall be over a twelve

month period based on the number of 5/8" meter equivalents, flat-rate and wastewater services will be considered a 5/8" customer. The current estimated charge would be \$0.66 per 5/8" meter equivalent. California American Water shall file a tier 1 advice letter within 5 days of the issuance of the decision to seek recovery of the charge. Cal Water, San Jose, and Golden State take no position on the terms included in this Section 3.3.

3.4 **Golden State**

Golden State and DRA agree upon a rate of return on rate base of 8.64% for the period from January 1, 2012, through December 31, 2014, for Golden State's operations. Golden State and DRA further agree that Golden State's rate-making capital structure shall consist of 45.00% long-term debt and 55.00% common equity and that Golden State's return on equity shall be 9.99% and its weighted average cost of long-term debt shall be 6.99% for the period from January 1, 2012, through December 31, 2014. In addition, Golden State and DRA agree that, effective with a final decision in A.11-05-001 et al., the TIRBA shall be discontinued and closed with immediate disposition of a customer credit of \$407,797.00. Within thirty (30) days of the effective date of a decision in this proceeding approving this Agreement without modification or condition, Golden State will file a Tier 1 Advice Letter implementing a one-time surcredit in accordance with applicable provisions of Decision 03-06-072. Cal Water, San Jose, and California American Water take no position on the terms included in this Section 3.4.

3.5 **Water Cost of Capital Mechanism**

The Parties agree that the Water Cost of Capital Mechanism adopted in D.09-07-051, which includes a 100 basis point dead band, plus and minus, before an adjustment occurs,

fairly balances intervenor and shareholder interests and provides a reasonable adjustment to the return on equity, and should also be adopted in this proceeding for any adjustment to the base year 2012 ratemaking return on common equity for the subsequent years 2013 and 2014 for Cal Water, San Jose, California American Water, and Golden State. The new benchmark period should be October 1, 2010 through September 30, 2011.

4.0 Miscellaneous

4.1 Regulatory Approval

The Parties shall use their best efforts to obtain Commission approval of this Agreement, without condition or modification, as expeditiously as possible and in any event no later than ninety (90) days following their execution of this Agreement.

4.2 Confidentiality

The Parties agree to maintain the confidentiality of all settlement negotiations and communications made during the course of settlement discussions in this matter, and agree that such communications remain subject to Rule 12 of the Commission's Rules of Practice and Procedure.

4.3 Compromise of Disputed Claims

This Agreement represents a compromise of disputed claims between the Parties. The Parties have reached this Agreement after taking into account the possibility that each Party may or may not prevail on any given issue. The Parties assert that this Agreement is reasonable, consistent with law and in the public interest.

4.4 No Precedent

Consistent with Rule 12.5 of the Commission's Rules of Practice and Procedure, this Agreement is not precedential in any other proceeding before this Commission.

4.5 **Entire Agreement**

The Agreement contains the entire agreement and understanding between the Parties as to the subject matter of this Agreement, and supersedes all prior agreements, commitments, representations, and discussions between the Parties. In the event there is any conflict between the terms and scope of the Agreement and the terms and scope of any prior agreement between the Parties, whether written or oral, this Agreement shall govern.

4.6 **Non- Severability**

This Agreement is not severable. The Parties agree that, if the Commission fails to adopt this Agreement in its entirety and without condition or modification, the Parties shall convene a settlement conference within fifteen (15) days thereof 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 within thirty (30) days of their settlement conference, this Agreement shall be rescinded and deemed as if it were never entered into, and the Parties shall be released from any and all obligations set forth in this Agreement.

4.7 **Non Waiver**

None of the provisions of this Agreement shall be considered waived by any Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of their rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

4.8 **Advice of Counsel**

In executing this Agreement, the Parties hereby acknowledge that they have consulted with and received the advice of counsel who are attorneys duly admitted to practice law in the State of California, and that they have freely executed this Agreement after independent investigation and without fraud, duress, or undue influence.

4.9 **Successors**

This Agreement and all the covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, including their parent companies, subsidiary companies, affiliated companies, servicing companies, partners, joint ventures, shareholders, directors, officers, employees, representatives, agents, attorneys, predecessors, and successors.

4.10 **Effect of Subject Headings**

Subject headings in this Agreement are inserted for convenience only, and shall not be construed as interpretations of the text.

4.11 **Governing Law**

This Agreement shall be interpreted, governed and construed under the laws of the State of California, including Commission decisions, orders and rulings, as if executed and to be performed wholly within the State of California.

4.12 **Authority of Signatories**

Each person executing this Agreement on behalf of a corporate or other entity hereby represents and warrants that he or she is duly authorized to do so and that his or her signature to this Agreement binds his or her principal to its terms.

4.13 **Further Assurances**

Each Party hereto agrees without further consideration to execute and deliver such other

documents and take such other actions as may be necessary to achieve the purposes of this Agreement.

4.14 **Jointly Drafted**

This Agreement has been jointly negotiated and drafted by all Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly enforced for against any Party.

4.15 **Counterparts and Facsimiles**

This Agreement may be executed in counterparts, and all such counterparts, together, shall constitute one and the same Agreement. Furthermore, this Agreement may be executed by facsimile transmission. Upon receipt, each facsimile shall be deemed to contain an original signature.

4.16 **Effective Date**

This Agreement shall become binding and effective as of the date it is fully executed by all of the Parties.

[Signature Page Follows]

IN WITNESS THEREOF, each Party has executed this Agreement as of the date set forth above their signatures below.

Dated: November 2, 2011

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Joseph P. Como,

Acting Director
Division of Ratepayer Advocates
505 Van Ness Ave
San Francisco, CA 94102
(415) 703-2771

Dated: November 2, 2011

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Palle Jensen,

Vice President of Regulatory Affairs
San Jose Water Company
110 West Taylor Street
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Dated: November 2, 2011

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Keith Switzer,

Vice President, Regulatory Affairs
Golden State Water Company
630 East Foothill Boulevard
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Dated: November 2, 2011

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Thomas F. Smegal,

Vice-President, Regulatory Matters
and Corporate Relations
California Water Service Company
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(408) 367-8566

Dated: November 2, 2011

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Sarah E. Leeper,

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(END OF APPENDIX A)