

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA



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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)

**MOTION TO ADOPT SETTLEMENT AGREEMENT
(SETTLEMENT AGREEMENT ATTACHED)**

SELINA SHEK
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2423
sel@cpuc.ca.gov
Attorney for the
DIVISION OF RATEPAYERS ADVOCATES

NATALIE D. WALES
1720 North First Street
San Jose, California 95112
(408) 367-8566
nwales@calwater.com
Attorney for
CALIFORNIA WATER SERVICE COMPANY

MARTIN A. MATTES
NOSSAMAN LLP
50 California Street, 34th Floor
San Francisco, CA 94111
(415) 398-3600
mmattes@nossaman.com
Attorneys for
SAN JOSE WATER COMPANY

SARAH E. LEEPER
OLIVIA PARA
333 Hayes Street, Suite 202
San Francisco, CA 94102
(415) 863-2960
sarah.leeper@amwater.com
Attorneys for
CALIFORNIA-AMERICAN WATER COMPANY

JOSEPH M. KARP
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111
(415) 591-1000
Attorneys for
GOLDEN STATE WATER COMPANY

Dated: November 2, 2011

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I. INTRODUCTION

Pursuant to Rule 12.1 of the Commission’s Rules of Practice and Procedure (“Rules”), the Division of Ratepayer Advocates (“DRA”), California Water Service Company (“Cal Water” or “CWS”), San Jose Water Company (“San Jose” or “SJW”), California-American Water Company (“California American Water” or “CAW”), and Golden State Water Company (“Golden State” or “GSW”) (together, “Parties”) submit this motion for approval of the proposed Settlement Agreement (attached) resolving all issues in this proceeding.

The Parties to the Settlement have worked closely to reach mutually agreeable positions on the issues in dispute. As required by Rule 12.1(b), an all-party settlement conference was noticed on October 18, 2011, and convened on October 26, 2011.

For the reasons discussed below, the Parties believe that the Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest. The Agreement is the result of a collaborative effort, and carefully balances the unique interests and needs of each Party, as well as the overall goal of furthering good public policy. The Parties strongly urge the Commission to grant this Motion and adopt the Agreement in its entirety, without modification. The Parties also request that the time periods for comment on the filed Agreement be shortened to 10 days for comments, and 5 days for reply comments. Finally, the Parties request that all exhibits marked for identification be moved into evidence.

II. SUMMARY OF THE SETTLEMENT AGREEMENT

As provided in the attached Agreement, the Parties agree to the following returns on equity (“ROEs”), debt costs, and adopted capital structures for Cal Water, San Jose, California American Water, and Golden State (“Applicants”):

Class A Water Utility	SETTLEMENT ROE	SETTLEMENT DEBT COST	DEBT	EQUITY	SETTLEMENT ROR
CWS	9.99%	6.24%	46.60%	53.40%	8.24%
CAW	9.99%	6.63%	47.00%	53.00%	8.41%
GSWC	9.99%	6.99%	45.00%	55.00%	8.64%
SJW	9.99%	6.68%	48.65%	51.35%	8.38%

The Parties agree to discontinue the Temporary Interest Rate Balancing Accounts (“TIRBAs”) that were authorized for Cal Water, California American Water, and Golden State in D.09-05-019, with the following dispositions of the balances in the accounts:

- Cal Water’s TIRBA balance of \$1,141,919 will be amortized over twelve months via a customer surcredit. Within 30 days of the effective date of a Commission decision adopting the Agreement, Cal Water will file a Tier 1 advice letter to implement the surcredits.
- California American Water’s TIRBA balance of negative \$2,081,865 will be recovered over twelve months based on the number of number of 5/8” meter

equivalents (with flat-rate and wastewater services considered as 5/8" customers). 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 issuance of the decision.

- Golden State's TIRBA balance of \$407,797 will be returned to customers in the form of a one-time surcredit in accordance with Decision 03-06-072. Within 30 days of the effective date of a Commission decision adopting the Agreement, Golden State will file a Tier 1 advice letter to implement the surcredits.

The Parties agree to continue the Water Cost of Capital Mechanism ("WCCM")¹ for each company for any adjustment to the base year 2012 return on equity for years 2013 and 2014.

III. BACKGROUND

Decisions 07-05-062 and 10-10-035 directed 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 water 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. On August 31, 2011, DRA served testimony in response to the Applications. DRA's testimony contested many of the positions taken by each Applicant. Cal Water, San Jose, California American Water, and Golden State each served rebuttal testimony on September 21, 2011.²

A discussion of the key issues presented by the Applications and testimony of each Applicant and by the testimony of DRA is provided below in Sections V to X, with issues relating to each Applicant separately addressed.

¹ Adopted for Cal Water, California American Water, and Golden State in D.09-07-051; adopted for San Jose in D.10-10-035 at 62.

² See Sections V to X for references to relevant Applications, direct testimony, rebuttal testimony, and reports.

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. After conducting discovery, negotiating in person, and analyzing their respective interests, the Parties have determined that the attached Agreement is in their best interests, in the public interest, and more cost-effective than undertaking the expense, delay, and uncertainty of further litigation.

IV. THE AGREEMENT MEETS THE CRITERIA UNDER RULE 12.1(d)

The Agreement being submitted with this Motion addresses all contested issues in this proceeding. Rule 12.1(d) requires that a settlement be "reasonable in light of the whole record, consistent with law, and in the public interest." Taken as a whole, this Motion and the Agreement satisfy these standards for approving settlements for the reasons discussed below.

A. The Agreement Is Reasonable in Light of the Whole Record

The Agreement is reasonable in light of the whole record. As discussed in Sections V to X, the Agreement is fully supported by the Applications and testimony of the Parties. Following discovery and settlement negotiations, the Parties reached a reasonable compromise on each of the issues in contention. The settlement negotiations were accomplished at arms' length over the course of several days and there was no collusion.

B. The Agreement Does Not Contravene Any Rules Or Laws

The Parties are aware of no statutory provision or prior Commission decision that would be contravened or compromised by the Agreement. The issues resolved in the Agreement are within the scope of the proceeding and will produce just and reasonable rates.

C. The Agreement Is In The Public Interest

The Agreement is in the public interest. The Commission has explained that a settlement which “commands broad support among participants fairly reflective of the affected interests” and “does not contain terms which contravene statutory provisions or prior Commission decisions” well serves the public interest. *Re San Diego Gas & Elec.*, D.92-12-019, 46 CPUC 2d 538, 552.

Together, the Parties fairly represent the affected interests: Applicants provide water service to customers in districts throughout California, and DRA is statutorily mandated to represent all ratepayers in California. The primary public interest affected by this proceeding is the delivery of safe and reliable water service at reasonable rates. The terms of the Agreement as described in Sections V to X advance this interest because they fairly balance each Applicant’s opportunity to earn a reasonable rate of return against the needs of consumers for reasonable rates and safe, reliable water service. In addition, Commission approval of the Agreement will provide speedy resolution of contested issues, which will avoid unnecessary litigation expense, and will conserve Commission resources. The Commission has acknowledged that “[t]here is a strong public policy favoring the settlement of disputes to avoid costly and protracted litigation.” *Re PG&E*, D.88-12-083, 30 CPUC 2d 189, 221.

V. CALIFORNIA WATER SERVICE COMPANY

In Application 11-05-001, direct testimony, and rebuttal testimony, Cal Water sought Commission approval of the following:

- Capitalization of 46.10% long-term debt and 53.90% equity;³

³ Cal Water’s original capitalization request was based on its actual estimated capital structure. Cal Water proposed to correct its Application to reflect a debt-to-equity capitalization of 47%/53%. CWS Exhibit 1 (CWS Corrected Application) at 2.

- A cost of debt of 6.24%⁴ (modified from 6.16%),⁵ a return on equity of 11.25%,⁶ and a rate of return of 8.86% (as modified);⁷
- Discontinuation of the TIRBA,⁸ and a TIRBA balance of \$1,141,919⁹ (modified from an estimated \$658,000¹⁰) to be returned to ratepayers over twelve months, and;
- Continuation of the WCCM, with a base year of 2012.¹¹

For Cal Water, DRA's testimony advocated the following recommendations:

- Capitalization of 50% long-term debt and 50% equity;¹²
- A cost of debt of 6.16%,¹³ and a return on equity of 8.75%.¹⁴ With DRA's recommended capital structure, this would result in a rate of return of 7.46%;
- Discontinuation of the TIRBA,¹⁵ and a TIRBA balance of \$8,537,927 to be returned to ratepayers, and;¹⁶
- Continuation of the WCCM.¹⁷

While Cal Water originally requested a debt/equity ratio of 46.10%/53.90%, Cal Water accepted DRA's offer of 46.60%/53.40% as part of a comprehensive settlement. DRA accepted Cal Water's cost of debt of 6.24%, which reflects Cal Water's actual cost of borrowing

⁴ CWS Exhibit 13 (CWS/Kropelnicki Rebuttal) at 4-9.

⁵ CWS Exhibit 1 (CWS Corrected Application) at 2.

⁶ *Id.*

⁷ The 8.86% rate of return is based upon Cal Water's actual estimated debt-equity capital structure of 46.10%/53.90% and Cal Water's actual cost of debt (with transaction costs) of 6.24%.

⁸ CWS Exhibit 7 (CWS/Kropelnicki Direct) at 31 (lines 8-9).

⁹ CWS Exhibit 14 (CWS/Smegal Rebuttal) at 20 (lines 3-6).

¹⁰ CWS Exhibit 7 (CWS/Kropelnicki Direct) at 31 (lines 11-16).

¹¹ *Id.* at 30 (lines 12-14).

¹² DRA Exhibit 1 (DRA/Woolridge) at 54 (lines 21-22).

¹³ *Id.* at 57 (lines 10-13) (referring to the debt cost rate originally proposed in Cal Water's Application).

¹⁴ *Id.* at 2 (line 18) to 3 (line 8).

¹⁵ DRA Exhibit 3 (DRA/Kotyrla) at 20 (lines 14-16).

¹⁶ DRA Exhibit 5 (DRA/Kotyrla Errata) at 14.

(including transactional costs). The Parties agreed on a return on equity of 9.99% for each Applicant as part of a comprehensive settlement. For Cal Water, this results in a rate of return of 8.24%.

DRA did not oppose Cal Water's proposal to discontinue the TIRBA. DRA accepted Cal Water's calculation of the TIRBA balance as \$1,141,919, and Cal Water agreed to amortize that balance over twelve months via a customer surcredit. Within 30 days of the effective date of a Commission decision adopting the Agreement, Cal Water will file a Tier 1 advice letter to implement the surcredits. DRA did not oppose continuation of the WCCM.

Cal Water and DRA agree that the above settlement terms will provide ratepayers with reasonable rates sufficient to maintain the financial soundness and stability of Cal Water.

VI. SAN JOSE WATER COMPANY

In Application 11-05-002, direct testimony, and rebuttal testimony, San Jose sought Commission approval of the following:

- Capitalization of 48.83% long-term debt and 51.17% common equity for the year 2012, and 48.48% long-term debt and 51.52% common equity for years 2013 and 2014;¹⁸
- A cost of debt of 6.68%¹⁹ and a return on common equity of 11.50%²⁰ for years 2012 through 2014;
- An overall rate of return of 9.14% for 2012 and 9.17% for 2013 and 2014, and;²¹
- Continuation of the WCCM, with a base year of 2012.²²

(Footnotes Continued from Previous Page.)

¹⁷ DRA Exhibit 3 (DRA/Kotyrla) at 5 (at 2-3).

¹⁸ A.11-05-002 at 7; SJW Exhibit 1 (SJW/Lynch) at 6 and Schedule 3.

¹⁹ A.11-05-002 at 7; SJW Exhibit 1 (SJW/Lynch) at 6 and Schedule 4.

²⁰ A.11-05-002 at 7; SJW Exhibit 2 (SJW/Ahern) at 2-3, 62; SJW Exhibit 3 (SJW/Ahern) at Schedule PMA-1.

²¹ A.11-05-002 at 7; SJW Exhibit 2 (SJW/Ahern) at 2-3, 62.

²² A.11-05-002 at 1-2, 12.

For San Jose, DRA's testimony advocated the following recommendations:

- Capitalization of 50% long-term debt and 50% equity;²³
- A cost of debt of 6.68%,²⁴ and a return on equity of 8.75%.²⁵ With DRA's recommended capital structure, this would result in an overall rate of return of 7.715%, and;
- Continuation of the WCCM, but with a deadband zone of plus or minus 100 basis points and a benchmark period of October 2010 through September 2011.²⁶

San Jose accepted DRA's offer of a capital structure comprising 48.65%/51.35% as the average of the debt and equity ratios San Jose proposed for year 2012 and later years. DRA accepted San Jose's cost of debt of 6.68%, which reflects San Jose's actual cost of borrowing (including transactional costs). The Parties agreed on a return on equity of 9.99% for each Applicant as part of a comprehensive settlement. For San Jose, this results in a rate of return of 8.38%, to which San Jose and DRA agreed.

San Jose and DRA agreed to a continuation of the WCCM for San Jose on the same terms applicable to the other three Applicants. For San Jose, this requires a reduction of the deadband zone from one of plus or minus 200 basis points to one of plus or minus 100 basis points. The agreed upon benchmark period is the calendar year 2012.

San Jose and DRA agree that the above settlement terms will provide ratepayers with reasonable rates sufficient to maintain San Jose's financial soundness and stability.

²³ DRA Exhibit 1 (DRA/Woolridge) at 55 (lines 14-15).

²⁴ *Id.* at 57 (lines 19-23).

²⁵ *Id.* at 49 (lines 23-24).

²⁶ DRA Exhibit 3 (DRA/Kotyrla) at 6 (lines 2-8).

VII. CALIFORNIA-AMERICAN WATER COMPANY

In Application 11-05-003, direct testimony, and rebuttal testimony, California American Water sought Commission approval of the following:

- Capitalization of 50.31% long-term debt and 49.69% equity, if the Commission grants Special Request #4 and Special Request #33 as requested by California American Water in its pending general rate case, A.10-07-007;²⁷
- Capitalization of 37.84% long-term debt and 62.16% equity, if the Commission denies California American Water's Special Request #4 and Special Request #33 in A.10-07-007;²⁸
- A cost of debt of 6.70%²⁹, a return on equity of 11.50%,³⁰ and a rate of return of 9.08%,³¹ if the Commission grants California American Water's Special Request #4 and Special Request #33 in A.10-07-007;
- A cost of debt of 6.70%,³² a return on equity of 11.50%,³³ and a rate of return of 9.68%,³⁴ if the Commission denies California American Water's Special Request #4 and Special Request #33 in A.10-07-007;
- Discontinuation of the TIRBA,³⁵ and authorization to recover the TIRBA balance of \$2,081,865³⁶ as a surcharge on customer bills over a 12-month period, and;
- Continuation of the WCCM.³⁷

²⁷ A.11-05-003 at 3 and Attachment A, Chapter 3, Table 1B; CAW Exhibit 2 (CAW/Stephenson Direct) at 3 and § IV.

²⁸ A.11-05-003 at 3-4 and Attachment A, Chapter 3, Table 1C; CAW Exhibit 2 (CAW/Stephenson Direct) at 4 and § IV.

²⁹ A.11-05-003 at 3 and Attachment A, Chapter 3, Table 3; CAW Exhibit 2 (CAW/Stephenson Direct) at 4 and § V.

³⁰ A.11-05-003 at 3 and Attachment A, Chapter 3, Table 1B; CAW Exhibit 3 (CAW/Villadsen Direct) at 2 (lines 23-24).

³¹ A.11-05-003 at 3 and Attachment A, Chapter 3, Table 1B; CAW Exhibit 2 (CAW/Stephenson Direct) at 4 and § VI.

³² A.11-05-003 at 3-4 and Attachment A, Chapter 3, Table 3; CAW Exhibit 2 (CAW/Stephenson Direct) at 4 and § V.

³³ A.11-05-003 at 3-4 and Attachment A, Chapter 3, Table 1C; CAW Exhibit 3 (CAW/Villadsen Direct) at 2 (lines 23-24).

³⁴ A.11-05-003 at 3-4 and Attachment A, Chapter 3, Table 1C; CAW Exhibit 2 (CAW/Stephenson Direct) at 4 and § VI.

³⁵ A.11-05-003 at 10; CAW Exhibit 2 (CAW/Stephenson Direct) at 5 and § VII.

³⁶ A.11-05-003 at 11; CAW Exhibit 6 (CAW/Stephenson Rebuttal Errata) at Attachment 8.

³⁷ A.11-05-003 at 11 and CAW Exhibit 2 (CAW/Stephenson Direct) at 5 and § VIII.

For California American Water, DRA's testimony advocated the following recommendations:

- Capitalization of 52.2% long-term debt and 47.8% equity;³⁸
- A cost of debt of 6.63%³⁹ and a return on equity of 9.00%.⁴⁰ With DRA's recommended capital structure, this would result in a rate of return of 7.76%;⁴¹
- Discontinuation of the TIRBA⁴² and a TIRBA balance of \$1,817,073⁴³ to be recovered from ratepayers, and;
- Continuation of the WCCM.⁴⁴

As part of this comprehensive settlement, California American Water and DRA agree to compromise on a 47% debt to 53% equity capital structure. The settlement on capital structure is independent of Special Requests #4 or #33 in California American Water pending general rate case (A.10-07-007). California American Water and DRA agree to adopt DRA's recommended 6.63% cost of debt. The Parties agreed on a return on equity of 9.99% for each Applicant as part of a comprehensive settlement. For California American Water, this results in a rate of return of 8.41%.

VIII. GOLDEN STATE WATER COMPANY

In Application 11-05-004, direct testimony, and rebuttal testimony, Golden State sought Commission approval of the following:

³⁸ DRA Exhibit 1 (DRA/Woolridge) at 54 (lines 11-12).

³⁹ *Id.* at 57 (lines 7-8).

⁴⁰ *Id.* at 3 (lines 7-8).

⁴¹ *Id.* at Attachment JRW-1.

⁴² DRA Exhibit 3 (DRA/Kotyrlo) at 20 (lines 14-16).

⁴³ DRA Exhibit 5 (DRA/Kotyrlo Errata) at 14 (lines 1-4).

⁴⁴ DRA Exhibit 3 (DRA/Kotyrlo) at 4 (lines 6-7).

- Capitalization of 44.4% long-term debt and 55.6% equity;⁴⁵
- A cost of debt of 6.99%,⁴⁶ a return on equity of 11.50%,⁴⁷ and a rate of return of 9.49%;⁴⁸
- Discontinuation of the TIRBA and authorization to dispose of the credit balance in the TIRBA by way of Golden State's GRC filed on July 21, 2011, or alternatively via an advice letter to be filed and resolved by the Commission no later than the Commission's resolution of Golden State's GRC,⁴⁹ and;
- Continuation of the WCCM, with a base year of 2012.⁵⁰

For Golden State, DRA's testimony advocated the following recommendations:

- Capitalization of 47.0% long-term debt and 53.0% equity;⁵¹
- A cost of debt of 6.99%,⁵² and a return on equity of 8.75%.⁵³ With DRA's recommended capital structure, this would result in a rate of return of 7.92%;
- Discontinuation of the TIRBA,⁵⁴ and a TIRBA balance of \$2,883,003 to be returned to ratepayers, and;⁵⁵
- Continuation of the WCCM.⁵⁶

While Golden State originally requested a debt/equity ratio of 44.4%/55.6% and DRA originally requested that the values be set at 47.0%/53.0%, Golden State and DRA compromised on a capital structure of 45.0%/55.0% as part of a comprehensive settlement. DRA accepted

⁴⁵ GSW Exhibit 1 (GSW/Tang Testimony) at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ GSW Amendment to Application at 2.

⁵⁰ GSW Application at 3.

⁵¹ DRA Exhibit 1 (DRA/Woolridge) at 55 (lines 4-5).

⁵² *Id.* at 57 (lines 14-18).

⁵³ *Id.* at 2 (line 18) to 3 (line 8).

⁵⁴ DRA Exhibit 3 (DRA/Kotyrló) at 20 (lines 14-16).

⁵⁵ DRA Exhibit 5 (DRA/Kotyrló Errata) at 15.

⁵⁶ DRA Exhibit 3 (DRA/Kotyrló) at 5 (line 15-16).

Golden State's cost of debt of 6.99%, which reflects Golden State Water's actual cost of borrowing (including transactional costs). The Parties compromised on a return on equity of 9.99% for each Applicant as part of a comprehensive settlement. For Golden State, this results in a rate of return of 8.64%.

DRA did not oppose Golden State's proposal to discontinue the TIRBA. DRA accepted Golden State's calculation of the TIRBA balance (\$407,797) as part of the Agreement, and Golden State agreed to a one-time customer surcredit to amortize that balance. Within 30 days of the effective date of a Commission decision adopting the Agreement, Golden State will file a Tier 1 advice letter to implement the surcredit. DRA did not oppose continuation of the WCCM.

Golden State and DRA agree that the above settlement terms will provide ratepayers with reasonable rates sufficient to maintain the financial soundness and stability of Golden State.

IX. DISCONTINUATION OF THE TIRBA FOR CAL WATER, CALIFORNIA AMERICAN WATER, AND GOLDEN STATE

In May 2009, the Commission adopted the TIRBA for Cal Water, California American Water, and Golden State on its own motion in order to "remove the uncertainty of debt financing costs during the current financial market and credit dislocation,"⁵⁷ referencing "the highly unusual problems in the 2008 financial markets."⁵⁸ The TIRBA therefore tracked the difference between actual debt interest costs, and the interest costs included in the cost of capital adopted in D.09-05-019.⁵⁹ DRA, Cal Water, California American Water, and Golden State agree that the extreme financial circumstances precipitating the Commission's adoption of the TIRBA are not

⁵⁷ D.09-05-019, *mimeo*, at 47 (Finding of Fact 29). San Jose does not have a TIRBA and was not a party to A.08-05-002 *et al.*, the proceeding in which the Commission adopted the TIRBA for the other Applicants.

⁵⁸ *Id.* at 41.

⁵⁹ *See id.* at 41-42.

anticipated for the period of January 1, 2012 through December 31, 2014, and that the TIRBA accounts should be discontinued after disposition of the current balances as described in the Agreement.

X. CONTINUATION OF THE WATER COST OF CAPITAL MECHANISM (“WCCM”) FOR ALL APPLICANTS

In D.09-07-051, the first consolidated cost of capital proceeding for Class A water companies, the Commission adopted a settlement agreement establishing a WCCM for Cal Water, California American Water, and Golden State.⁶⁰ The WCCM is based on the Cost of Capital Mechanism (“CCM”) of the large investor-owned energy utilities, which the Commission adopted in 2008 to replace the utilities’ annual cost of capital applications⁶¹ and to streamline their cost of capital process.⁶² With some modifications, a WCCM was adopted for San Jose in D.10-10-035.⁶³

As discussed above, each Applicant requested continuation of its respective WCCM.⁶⁴ DRA did not oppose continuing the WCCMs, but recommended making San Jose’s WCCM consistent with those of the other Applicants.⁶⁵ The Parties agree that the WCCM adopted in D.09-07-051 fairly balances intervenor and shareholder interests, and should be adopted for all Applicants for any adjustment to the base year 2012 return on common equity for the subsequent

⁶⁰ D.09-07-051.

⁶¹ D.08-05-035, *mimeo*, at 3.

⁶² *Id.* at 16.

⁶³ D.10-10-035, *mimeo*, at 62.

⁶⁴ This is consistent with the terms of the WCCM Settlement Agreement adopted in D.09-07-051, in which parties to the settlement agreed to propose “a similar adjustment to the cost of capital” in subsequent cost of capital proceedings. D.09-07-051, Attachment A (Settlement Agreement) at 3.

⁶⁵ DRA Exhibit 3 (DRA/Kotyrlo) at 3-6.

years 2013 and 2014.⁶⁶ The new benchmark period should be October 1, 2010 through September 30, 2011.

XI. SHORTENING OF COMMENT PERIODS

Commission Rule 12.2 authorizes parties to submit comments on a proposed settlement within 30 days of filing, and allows reply comments within 15 days later. Due to the all-party nature of the proposed Agreement, Parties request that the Commission shorten those comment periods by allowing 10 days for comments, and 5 days for reply comments.

XII. ADMISSION OF EXHIBITS INTO EVIDENCE

During the October 17, 2011 evidentiary hearing in this proceeding, the Administrative Law Judge (“ALJ”) marked documents provided by each Party as exhibits for the purposes of identification.⁶⁷ By this Motion, the Parties request that those exhibits be moved into evidence.

XIII. CONCLUSION

The Parties believe that the Agreement, the related documentation, and the testimony in this case convey sufficient information for the Commission to discharge its regulatory obligations with regard to the Applications in this proceeding. Nevertheless, the Parties are prepared to offer additional support for the Agreement if needed.

The Parties note that they have entered into this Agreement on the basis that it shall not be construed as an admission or a concession by them regarding any fact or matter of law in dispute in this proceeding. Furthermore, as contemplated by Rule 12.5, the Parties do not intend that the Commission’s adoption of this Agreement be construed as any statement of precedent or

⁶⁶ This is consistent with the “recalibration” envisioned in the WCCM Settlement Agreement adopted in D.09-07-051. D.09-07-051, Attachment A (Settlement Agreement) at 4.

policy of any kind for or against any of them, in the current or in any future proceedings.

Finally, the Parties request shortened time periods for comments and reply comments on the Agreement, and the admission of all exhibits into evidence.

Dated: November 2, 2011

Respectfully Submitted,

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SELINA SHEK
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2423
sel@cpuc.ca.gov
Attorney for the
DIVISION OF RATEPAYERS ADVOCATES

NATALIE D. WALES
1720 North First Street
San Jose, California 95112
(408) 367-8566
nwales@calwater.com
Attorney for
CALIFORNIA WATER SERVICE COMPANY

MARTIN A. MATTES
NOSSAMAN LLP
50 California Street, 34th Floor
San Francisco, CA 94111
(415) 398-3600
mmattes@nossaman.com
Attorneys for
SAN JOSE WATER COMPANY

SARAH E. LEEPER
OLIVIA PARA
333 Hayes Street, Suite 202
San Francisco, CA 94102
(415) 863-2960
sarah.leeper@amwater.com
Attorneys for
CALIFORNIA-AMERICAN WATER
COMPANY

JOSEPH M. KARP
WINSTON & STRAWN LLP
101 California Street
San Francisco, CA 94111
(415) 591-1000
Attorneys for
GOLDEN STATE WATER COMPANY

(Footnotes Continued from Previous Page.)

⁶⁷ Reporter's Transcript (10/17/11) at 3 (line 3) to 7 (line 23).