

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



Draft Resolution No. W-4660
Agenda ID #6926

August 21, 2007

TO: Parties to Point Arena Water Works, Inc. Advice Letter No. 51

Enclosed is draft Resolution W-4660 of the Division of Water and Audits. It will be on the Commission's September 20, 2007 agenda. The Commission may then act on this Resolution or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare a different resolution. Only when the Commission acts does the resolution become binding on the parties.

Parties to this matter may file comments on this draft resolution. An original and 2 copies of the comments, with a certificate of service, should be submitted to:

Division of Water and Audits, Third Floor
Attention: Adam Thaler
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Parties may submit comments on or before September 10, 2007. The date of submission is the date the comments are received by the Division of Water and Audits. Parties must serve a copy of their comments on all persons on the service list attached to the draft Resolution, on the same date that the comments are submitted to the Division of Water and Audits.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft resolution, a table of authorities and appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal, or technical errors in the draft resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted. Late submitted comments will not be considered.

/s/ RAMI KAHLON

Rami Kahlon, Director
Division of Water and Audits

Enclosures: Draft Resolution W-4660
Certificate of Service
Service List

WATER/FLC/SNR/AJT:jrb

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch**

**RESOLUTION NO. W-4660
September 20, 2007**

R E S O L U T I O N

(RES. W-4660), POINT ARENA WATER WORKS, INC. (PAWW). ORDER AUTHORIZING A WATER RIGHT MEMORANDUM ACCOUNT (WRMA) TO RECORD THEREIN ALL COSTS RELATED TO WATER PERMIT APPLICATION NO. 30892 FILED BY PAWW WITH THE STATE WATER RESOURCES CONTROL BOARD (SWRCB), AND REJECTING RECORDING OF EXPENSES IN A MEMORANDUM ACCOUNT RELATED TO EXISTING WATER RIGHT PERMIT NO. 17016 (APPLICATION NO. 25442).

SUMMARY

By Advice Letter (AL) 51-W filed on October 23, 2006, Point Arena Water Works, Inc. (PAWW) requests approval to establish a Water Right Memorandum Account (WRMA) to record all costs related to: 1) existing Water Right Permit No. 17016 (Application No. 25442), and 2) Water Permit Application No. 30892 filed by PAWW with the State Water Resources Control Board (SWRCB).

This resolution grants this request in regard to SWRCB Application No. 30892 on the condition that any such recorded costs and ultimate recovery thereof are limited exclusively to new service connections, and rejects recording of expenses related to existing Water Right Permit No. 17016 (Application No. 25442) in a memorandum account. Costs related to existing Water Right Permit No. 17016 should be treated as operating expenses.

BACKGROUND

On December 27, 1977, the SWRCB issued Permit No. 17016 to PAWW authorizing the diversion of 0.22 cubic feet per second (cfs) of water for an annual maximum quantity of 100 acre-feet from the Garcia River (underflow) during the period from January 1 to December 31. No limit of total diversion was stated in the permit. However, by applying the diversion rate to the days of diversion, the maximum amount of water obtainable is 160 acre-feet per annum. The limitation of 100 acre-feet per annum of

diversion was established by Board Order dated June 8, 1994 as a condition of approval for a petition of extension of time.

On June 1, 1999, PAWW filed with the SWRCB Application No. 30892 requesting a right to divert an additional 0.31 cfs of water for an additional annual quantity of 150 acre-feet from the Garcia River (underflow). The maximum annual diversion under this right together with Permit No. 17016 would be 250 acre-feet.

On March 29, 2006, PAWW filed with the SWRCB a Petition for Extension of Time for Water Right Permit No. 17016 (Application No. 25442). PAWW requested a 33-year extension of time to complete construction and beneficial use of water. PAWW requested that the processing of this Petition for Extension of Time be concurrent with the processing of pending Application No. 30892.

Presently, PAWW provides water service to 189 service connections serving approximately 473 people. The maximum annual amount of water used was 41.2 acre-feet in 2004 with a maximum month use of 4.9 acre-feet in the same year.

In its filing, PAWW estimated that full build out in the City of Point Arena is expected to occur by year 2030. PAWW estimated by that time its service territory would provide water to 920 customers or approximately 2,300 people. Therefore, PAWW requested to a right to divert an additional 150 acre-feet of water through Application No. 30892.

The Division of Water and Audits (Division) inquired regarding the expiration of the existing permit and asked PAWW to explain the renewal process and any expenses involved.

PAWW responded as follows:

The time within which to divert and put water to beneficial use is stated in the Permit. If the project is not fully developed or the maximum amount of water has not been put to beneficial use before the date stated in the Permit, a Petition for Extension of Time must be submitted to the SWRCB. The SWRCB considers an extension of time as a re-authorization of the project and requires the extension of the project development period be evaluated to determine impacts to other water right holders and to the environment under CEQA. A CEQA document will be developed and the SWRCB will use it to make its determination for approval of the project

The 33-year extension of time would extend the period within which to perfect beneficial use from December 31, 1997 to December 31, 2030. The 33-year

extension requested is based on the time from the last authorized period of use to the time in which the City of Point Arena is anticipated to reach full build out.

The full beneficial use of water cannot be completed until the City of Point Arena reaches full build out and develops additional demand for water supplied by PAWW under Permit No. 17016.

The expense involved in the process to acquire additional time to develop water under a Permit is unknown.

The only payments required to be made to the SWRCB for Permit No. 17016 are the annual Water Right Fee and a one-time Petition Fee.

On June 29, 2006, a Memorandum of Understanding (MOU) related to Application Nos. 25442 and 30892 was executed by PAWW, Analytical Environmental Services (AES) and the State of California, acting by and through the SWRCB, Division of Water Rights, to provide for the preparation of an initial study, and, upon further authorization by PAWW, for preparation of additional environmental documentation pursuant to the California Environmental Quality Act (CEQA).

Pursuant to CEQA, the lead agency is to conduct an environmental analysis of this project and prepare applicable environmental documentation. As the lead agency, the SWRCB would use the initial study to determine whether a Negative Declaration (ND), Mitigated Negative Declaration (MND), or Environmental Impact Report (EIR) must be prepared to comply with CEQA.

On August 29, 2006, PAWW's consultant estimated that the preparation cost of the environmental documents required for this project would be approximately \$50,000. This amount included \$25,000 estimated by the AES and an additional \$25,000 for a Water Availability Analysis and Cumulative Flow Impairment Index report and other additional work during the preparation of the initial study. PAWW states that upon completion of the initial study, it will be determined if an EIR or unanticipated studies are further necessary, and if so, additional funds may be required.

PAWW requests a memorandum account, WRMA, to track expenses and costs as described above.

DISCUSSION

Standard Practice U-27-W states that Memorandum Accounts track costs and revenues, but recovery of such costs are not guaranteed. Examples of memorandum accounts include legal fees, water shed study costs, Department of Health Services costs (penalties excluded), and other events of an exceptional nature that are not under the utility's control, could not have been reasonably foreseen in the utility's last general rate increase, that will occur before the utility's next scheduled rate case, which are substantial in nature in that the amount of money involved is worth the effort of

processing a memorandum account and that they have *ratepayer benefits*. This resolution clarifies the distinction between existing ratepayer benefits vs. future ratepayers.

Recovery of memorandum accounts requires full justification of all expenses and a recorded earnings test for the calendar period during which the expenses were incurred. Additionally, Standard Practice U-27-W states that average balances in the memorandum account earn interest at the 90-day commercial paper rate.

In a letter dated June 21, 2007, PAWW submitted an update to Advice Letter No. 51 explaining that the planned build out of the City of Point Arena of 920 service connections has been reduced to 676. Pending Application No. 30892 requesting an additional 150 acre-feet has been modified to request only an additional 50 acre-feet per annum.

Existing vs. Future Customers

In its advice letter, PAWW states that

“there is a great benefit to existing and future customers who will directly benefit from water availability once the project is approved by the SWRCB”.

Currently, PAWW has the right to withdraw 100 acre-feet annually from the Garcia River, far exceeding the approximately 40 acre-feet needed to serve its existing customers. PAWW has failed to discuss or provide any information as to how existing ratepayers benefit from this project. In response to a data request, PAWW stated, “It is not possible to quantify the cost directly associated with either water right project”.

This advice letter is premised upon future growth and projected development beyond the scope of existing customers. The Division of Water and Audits (Division) recommends that PAWW be allowed to establish a memorandum account to track its expenses, but any such recovery shall be limited to future customers only.

Because PAWW wishes to expand its water rights capacity based upon its own future growth forecasts of *new* customers, such cost recovery should be made through, but not limited to, facilities fees, contributed plant, lot fees, developer fees, etc. which are directly or indirectly borne by the new customers.

In response to a data request, PAWW stated:

Water use by the City of Point Arena has exceeded 37 acre-feet in recent years and is expected to increase in the coming years. Once the petition for extension of

time is approved by the SWRCB, the amount of water available for diversion will be 100 acre-feet and will exceed the current demand for water by PAWW's existing customers.

The above response lacks merit or justification to recover costs from existing customers. The existing customer base has used approximately 40 acre-feet annually. Water consumption for the existing 189 customers has been relatively stable and average quantity consumption, per existing customer, is not expected to increase, especially in light of the Commission's goals of conservation programs.

The additional requested 50 acre-feet per year by Application No. 30892 will provide a total of 150 acre-feet per year, approximately 110 acre-feet over the amount needed to supply the existing customers. In its advice letter filing, PAWW estimates full build-out in the City of Point Arena to occur by 2030 and to serve an additional 676 service connections. The Division asked PAWW to explain why PAWW is applying to secure additional water rights so far ahead of time.

PAWW responded as follows:

PAWW is applying to secure additional water rights to ensure the availability of water for the future growth planned for the City of Point Arena. PAWW was directed by the City of Point Arena to acquire water rights of sufficient amount to serve the City upon full build-out under the General Plan. Applying for the full amount of water required to support the full build-out of the City is also required by the Department of Health Services under Section 64562, Title 22 of the California Code of Regulations.

The regulations state that sufficient water supply shall be available from the water sources and distribution of reservoirs to supply adequately, dependably, and safely the total requirements of all users under the maximum demand conditions before agreement is made to permit additional service connections to a system.

Recently, the Commission Adopted Resolution No. 4655, dated August 23, 2007, allowing Apple Valley Ranchos Water Company to modify its Rule 15 tariff to incorporate a Supplemental Water Acquisition Fee to be charged to applicants of a main extension.

PAWW should not be authorized to collect any monies associated with this memorandum account from its existing ratepayers.

NOTICE AND PROTESTS

A notice of the proposed tariff changes incorporated was mailed to the service list. The Division received a comment dated July 20, 2007 from the City of Point Arena (City).

In its comments, the City does not object to the approval of a Water Right Memorandum Account, but requests that the two water right projects described in AL 51 be described accurately and tracked separately.

The City requests that the resolution state that Advice Letter No. 51 has been significantly revised on June 18, 2007, reducing substantially the quantity of additional water rights sought. The new water rights requested under Application No. 30892 will be reduced from 150 acre-feet per year to 50 acre-feet per year. The revised outcome of total water available under application No. 30892 together with existing permit No. 17016 will be reduced from 250 acre-feet to 150 acre-feet per annum. The City states that,

“With some buffer, this value is consistent with the results found in the report “Strategy for Implementing the City of Point Arena 2006 Local Coastal Plan – Residential Build-out Estimate with Water and Sewer Capacity Analysis” adopted in March, 2006 by the City Council.

The City supports this reduction in the water right application and respectfully requests that this resolution reflect this major change to the “Water Right Project” or that the implementing resolution explicitly reflect this change in project.

Secondly, the City requests that the Water Right Memorandum Account track expenses related to the renewal of existing Water Right Permit No. 17016 separately from Application No. 30892 for new water rights.

The City expressed its discontent that Advice Letter No. 51-W combines two separate projects into one category into one lump expense.

Permit No. 17016

Permit No. 17016 has been in existence for 30 years and is necessary to serve existing customers. Expense related to the Petition for 33 additional years is necessary to serve *existing customers*. The City believes that reasonable expenses from existing customers may be recovered. The City anticipates that this existing permit will be extended with conditions similar to the present conditions (i.e. year-round pumping with no requirement for off-stream storage). The City believes it is less likely that this existing permit will require an EIR or more unanticipated studies.

Application No. 30892

Application No. 30892 is an application for a *new* water right to serve *future* customers. As such, expenses related to this application should not be borne by existing customers. Furthermore, expenses related to this new application most likely will be considerably higher than those related to the extension of the existing permit. SWRCB may require a prohibition on pumping during the dry months. This would require a large, expensive reservoir and the problems inherent in using surface water for drinking water supply. The application for a new water right has triggered protests from the Department of Fish and Game and other interested parties. While the reduction in acre-feet requested may ameliorate these protests, the City believes that the application for a new water right is likely to require additional studies and possibly an EIR.

The City also points out that Advice Letter No. 47, filed on August 30, 2004 and approved without resolution on September 29, 2004, was filed without a Water Supply Questionnaire. The City asserts that expenses relating to new water rights to serve its existing and other new customers should not be borne by existing customers. For this reason, the City further emphasizes that it is crucial that these two water right projects be tracked separately.

The Division concurs that the existing permit serving existing customers (Permit No. 17016) and the application for a new and additional water right (Application No. 30892) are two separate matters and should be tracked separately.

The Division recommends that PAWW be authorized to establish a memorandum account for Application No. 30892 only and only be recoverable from future customers as discussed above.

Since expenses incurred resulting in the existing Permit No. 17016 are considered ongoing operational expenses, these matters should be reviewed during the general rate cases as an operating expense. The Division recommends that the request to establish a memorandum account to track expenses pertaining to Permit No. 17016 be denied and that reasonable expenses be reviewed to ensure that the expenses are prudent in the general rate case filing.

In its Advice Letter No. 47, PAWW stated that,

"This filing will not increase any rate or change, cause the withdrawal of service, or conflict with other schedules or rules."

Advice Letter No. 47 was a revision to the service area map of PAWW to include one new area contiguous to the present service area. There were no protests and PAWW

did not propose to serve any new customers. The Division approved this advice letter without a Water Supply Questionnaire.

Recovery Process

Upon adoption by the Commission, this resolution authorizes PAWW to establish a memorandum account pursuant to Water Permit Application No. 30892 only. The proposed tariff sheets filed in Advice Letter No. 51 are denied. Future tariff sheets dealing with recovery of funds in the Memorandum Account must be modified to omit Water Right Permit 17016.

PAWW may file an advice letter on the process they propose for recovering the costs associated with Water Permit Application No. 30892 from its developers or future ratepayers. Such recovery options include, but are not limited to, facilities fees on new service connections, contributions, or modifying its Rule 15 tariff to incorporate a Supplemental Water Acquisition Fee to be charged to applicants of main extensions.

COMMENTS

Public Utilities Code §311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Code §311(g)(2) provides that this 30-day period may be waived or reduced upon stipulation of all parties in the proceeding.

The 30-day comment period for the draft resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from the date of mailing of this resolution to the parties.

FINDINGS

1. PAWW has a water right to withdraw 0.22 cubic feet per second, for a maximum of 100 acre-feet per year from the Garcia River (underflow) under Permit No. 17016 from the State Water Resources Control Board (SWRCB). PAWW pumps approximately 40 acre-feet annually to service all its 189 service connections.
2. PAWW's water rights Permit No. 17016 was issued on December 27, 1977 for the diversion of 0.22 cubic feet per second during the period of January 1 to December 31 from the Garcia River (underflow).
3. A petition for extension of time for Water Permit No. 17016 must be submitted to the SWRCB if the project is not fully developed by the time specified in the permit.
4. PAWW filed an application with the SWRCB to extend Permit No. 17016 by 33 years.

5. PAWW filed an advice letter requesting to establish a memorandum account to track expenses related to the extension of Permit No. 17016.
6. PAWW presently serves 189 service connections and states it will serve an additional 487 in the future for a total of 676 service connections upon future growth and full build out.
7. PAWW filed Application No. 30892 with the SWRCB to acquire an additional 50 acre-feet per year and obtain a water right to serve future growth.
8. PAWW filed an advice letter to establish a memorandum account to track expenses related to existing Permit No. 17016 (Application No. 25442) and Application No. 30892 for additional water rights.

THEREFORE IT IS ORDERED THAT:

1. Authority is granted under Public Utilities Code Section 454 for Point Arena Water Works, Inc. to establish a Water Right Memorandum Account to record therein all costs related to Water Permit Application No. 30892 filed by Point Arena Water Works, Inc. with the State Water Resources Control Board.
2. Point Arena Water Works, Inc. may file an advice letter on the process they propose for recovering the costs associated with Water Permit Application No. 30892 from its developers or future ratepayers.
3. Point Arena Water Works, Inc. is not authorized to collect any monies from its existing ratepayers in association with the memorandum account hereby authorized as of the date of this resolution.
4. Point Arena Water Works, Inc. is not authorized to establish a memorandum account pertaining to Permit No. 17016.
5. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on September 20, 2007; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution W-4660 on all parties in this filing or their attorneys as shown on the attached list.

Dated August 21, 2007, at San Francisco, California.

/s/ JOSIE R. BABARAN
Josie R. Babaran

NOTICE

Parties should notify the Division of Water and Audits, Third Floor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the Resolution number on which your name appears.

Service List
Draft Resolution W-4660

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