Date of Issuance 4/14/2010

Decision 10-04-001 April 8, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities.	Investigation 07-01-022 (Filed January 11, 2007)
And Related Matters.	Application 06-09-006 Application 06-10-026 Application 06-11-009 Application 06-11-010 Application 07-03-019

DECISION AUTHORIZING MEMORANDUM ACCOUNTS TO TRACK LEGAL AND REGULATORY EXPENSES INCURRED IN THIS PROCEEDING

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DECISION AUTHORIZING MEMORANDUM ACCOUNTS TO TRACK LEGAL AND REGULATORY EXPENSES INCURRED IN THIS PROCEEDING

Summary

This decision affirms Decision 08-02-036's approval of a memorandum account to track legal and related expenses incurred in this proceeding for all Class A water utilities. The Class A water utilities,[1] other than Suburban Water Systems, may establish memorandum accounts to track legal and related expenses for participating in this proceeding from the date of issuance of this Order Instituting Investigation. Legal and related expenses incurred in preparing applications consolidated with this proceeding, whether incurred prior or subsequent to the issuance of this Order Instituting Investigation, are excluded from these memorandum accounts.

1. Background

In Decision (D.) 08-02-036, the Commission authorized Suburban Water Systems (Suburban) and the other Class A water utilities to establish memorandum accounts to track the legal and related costs of participating in this proceeding.[2] Authorization to establish the memorandum accounts was limited

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[1] Apple Valley Ranchos Water Company (Apple Valley), California-American Water Company (CalAm), California Water Service Company (Cal Water), Golden State Water Company (GSWC), Great Oaks Water Company, Park Water Company (Park), San Gabriel Valley Water Company (San Gabriel), San Jose Water Company, and Valencia Water Company.

[2] The memorandum account was limited to the legal and related costs of participating in this proceeding from the date of issuance of this Order Instituting Investigation (OII). Costs of preparing applications consolidated with this proceeding, whether incurred prior or subsequent to the issuance of the OII, were excluded from the authorized memorandum accounts as were the costs of customer notices. Suburban requested authorization of a memorandum account to track legal and related expenses in its

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to the circumstances of this proceeding. Future requests for memorandum accounts to track costs associated with participating in generic proceedings were to be made by advice letter in accordance with General Order 96-B and the Water Industry rules, and the Division of Water and Audits would prepare a resolution for Commission consideration of the request unless the Commission had previously directed staff to deny or to approve the particular relief requested.[3]

Limited rehearing of D.08-02-036 was granted on the issue of memorandum account treatment for all Class A water utilities, other than Suburban, for the legal and related costs of participating in this proceeding from the date of issuance of this OII. Class A water utilities and other parties were directed to provide all documentation supporting their positions on extending or denying memorandum treatment to the other Class A water utilities.[4] Parties submitted opening comments on July 27, 2009 and reply comments on August 17, 2009.

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application that was consolidated with this proceeding. DRA and Suburban concurred that prospective costs could be recovered and that the legal and regulatory expenses associated with participating in this proceeding qualified as an unanticipated expense. DRA opposed tracking expenses already incurred on the grounds that such recovery would be contrary to the principle against retroactive ratemaking. As noted in Suburban's comments on the proposed Phase 1A decision, CalAm filed an advice letter to establish a memorandum account to track the expenses associated with participating in this proceeding (CalAm's conservation rate applications were not consolidated with the OII), and the Division of Water and Audits rejected the advice letter.

[3] D.09-06-053, Ordering Paragraph 3 (*slip op*.), modifying in part D.08-02-036.

[4] D.09-06-053 at 8 (*slip op*.)

2. Commission Authorization of Memorandum Accounts

A memorandum account allows a utility to track costs arising from events that were not reasonably foreseen in the utility's last general rate case. By tracking these costs in a memorandum account, a utility preserves the opportunity to seek recovery of these costs at a later date.[5] Parties supporting approval for memorandum account authorization for legal and related costs for all Class A water utilities[6] assert that such authorization is consistent with Standard Practice (SP) U-27-W, the Commission's four-pronged test, and applicable precedent. The Division of Ratepayer Advocates (DRA) disagrees and asserts that the Class A water utilities' request for memorandum accounts is contrary to Commission procedure.

2.1. Precedent for Authorizing Memorandum Accounts

The Commission has not applied a fixed set of factors in determining whether to establish memorandum accounts for water utilities. Some of the factors the Commission has considered have been articulated in Resolution W-4276, D.02-08-054, and D.04-06-018. In SP U-27-W, paragraphs 25 and 44 contain similar lists of factors. Even when the Commission has applied these factors, the Commission has not always applied all of them or required that they all be met before authorizing a memorandum account. Thus, at different times,

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[5] When seeking recovery, the utility must also demonstrate that the costs are not covered by other authorized rates, it is appropriate for ratepayers to pay for those categories of costs in addition to otherwise authorized rates, the utility acted prudently when it incurred those costs, and the level of costs is reasonable.

[6] California Water Association (CWA), GSWC, and Park.

the Commission has considered all of these factors, considered some of these factors or has relied on other public policy considerations.[7]

In reviewing some requests for memorandum accounts, the Commission has considered the following four factors, finding that memorandum accounts were appropriate if: 1) the expense is caused by an event of an exceptional nature that is not under the utility's control; 2) the expense cannot have been reasonably foreseen in the utility's last general rate case and will occur before the utility's next scheduled rate case; 3) the expense is of a substantial nature in the amount of money involved; and 4) the ratepayers will benefit by the memorandum account treatment.[8] DRA states the memorandum accounts for tracking legal and related expenses in this proceeding do not meet these criteria.

SP U-27-W, generally relied on by the Class A water utilities, incorporates these four factors, with certain modifications.[9] CWA, Park and GSWC assert the memorandum accounts meet these criteria.[10]

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[7] In approving low-income ratepayer assistance programs, a policy objective of the Commission's December 2005 Water Action Plan, the Commission authorized memorandum accounts to track costs associated with those programs. *See* D.06-11-053, *slip op.* at Ordering Paragraph 5 (authorizing a memorandum account to track initial and ongoing expenses); D.06-11-052, 2006 Cal. PUC LEXIS 491 *7. In permitting Safe Water Drinking Act expenses to be tracked in existing water quality memorandum accounts, the Commission relied on a limited number of factors and permitted a request for authority to track such expenses if they were unforeseen, could not have been dealt with in the last scheduled rate case, would be incurred prior to the next scheduled rate case, and were beyond the control of the utility. D.94-06-033, 1994 Cal. PUC LEXIS 428 *95.

[8] *See* Resolution W-4276; D.02-08-054; and D.04-06-018.

[9] At paragraph 25, SP U-27-W states memorandum accounts track costs that the Commission has directed to be tracked due to events of an exceptional nature that 1) are not under the utility's control; 2) could not have been reasonably foreseen in the utility's

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2.1.1. Parties' Positions

GSWC asserts that SP U-27-W criteria have been satisfied both by Suburban and by the other Class A water utilities. GSWC states it had no control over the expenses incurred. GSWC filed its application to implement changes in ratesetting mechanisms and to reallocate rates. That application later was consolidated with this proceeding over GSWC's objections. In order to comply with the scope of this proceeding, GSWC was ordered to file an amended application. GSWC had no control over the review and amendment of its application. This proceeding lengthened the time for consideration of GSWC's application and varied the issues under consideration. The involvement of multiple utilities and five consumer groups resulted in a dramatic increase in hearing time, briefing, and settlement negotiations. GSWC entered into two settlement agreements, one on conservation rate design issues and the other on data collection and reporting, and customer outreach and education. GSWC could not have foreseen the costs for participating in this proceeding in its last rate case, which was filed before this proceeding was opened. Most of GSWC's costs in this proceeding were incurred before it filed its next rate case.[11] GSWC asserts ratepayers received benefits related to facilitating water conservation through GSWC's participation in this proceeding.

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last general rate case; 3) that will occur before the utility's next scheduled rate case; 4) are of a substantial nature in that the amount of money involved is worth the effort of processing a memorandum account; and 5) have ratepayer benefits.

[10] *See* CWA's Comments at 7; GSWC's Comments at 6-9; Park's Comments at 3-5.

[11] GSWC's costs are approximately $608,000.

Park asserts all criteria are met. The Commission opened this proceeding, and all Class A water utilities were made respondents, a fact over which the utilities had no control. Park's last general rate case was filed a year before the proceeding was opened, and Park notes that Apple Valley's last rate case was filed two years before.[12] Neither Park nor Apple Valley could have foreseen this proceeding in their last rate cases. Park argues its and Apple Valley's expenses in this proceeding are substantial. Park's expenses mostly are for outside attorney fees and consultant costs.[13] Park asserts the costs for participation benefit ratepayers since conservation rates, revenue decoupling, and modified balancing accounts were adopted. These mechanisms provide incentives for customers to conserve water and remove utilities' disincentives for conservation.

CWA asserts all of the Class A water utilities are similarly situated in that they were required to incur unanticipated costs to participate in this proceeding.[14] The companies could not have forecasted the extent of expenditures required to participate in this proceeding, especially due to the active participation of the intervenors in this proceeding.

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[12] Apple Valley is a wholly owned subsidiary of Park.

[13] Park has recorded over $88,000 in outside expenses, and Apple Valley has recorded almost $30,000 in outside expenses.

[14] CWA notes that San Gabriel filed a company-specific application to address its implementation of the Commission's Water Action Plan and has not charged any costs to the memorandum account established for participation in this proceeding. This decision does not address San Gabriel's request to establish a memorandum account to track the costs incurred in that application. The tracking of San Gabriel's application-related costs in a memorandum account will be decided in Application 08-09-008.

DRA asserts that memorandum account treatment for legal and related costs does not meet the Commission's four-pronged test. DRA argues that the Class A water utilities have not met their burden of proving these expenses were necessary and in addition to previously-approved regulatory expense budgets included in their general rate cases. DRA disputes that these expenses were not under the utilities' control. Legal and related expenses are caused by routine rate regulation. Further, not all Class A water utilities established conservation rates in this proceeding. DRA states Suburban's situation was unique. Only DRA and Suburban litigated the issue of memorandum account treatment for previously incurred costs and DRA's agreement to support prospective costs was contained in a settlement agreement. According to DRA, these costs were foreseeable. The Class A water utilities had notice that the Commission's policy was to develop conservation rate designs when the Water Action Plan was issued in December 2005. The minimum data requirements established in D.07-05-062 require Class A water utilities to budget for adequate legal resources to participate in regulatory proceedings regarding conservation. Further, when the Commission issued this OII no Class A water utility requested a memorandum account. DRA disagrees with the Class A water utilities' assessment that their legal costs are substantial, because the numerical value of the expenses alone is insufficient to determine whether they are substantial. The estimated amounts expended for legal and related costs for participating in this ongoing OII range from zero to over $600,000.[15] In addition, the expenses are a small percentage of revenues.

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[15] DRA's Reply Comments at 14. Other Class A water utilities have recorded amounts ranging from approximately $104,000 for Cal Water and to approximately $256,000 for Cal Am. Suburban's memorandum account is not at issue; it has recorded

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The Class A water utilities have not substantiated that the expenses exceed forecasted budgets already included in rates. In addition, no Class A water utility met its burden of quantifying the benefit provided to ratepayers of participating in the proceeding. Finally, DRA asserts the Division of Water and Audits' rejection of CalAm's advice letter for a memorandum account to track expenses in this proceeding was not improper.

2.1.2. Discussion

In D.08-02-036, the Commission authorized a memorandum account for Suburban to track the costs of participating in this proceeding, because those costs were unanticipated and beyond the utility's control. Thus, we consider whether the reasons for authorizing Suburban's memorandum account apply equally to authorization of the memorandum accounts for the other Class A water utilities.

We are not persuaded that our earlier conclusion, that participation in this proceeding was unanticipated, was incorrect.[16] This OII was opened after several Class A water utilities filed applications for conservation rates. Not all conservation rate applications were consolidated. This OII was not envisioned in the Commission's Water Action Plan and not discussed in the Class A water utilities' general rate cases. The Water Action Plan required establishment of conservation rates independent of the general rate case cycle but did not mention

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approximately $273,000. Not all Class As have recorded costs. For example, Valencia Water Company and San Gabriel did not have applications consolidated with this proceeding and have no costs recorded in memorandum accounts. Great Oaks Water Company did not provide the requested information to DRA.

[16] D.08-02-036 at 45.

a proceeding such as this one that would address both rate and non-rate related conservation issues. We are not persuaded that our earlier conclusion, that the costs for participating in this proceeding were not under the utilities' control, was incorrect.[17] The OII's initial schedule called for completing this proceeding in a limited period of time on a narrow range of policy issues with concurrent determinations on conservation rate design and revenue adjustment mechanism proposals. The scope of the proceeding was expanded and phased at the request of DRA and with the support of the Class A water utilities.[18] DRA also requested that it be permitted to continue settlement negotiations with the Class A water utilities on the initially coordinated conservation rate design applications. Those settlement negotiations expanded to include intervenors and their concerns about rate design, monitoring, and customer education and outreach. Although not all Class A water utilities reached settlement agreements with all intervenors on monitoring and customer education and outreach, all at least negotiated with intervenors on those issues. Negotiations probably would not have occurred absent a consolidated proceeding, because intervenors would have been unlikely to have participated in all of the separate applications. The applications consolidated with this OII were not general rate cases and were filed independent of the rate case cycle of the Class A water utilities. The parties that

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[17] *Id.* at 46.

[18] DRA's January 29, 2007 Response on Preliminary Scoping Memo at 2. Attachment A to DRA's response included numerous additional policy, *i.e.,* integrated water resource management. The Phase 1 scoping memo revised the preliminary scope of the proceeding and adopted a two phase proceeding. The February 8, 2008 Assigned Commissioner's Ruling and Phase 2 Scoping Memo expanded the policy issues, as requested by DRA and other parties.

did not have their conservation rate design applications consolidated with this OII incurred the additional expenses associated with participation in this proceeding and were foreclosed from filing advice letters to establish memorandum accounts to track those expenses. Consistent with our determinations for Suburban, the legal and related expenses were not under the other Class A water utilities' control and were not anticipated in the other Class A water utilities' rate cases.[19]

The adoption of five conservation rate designs in Phase 1 of this proceeding was facilitated through the utilities' settlement agreements with DRA and, in one instance, The Utility Reform Network. Settlement agreements between the utilities and consumer groups led to the adoption of mechanisms to track the impact of the adopted rate designs on consumers, especially low-income ratepayers and persons with disabilities, and procedures for customer education and outreach. Public policy considerations support authorization of the memorandum accounts in this instance to encourage participation in both the generic review of conservation initiatives and in settlement negotiations.

Thus, the authorization of memorandum accounts to track legal and related expenses incurred in this proceeding is consistent with the Commission's discretion to weigh public policy considerations. These public policy considerations support our earlier determination in D.08-02-036 that the

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[19] In D.08-02-036, the Commission made no determination on any other factors or criteria in addressing whether to authorize the memorandum accounts for legal and related expenses. Consistent with this earlier decision, we make no determinations on other factors here.

circumstances of this proceeding support establishment of the memorandum accounts to track the Class A utilities' legal and related costs of participating in this proceeding.

2.2. Timeliness of requests for memorandum accounts and applicable precedent

The parties dispute whether timeliness of the request for a memorandum account should be a factor and whether past Commission extensions of memorandum account treatment to utilities that did not request them are relevant to this proceeding. DRA argues the Class A water utilities, other than Suburban, did not timely request memorandum accounts and authorization for memorandum accounts is contrary to Commission policy. Parties supporting the memorandum accounts note the Commission routinely has approved unrequested memorandum accounts.

2.2.1. Parties' Positions

DRA asserts that the Division of Water and Audits' rejection of CalAm's advice letter is not inconsistent with the memorandum account treatment accorded Class A water utilities in the Drought OII.[20] DRA relies on the Commission having established memorandum accounts for tracking conservation expenses and revenue fluctuations related to mandatory and voluntary conservation in the Drought OII in advance of permitting recovery for legal expenses attributable to the OII and supervisor overtime costs related to conservation. To recover those expenses, the water companies had to file applications for water management plans.

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[20] I.89-03-005 *et al.*

CWA asserts the Commission is empowered to authorize memorandum accounts under the circumstances. CWA states there is no substantive difference in the timing of the memorandum accounts in the Drought OII and the timing in this proceeding. Authorizing memorandum accounts in the Drought OII for conservation expenses at one point and later permitting the recording of legal and other expenses in those accounts absent a specific request is not significantly different than the authorization of the memorandum accounts for legal and related expenses in D.08-02-036.

GSWC, CWA, and Park assert the Commission has extended similar memorandum account treatment to other utilities that did not initially seek such relief in other circumstances. CWA states there have been no legal challenges to the authorization of those memorandum accounts. In one proceeding, GSWC was the only utility to request memorandum account treatment to record water contamination litigation expenses. However, the Commission authorized similar memorandum accounts for Suburban and San Gabriel if they became involved in similar litigation.[21] The Commission subsequently extended memorandum account treatment to all water utilities.[22] DRA asserts these resolutions do not set a relevant precedent because they pertain to ratemaking and affect rates, permitted tracking of expenses incurred after the establishment of the account, and relate to costs incurred from participating in major civil lawsuits. In addition, the relief initially was expanded to two companies who also pumped water from the contaminated aquifer and only later was expanded because

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[21] Resolution W-4089, *slip op.* at 5.

[22] Resolution W-4094.

further lawsuits had been filed in a different water basin, leading the Commission to assume the problem could become widespread.

Park notes the Commission issued Resolution W-3784 authorizing all water companies to establish memorandum accounts to record water sampling and testing expenses associated with the Environmental Protection Agency's National Primary Drinking Water Regulations on Lead and Copper, and Department of Health Services fees. No water companies had requested such memorandum account treatment. DRA argues that new federal regulations and fees mandated in state regulations governed the creation of these memorandum accounts, and those memorandum accounts permitted water utilities to track costs not already covered in rates.

Park notes the Commission issued Resolution W-3940 to authorize Havasu Water Company to establish a late charge of 1.5% on delinquent balances. Resolution W-3940 also authorized all water utilities to file advice letters with tariffs to establish the same 1.5% late charge.[23] DRA asserts this resolution addressed the policy issue of late payments by permitting tracking late charges in a memorandum account as a temporary measure and was the fourth in a string of requests for memorandum accounts. In addition, the resolution authorized water utilities to request memorandum accounts by advice letter. In this OII, the memorandum accounts were authorized on a retroactive basis.

Park notes the Commission issued Resolution E-3331 and authorized the 1993 Federal Tax Reform Legislation Memorandum Account. The Commission noted the energy companies and nine water companies had filed advice

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[23] Resolution W-3940, Ordering Paragraph 3.

letters requesting memorandum account treatment. Although not all water companies had requested memorandum accounts, the Commission authorized the memorandum accounts for the energy companies, the nine water companies and all other water companies under the Commission's jurisdiction.[24] In Resolution W-4014, the Commission authorized memorandum accounts to track changes in the revenue requirement associated with changes in federal and state tax liability resulting from the Small Business Jobs Protection Act and California Assembly Bill 3499. Although the advice letter was filed by one water company and similar advice letters were filed by other water companies, the Commission authorized memorandum accounts for all Class A water utilities. DRA states these resolutions relate to general ratemaking applicable to changes in federal and state legislation concerning tax reform and tax liability. In this proceeding, no new federal legislation affecting all Class A water companies justifies memorandum account treatment for all water utilities in the absence of requests for memorandum account treatment.

2.2.2. Discussion

In D.08-02-036, the Commission determined that authorization of memorandum accounts to track legal and related expenses in this proceeding for the other Class A water utilities was consistent with the authorization to book legal expenses incurred in the Drought OII.[25] We are not persuaded that the authorization and the comparison to the Drought OII were erroneous. The Commission authorized the tracking of legal expenses after the issuance of the

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[24] Resolution E-3331, Ordering Paragraph 1.

[25] D.08-02-036 at. 45.

Drought OII, as was done in D.08-02-036.[26] The Class A water utilities did not request booking of legal expenses in the memorandum accounts in the Drought OII, and only Suburban specifically requested such relief in this proceeding. CalAm's request came via an advice letter. That Suburban requested a separate memorandum account for the expenses in its application was irrelevant to the determination on its request and is irrelevant to consideration of whether booking legal and related expenses in a memorandum account is appropriate for the other utilities. In the Drought OII, the earlier creation of memorandum accounts for conservation expenses neither facilitated nor precluded the Commission's authorization to book in those accounts legal expenses for participating in that proceeding.[27] That recovery of the expenses booked in the Drought OII memorandum accounts was conditioned on specific utility actions similarly is irrelevant to the authorization of those accounts.

As discussed above, there are many instances where the Commission has authorized memorandum accounts without a specific request. One authorized memorandum account concerned legal expenses for proceedings outside the Commission, and the other memorandum accounts were for different expenses. These determinations illustrate the Commission's ability to authorize memorandum accounts where necessary, independent of the number of requests for them and the specific expenses to be tracked. In contrast, there is no

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[26] *See* D.92-09-084, 45 CPUC 2d 630, 642, Ordering Paragraph 6.

[27] Those conservation memorandum accounts were structured differently than the current conservation memorandum accounts authorized by the Commission, so it was possible to include legal expenses in those accounts. As noted above in Section 2.1, the Commission has permitted utilities to seek authorization to book expenses in related memorandum accounts.

support for a finding that the Commission lacks authority to authorize memorandum accounts to track legal and related costs of participating in this proceeding for utilities that did not request them. Thus, we affirm our earlier approval in D.08-02-036 of memorandum accounts to track legal and related costs incurred in this proceeding. Furthermore, we here determine that the legal and related costs of required participation in this generic proceeding to address rate and non-rate related conservation issues are costs that can be recovered from ratepayers. As in D.08-02-036, we limit the authorization of such memorandum accounts to the circumstances of this proceeding. Authorization of these memorandum accounts does not guarantee recovery of expenses booked to these accounts that have been otherwise authorized in rates or are imprudent or unreasonable.

As noted in D.09-06-053, modifying in part D.08-02-036, future requests for memorandum accounts to track costs associated with participating in generic proceedings shall be made by advice letter in accordance with General Order 96-B and the Water Industry rules. The Division of Water and Audits will prepare a resolution for Commission consideration of the request unless the Commission has previously directed staff to deny or to approve the particular relief requested.

These memorandum accounts may include legal and related expenses tracked in these memorandum accounts pursuant to D.08-02-036. Legal and related expenses incurred in preparing applications consolidated with this proceeding, whether incurred prior or subsequent to the issuance of this OII, are excluded from these memorandum accounts. The Class A water utilities may file Tier 1 advice letters within 30 days of the issuance of this decision to establish these memorandum accounts, by updating the Preliminary Statements contained

in their tariffs. These advice letters are subject to review and approval by the Commission's Division of Water and Audits. The Class A water utilities may seek recovery of the expenses booked to these memorandum accounts in their next general rate cases or by filing Tier 3 advice letters.

3. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 16, 2010 by CWA and DRA, and reply comments were filed on February 22, 2010 by CWA. Issues raised in comments are addressed in the applicable sections of this decision.

4. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Janice L. Grau is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.08-02-036, the Commission authorized Suburban and the other Class A water utilities to establish memorandum accounts to track the legal and related costs of participating in this proceeding from the date of issuance of this OII. Legal and related expenses incurred in preparing applications consolidated with this proceeding were excluded from these memorandum accounts.

2. Limited rehearing of D.08-02-036 was granted on the issue of memorandum account treatment for Class A water utilities, other than Suburban, for the legal and related costs of participating in this proceeding.

3. In some circumstances, the Commission has considered the following factors in reviewing requests for memorandum accounts: 1) the expense is caused by an event of an exceptional nature that is not under the utility's control; 2) the expense cannot have been reasonably foreseen in the utility's last general rate case and will occur before the utility's next general rate case; 3) the expense is of a substantial nature in the amount of money involved; and 4) the ratepayers will benefit by the memorandum account treatment. SP U-27-W incorporates these factors with certain modifications.

4. Even when the Commission has applied the factors listed in Finding of Fact 3, the Commission has not always applied all of them or required that they all be met before authorizing a memorandum account. At different times, the Commission has considered all of these factors, considered some of these factors, or has relied on other public policy considerations. In approving low income ratepayer assistance programs in D.06-11-052 and D.06-11-053 to implement a policy objective of the Commission's December 2005 Water Action Plan, the Commission authorized memorandum accounts to track costs associated with those programs without considering any of these factors.

5. This OII was not envisioned in the Commission's Water Action Plan. The OII's initial schedule called for completing this proceeding in a limited period of time on a narrow range of policy issues with concurrent determinations on conservation rate design and revenue adjustment mechanism proposals.

6. The applications consolidated with this OII were filed independent of the rate case cycle of the Class A water utilities.

7. Phase 1 of this proceeding adopted five conservation rate design settlements and settlement agreements between the utilities and consumer groups concerning mechanisms to track the impact of the adopted rate designs

on consumers, especially low-income ratepayers and persons with disabilities, and procedures for customer education and outreach.

8. In D.92-09-084, after the issuance of the Drought OII, I.89-03-005, the Commission authorized the tracking of legal expenses in conservation memorandum accounts.

9. The Commission has authorized memorandum accounts without a specific request in a number of resolutions, including Resolutions W-4089, W-3784, W-3940, W-4014, and E-3331.

10. Future requests for memorandum accounts to track costs associated with participating in generic water proceedings should be made by advice letter in accordance with General Order 96-B and the Water Industry rules. The Division of Water and Audits should prepare a resolution for Commission consideration of the request, unless the Commission has previously directed staff to deny or to approve the particular relief requested.

11. When a utility seeks recovery of costs tracked in a memorandum account, the utility must also demonstrate that the costs are not covered by other authorized rates, it is appropriate for ratepayers to pay for those categories of costs in addition to otherwise authorized rates, the utility acted prudently when it incurred those costs, and the level of costs is reasonable.

Conclusions of Law

1. Authorization of memorandum accounts to track legal and related expenses incurred for participating in this proceeding from the issuance of the OII is consistent with the Commission's discretion to weigh public policy considerations, is consistent with authorization for tracking legal expenses accorded in the Drought OII, and is consistent with the Commission's authority to authorize memorandum accounts without a specific request.

2. It is reasonable to require future requests for memorandum accounts to track costs associated with participating in generic water proceedings to be made by advice letter in accordance with General Order 96-B and the Water Industry rules.

3. Memorandum accounts for legal and related expenses for participation in this proceeding should be granted to all Class A water utilities, consistent with the grant to Suburban.

4. The legal and related costs of required participation in this generic proceeding to address rate and non-rate related conservation issues are costs that can be recovered from ratepayers, provided that the expenses have not been otherwise authorized in rates and are not imprudent or unreasonable.

O R D E R

IT IS ORDERED that:

1. Apple Valley Ranchos Water Company, California-American Water Company, California Water Service Company, Golden State Water Company, Great Oaks Water Company, Park Water Company, San Gabriel Valley Water Company, San Jose Water Company, and Valencia Water Company may establish memorandum accounts to track legal and related expenses for participating in this proceeding from the date of issuance of this Order Instituting Investigation. To establish these memorandum accounts, Apple Valley Ranchos Water Company, California-American Water Company, California Water Service Company, Golden State Water Company, Great Oaks Water Company, Park Water Company, San Gabriel Valley Water Company, San Jose Water Company, and Valencia Water Company must file Tier 1 advice letters within 30 days of the issuance of this decision, subject to review and

approval by the Commission's Division of Water and Audits. In these advice letters, the utilities are required to update the Preliminary Statements contained in their tariffs. These memorandum accounts may include legal and related expenses tracked in these memorandum accounts pursuant to D.08-02-036. Once these memorandum accounts are established, Apple Valley Ranchos Water Company, California-American Water Company, California Water Service Company, Golden State Water Company, Great Oaks Water Company, Park Water Company, San Gabriel Valley Water Company, San Jose Water Company, and Valencia Water Company may seek recovery of the expenses booked to these memorandum accounts in their next general rate cases or by filing Tier 3 advice letters. Authorization of these memorandum accounts does not guarantee recovery of expenses booked to these accounts that have been otherwise authorized in rates or are imprudent or unreasonable.

2. Legal and related expenses incurred in preparing applications consolidated with this proceeding, whether incurred prior or subsequent to the issuance of this Order Instituting Investigation, are excluded from the memorandum accounts authorized in Ordering Paragraph 1.

3. Future requests for memorandum accounts to track costs associated with participating in generic water proceedings shall be made by advice letter in accordance with General Order 96-B and the Water Industry rules. The Division of Water and Audits shall prepare a resolution for Commission consideration of the request unless the Commission has previously directed staff to deny or to approve the particular relief requested.

This order is effective today.

Dated April 8, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners