

Decision 08-03-020 March 13, 2008

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of CALIFORNIA WATER SERVICE COMPANY (U-60-W), a California corporation, requesting an order from the California Public Utilities Commission authorizing the continuation of the existing service connection moratorium in the Coast Springs Water System.

Application 06-11-021  
(Filed November 30, 2006)

**OPINION CONTINUING MORATORIUM IN  
COAST SPRINGS WATER SYSTEM**

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## **OPINION CONTINUING MORATORIUM IN COAST SPRINGS WATER SYSTEM**

### **1. Summary**

This decision extends the existing moratorium for new service connections in Coast Springs Water System (Coast Springs) and orders California Water Service Company (CalWater or Applicant) to pursue several options to increase supplies in Coast Springs and report to the Commission in its next general rate case (GRC) proceeding. This proceeding is closed.

### **2. Background**

A brief description of Coast Springs and a history of the existing moratorium will help put our discussion in context.

Coast Springs is a division of CalWater Redwood Valley District. CalWater acquired Coast Springs in May 2000 as part of its acquisition of Dominguez Water Company (Dominguez). At the time of the acquisition, Dominguez was under a moratorium imposed by the Department of Health Services (DHS, now the Department of Public Health or DPH) that limited the maximum allowable number of connections for Coast Springs to 250. Dominguez was also under Commission order to make necessary improvements to remove the DHS moratorium. As part of acquiring Dominguez, CalWater assumed all of Dominguez' public utility obligations related to Coast Springs including the obligation to remove the new connection moratorium placed on Coast Springs by DHS.

In March 2002, CalWater filed Application 02-03-032 requesting, among other things, the Commission's authority to establish a moratorium on new connections above 250 (or to any higher limit DHS might subsequently approve) in Coast Springs. In that proceeding, the Commission found that Coast Springs

Water System had reached the limit of its capacity and was unable to serve more connections than permitted in its domestic water supply permit without injuriously withdrawing the supply from its current users. The Commission also granted Coast Springs' request for a moratorium in D.03-03-037. The Commission set a three-year connection moratorium on new service connections above 250 for the Coast Springs, and also established a procedure for recording all requests for new service connections during the moratorium. The company was to establish a waiting list and an approved list to identify applications for water service exceeding the moratorium limit and to identify services provided under the moratorium limit without active meter connections. CalWater was to revoke any approved connection if a valid building permit was not provided by the holder of the permit within 18 months of the acceptance of the application for service. In addition, D.03-03-037 provided that the 250 limit would automatically adjust to any new, higher limit permitted by DHS. In July 2003, DHS increased the number of service connections for Coast Springs from 250 to 255. Accordingly, the current moratorium was set at 255.

D.03-03-037 also ordered CalWater to complete a hydrogeologic study by the end of 2003. CalWater hired CH2M HILL as a consultant to conduct the required hydrogeologic study. CH2M HILL issued a report in 2003 and a follow-up report in February 2005, making several recommendations for securing additional supplies in Coast Springs. D.06-04-006 extended the moratorium until further Commission order.

In this application, CalWater asks for Commission authority to continue the service connection moratorium in the Coast Springs that was ordered in D.03-03-037. The Company proposes three alternatives:

1. Installation of a marine desalination unit;

2. Construction of a new well; or
3. Continuation of the moratorium indefinitely if neither Alternative 1 nor 2 is adopted.

A prehearing conference (PHC) was held on February 21, 2007. The Division of Ratepayer Advocates (DRA), and two intervenors, Jeffrey Young (Young) and Marcos Pareas (Pareas), appeared at the PHC. Following the PHC, the assigned Commissioner issued a scoping memo on March 12, 2007 identifying the following issues to be addressed in this proceeding:

1. Should the Commission extend the moratorium?
2. If the moratorium is extended, how long the extension should be?
3. If the moratorium is extended for a specified period of time, what remedies should CalWater seek during that time to improve Coast Springs' water supplies and provide a basis for lifting the moratorium? Is either installation of a marine desalination plant or construction of a new well a viable solution to CalWater's supply issues?
4. Should CalWater be authorized to establish a memorandum account to record the costs associated with the selected project to lift the moratorium?

The scoping memo also indicated that all issues related to the moratorium and remedies to lift the moratorium should be addressed in this proceeding, while the broader issue of who should pay for the remedies, raised by DRA, would be appropriate for future GRC proceedings.

Evidentiary hearings were held on August 21 and 22, 2007. DRA and Pareas submitted testimony. Young also participated in hearings.

### **3. Moratorium**

All parties agree that the moratorium should be extended, but they differ on the length of the extension and the remedies CalWater should pursue to lift the moratorium. Below, we address these issues:

#### **3.1. Extension of the Moratorium**

All parties agree that CalWater has to continue the service connection moratorium in Coast Springs. The moratorium was first established because the Commission found that Coast Springs had reached the limits of its capacity and was unable to serve more customers without injuriously diminishing the supply available to its current users. The moratorium was expected to be in place for three years while CalWater made system improvements that would increase supplies and allow the moratorium to be lifted. However, the Commission had to extend the moratorium in D.06-04-006, when it found that despite some improvements, Coast Springs still faced capacity limitation.

That situation has not changed. The record shows that while Coast Springs has sufficient water supplies for its existing customers, it does not have sufficient supplies to serve new customers. None of the parties object to the continuation of the moratorium. In our view, as long as DHS has a moratorium in Coast Springs, a service connection moratorium should also be in place. Therefore, we order the existing moratorium to continue and adjust automatically to any new level DHS may permit.

#### **3.2. The Waiting List**

CalWater claims that 22 customers are on the waiting. However, the record shows only seven of the 22 claimed applicants have submitted the documentation the Commission requires to establish eligibility. Below, we discuss this in detail.

D.03-03-037 ordered CalWater to follow a standard procedure for establishing and maintaining a waiting list. CalWater claims, based on the directive of D.03-03-037, the waiting list holds 12 names, 11 individuals, and a 14-lot parcel (Parcel K). Young argues that CalWater should not have included the names of customers who did not have written applications on the waiting list. Had CalWater followed the established procedure, according to Young, the waiting list would include only seven customers instead of 22. DRA also believes that CalWater has violated D.03-03-037 and the number on the waiting list should be seven.

One of the conditions of D.03-03-037 in establishing the waiting list was that “[a]ll future applications for new service connections are to be in writing.”<sup>1</sup>

In other words, the Commission expressly required that only written applications be placed on the waiting list. In addition, the Commission required that “only a lot owner may apply for a new service connection to that lot.”<sup>2</sup> CalWater’s waiting list<sup>3</sup> contains four individuals,<sup>4</sup> added after D.03-03-037, but without written application dates. The waiting list also included a group of

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<sup>1</sup> D.03-03-037, p. 12.

<sup>2</sup> *Id.*

<sup>3</sup> Exhibit 303. This waiting list was an updated (June 6, 2007) version of the list that CalWater had attached to its application. The update reflects one name being removed and another added. The applicant who was removed from the list was at the top of the waiting list and granted connection. The applicant who was added was a customer who had connection and was previously on the approved list but, consistent with D.03-03-037, was removed from that list and placed on the waiting list because of failure to provide the required building permits.

<sup>4</sup> Exhibit 303, Applicant Nos. 4, 5, 6, and 24.

14 spaces under “Parcel K”<sup>5</sup> with no application dates. CalWater contends it placed the 14 spaces on the waiting list based on the request from a developer, Dunmoore Communities (Dunmoore). Although CalWater asserts that Dunmoore has a business relationship with the owner of Parcel K, which gives it the authority to act on the owner’s behalf, we cannot determine from the record if that business relationship was in effect at the time of the alleged request for service for Parcel K. Even if we could establish that Dunmoore was either the owner or acting on behalf of the owner, as CalWater suggests, the 14 spaces do not have written application dates and have therefore not met the Commission’s criteria for inclusion on the waiting list. Consistent with the procedure set in D.03-03-037 for establishing the waiting list, the four individuals and Parcel K -- all without application dates -- are not eligible to be on CalWater’s waiting list. The number of applicants on the waiting list for the purpose of this proceeding is seven.

In the comments on the proposed decision, CalWater proposes that we address removal of these four individuals from the waiting list in its next GRC. DRA also in its reply comments on the proposed decision notes that if these individuals indeed have complete applications, it would be unfair to remove them from the waiting list. We allow CalWater to file an advice letter to present evidence demonstrating that the four individuals are eligible to be included in the waiting list. CalWater should file a Tier 2 advice letter correcting the waiting list no later than 10 days from the date of this decision.

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<sup>5</sup> *Id.*, Applicant No. 23.

### **3.3. Remedies to Increase Water Supplies in Coast Springs**

Because the duration of the moratorium depends on the remedies and the amount of time they would require to complete, we address the remedial measures first.

**Marine Desalination Unit:** CalWater originally requested authorization to either install a desalination unit or construct a new well; however, CalWater now proposes the installation of a desalination unit as the best option for lifting the moratorium. The proposed desalination unit would produce 5.6 gpm of water for up to 22 residential customers at an estimated capital cost of \$450,450, and an estimated annual operation and maintenance costs of \$25,000.

DRA opposes the desalination unit and proposes a number of options as potential sources of additional supplies. DRA recommends CalWater pursue the following:

- Obtaining water from the Cline Well;
- Reactivating the Tunnel Well;
- Using the collection pond;
- Reducing the amount of unaccounted-for water in the district;  
and
- Considering the recommendations provided in the 2005 CH2M HILL report.

Young and Pareas also oppose the installation of a desalination unit and endorse several of DRA's options.

The widespread opposition to CalWater's proposed marine desalination unit is due to the \$450,450 estimate for the plant. DRA and other parties are concerned that the actual cost of a desalination unit would be considerably higher because the estimate does not include all costs of the project.

We agree that CalWater's estimate of the cost of building a desalination unit is deficient, and reject CalWater's proposal for this and several other reasons.

First, the cost estimate appears to be only a "rough estimate" that is used "to give a general cost of a desalination plant,"<sup>6</sup> not an "official" estimate for the project. CalWater's witness, John Foth (Foth) testified that neither he nor CalWater has any experience with desalination units. The estimate is from a proposal by the developer of Parcel K. There is no breakdown or a description of the estimate. It does not contain detailed analysis of the proposed desalination unit. Nor does it consider all the costs of a desalination plant. For example, it does not include the cost associated with addressing potential opposition by environmental groups even though CalWater's witness acknowledges that "there is and has been opposition to various plants."<sup>7</sup>

According to Foth, "The numerous permits required for the desalination unit may require other upgrades or delays in construction"<sup>8</sup> and cause the estimate to increase. Although Foth does not provide an estimate of how much higher the cost of permitting would be, he testifies that because a desalination plant would require many permits and take many years to build, costs associated with the items that were included in the estimate would be significantly higher.<sup>9</sup> Without the information on the types of permits that would be required for a

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<sup>6</sup> Transcript (TR), p. 98.

<sup>7</sup> *Id.*, p. 93.

<sup>8</sup> Exhibit 1, p. 5.

<sup>9</sup> TR, p. 84.

desalination unit, it is difficult to ascertain if CalWater's estimate is reasonable. Foth characterizes the estimate as being rough, and the estimate accounts for only some of the costs of obtaining the required environmental permits to build a desalination unit. Consequently, we conclude that the estimate is deficient and likely understated.

Second, there is uncertainty that the desalination unit would ever be built. Because of the process involved in obtaining all the permits for building a desalination unit, CalWater may face difficulty building the proposed unit in Coast Springs.

Third, the proposed desalination unit would produce substantially more water than needed to serve customers on the waiting list in Coast Springs. As discussed above, the number of applicants eligible for inclusion on the waiting list for new service connections is seven. Foth testified that generally DHS requires an additional capacity of one gpm for every eight customers. At that rate, CalWater would need about 0.875 gpm for seven additional customers. The 5.6 gpm capacity of the proposed desalination unit is well beyond this limit, making the economics of the project even more questionable. We see no reason to pursue higher than needed capacity.

We also reject CalWater's argument that the desalination unit can be used for redundancy purposes. CalWater claims that "Well No. 4 provides 70%-75% of the supply in the Coast Springs and if it were to be out of service, the only back up would be the supplies in the storage tank."<sup>10</sup> CalWater then argues that "having only storage to provide back up and emergency supply is a risk and not

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<sup>10</sup> CalWater Reply Brief, p. 3.

the best policy for long term management and reliability of the Coast Springs water system.”<sup>11</sup> Based on this argument, and without any further evidence, CalWater claims “the desalination unit would provide improved redundancy and reliability for Coast Springs Water System.”<sup>12</sup>

The purpose of this proceeding is to explore viable options to increase supplies to Coast Springs to help lift the DHS moratorium in that area. An examination of Coast Springs’ redundancy needs is beyond the scope of this proceeding. Even if we were to undertake such an investigation here, we would have to examine different sets of facts and data (for example, the level of redundancy required in Coast Springs) from what the record supports in this proceeding. We decline to consider the potential benefit or the use of the desalination unit for redundancy purposes at this time. Since CalWater has raised Coast Springs’ reliability needs, we order CalWater to file a plan for meeting the redundancy needs and providing back up service in Coast Springs with its next GRC.

In their comments on the proposed decision, DRA, Young, and Pareas agree with the proposed decision’s argument that an examination of Coast Spring’s redundancy needs is beyond the scope of this proceeding, but they do not support the proposed decision ordering CalWater to file a plan for meeting the Coast Spring’s redundancy needs in its next GRC. The parties states that by requiring CalWater to file a redundancy plan, the proposed decision is accepting

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<sup>11</sup> *Id.*, p. 9.

<sup>12</sup> *Id.*, p. 3.

CalWater's argument that additional redundancy is needed in the area.<sup>13</sup> We disagree. The proposed decision does not make any conclusions regarding CalWater's supply redundancy. It merely requests information to be used in a future Commission review.

CalWater also argues in its comments on the proposed decision that the proposed decision should clarify that redundancy needs are to be considered in lifting the moratorium and reference the need for "reliable" supplies in addition to total supplies. CalWater did not introduce redundancy or reliability in its application and those issues were not included in the scope of this proceeding. Therefore, reliability of supplies and redundancy issues are not addressed here.

Finally, even if a desalination unit is built, it may never be used to provide water to Coast Springs. It is suggested by Foth that CalWater maintains sufficient storage to cover water usage in Coast Springs to current and proposed customers during peak periods. Therefore, even if the unit is built, CalWater might never need to take water from the desalination unit to supply Coast Springs because storage would be utilized to cover the demand. Due to cost and lack of need for the proposed amount of surplus water, a desalination unit is not a viable option.

In its comments on the proposed decision, CalWater asks to modify the proposed decision to clarify that the cost estimate for the desalination unit was provided only to support the "substantial nature" prong of the memorandum account test.<sup>14</sup> However, the record shows that the cost data was presented for

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<sup>13</sup> See joint comments of DRA, Young and Pareas on the proposed decision, p. 5.

<sup>14</sup> Comments of CalWater on the proposed decision, p. 7.

purposes beyond the memorandum account test. CalWater's brief states that CalWater recommends installation of a desalination unit because it is the most cost effective option.<sup>15</sup> CalWater's application also states that CalWater recommends a desalination unit over a new well, although the estimated costs are higher for a desalination unit.<sup>16</sup>

We now turn to other remedies proposed by the parties.

**Cline Well:** The Cline Well is an existing well near Well No. 4. It is not owned by CalWater. Foth testified that the Cline Well would be a viable source of water for Coast Springs and it would not be a very expensive option, although an exact estimate of the cost was not provided.<sup>17</sup> CH2M HILL's February 17, 2005 report also identifies the Cline Well as one of the options for potentially capturing some additional flow that bypasses Well No. 4. The report notes that the Cline Well is used for landscape irrigation and is pumped at an average rate of 1.5 gpm in dry season and 1.0 gpm in wet season. The report then suggests that "there is likely some additional pumping capacity for the well."<sup>18</sup>

The record shows that CalWater made some effort to contact the owner of the Cline Well, but was not successful.

**Reactivating the Tunnel Well:** The Tunnel Well is a tunnel that develops the same source of water as some of CalWater's existing wells, but because it is not an approved source of water by DHS, it is not currently connected to

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<sup>15</sup> CalWater Brief, p. 2.

<sup>16</sup> Exhibit 1, p. 6.

<sup>17</sup> TR, pp. 39-40.

<sup>18</sup> Exhibit 1- Appendix C, CH2M Hill report, p. 4.

CalWater's system.<sup>19</sup> According to the CH2M HILL 2003 report, the Tunnel Well has a reported flow of between 0.5 and 1.0 gpm. The record shows that CalWater is obtaining a water supply permit from DHS for the Tunnel/Side Well.

CalWater's reply brief also indicates that CalWater is already pursuing this option.<sup>20</sup>

**Collection Pond:** The CH2M HILL 2005 report identified a collection pond with about 400,000 to 500,000 gallons of capacity and states that water in the pond could be used to help meet short-term peak needs.<sup>21</sup> Although currently the water is not an acceptable source of water, Foth testified that if the water from the collection pond was approved by DHS, it would provide adequate water to accommodate the number of customers on the waiting list.

**Unaccounted-for Water:** The record shows that CalWater has 30.95% unaccounted-for water. The average level of unaccounted-for water for a small water system is between 10% and 14% and the Commission has adopted a settled level of 22% for ratemaking purposes for CalWater. Although CalWater argues that the unaccounted-for water can be attributed to many factors, not just leakage, there is no explanation as to why CalWater's rate is higher than the average small water system. If any of the unaccounted-for water is due to leakage in the transmission system, infrastructure improvements could remedy the leakage and augment CalWater's water supply.

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<sup>19</sup> *Id.*, p. 4.

<sup>20</sup> CalWater Reply Brief, p. 7.

<sup>21</sup> Exhibit 1- Appendix C, CH2M Hill 2005 report, p. 4.

**New Well:** The February 2005 CH2M HILL report noted that the “yield in the shoestring aquifer<sup>22</sup> can be increased from a range of 11-16 gpm to a range of 16-26 gpm by installing an additional well downstream of Well No. 4.”<sup>23</sup> Young and Pareas support this alternative. DRA believes “there are other less costly options that CalWater should pursue first.”<sup>24</sup> CalWater rejects the proposed well on the basis that “the amount or quality of the additional capacity does not justify the cost.”<sup>25</sup> CalWater estimates a new well would cost about \$420,000. About \$120,000 of this amount is for the capital cost of the well and the rest is for obtaining the land.

During the hearing Foth testified that there may be alternative locations on CalWater’s own property for a new well, which would reduce the land cost estimate. Foth also testified that that CalWater may be able to drill pilot holes to determine whether additional water is available for a well at less cost than CalWater’s original estimate.

**CH2M HILL 2003 and 2005 Recommendations:** CH2M HILL made five recommendations in its 2003 and four recommendations in its 2005 reports.<sup>26</sup> The 2005 report specifically identified the shoestring aquifer “as the most viable source of additional supply” and suggested the potential yield may be developed by 1) altering the physical characteristics of the creek; 2) installing an additional

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<sup>22</sup> Shoestring aquifer is the term used for the aquifer near Well No. 4.

<sup>23</sup> *Id.*

<sup>24</sup> DRA’s Opening Brief, p. 11.

<sup>25</sup> Exhibit 1, p. 5.

<sup>26</sup> Exhibit 1, Appendix C.

well downstream of Well No. 4; and 3) diverting downstream water to above-ground storage near Well No. 4.

CalWater claims it considered the options in both reports and rejected several of them because of the cost, or the added value.<sup>27</sup> In particular, CalWater claims the environmental permitting issues, which could restrict how much of the flow could be captured downstream, as the primary reason for not pursuing the diversion of surface water in the shoestring aquifer option.

**Discussion:** Actions towards lifting the moratorium should be taken as quickly as possible and with no further delay. We find that many of the above proposed options have the potential to directly affect CalWater supplies and help lift the moratorium if further pursued. Some can be implemented immediately (such as identifying the source of unaccounted-for water), while others may require obtaining DHS approval as a source (such as the collection pond). Also, some projects will have a shorter timeframe because no lengthy permit will be required.

While the exact estimate of the cost of each project is unknown, many seem to cost less than a desalination unit. For example, one of CH2M HILL's 2005 recommendations, which was rejected in favor of the desalination unit, had an estimated cost of \$50,000, much less than the estimate of building a desalination unit. It is unclear why such projects were not considered as part of CalWater's solutions. In our view, many of the proposed alternatives may be more economical than a desalination unit and could provide faster and more effective ways to obtain additional capacity in Coast Springs.

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<sup>27</sup> CalWater Reply Brief, p. 6.

However, specific information, such as cost, the amount of additional water that each project could produce, the required permits, and the amount of time required to complete each project are needed in order to determine the most viable solutions. The record does not provide this data. Due to lack of information, we do not select a project at this time. Instead, we order CalWater to examine all of the above options and submit a report for our review in its next GRC. The report should include information such as the expected additional water supply, the estimated cost, the status of DHS and other permits required to implement each project, and the timeframe for completing each project listed above.

Finally, broader measures such as conservation and recycling were not addressed by the parties in this proceeding. Although these measures do not provide new supplies, because they reduce water consumption, they may be acceptable to DHS as an additional source to help lift the moratorium. CalWater should explore these options as well, because from an efficiency perspective, it would make sense to pursue solutions that save water before embarking on a more ambitious and costly projects like building a new desalination unit.

In their comments on the proposed decision, DRA, Young, and Pareas reargue that the Commission should require CalWater to take immediate action to remove the moratorium. The proposed decision properly finds that the options proposed by the parties could produce additional capacity, but also notes that additional information, such as cost, the amount of additional water that each project could produce, the required permits, and the amount of time required to complete each project would be needed in order to determine the most viable solutions.

### **3.4. Moratorium Length**

Parties have different views on the length of the moratorium extension. CalWater proposes a seven-year moratorium to pursue installation of a desalination plant.<sup>28</sup> DRA recommends the moratorium be continued until the Commission reviews CalWater's progress towards lifting the moratorium in CalWater's next GRC for Coast Springs, scheduled for July 2009. Young recommends only a one-year extension, because the projects he proposes are either underway, or require a short time to complete. Pareas, who originally recommended a five-year extension, changed his recommendation to one year after the hearings.

The length of the extension depends on the specific project we choose to increase water supplies in Coast Springs, and the length of time that project would require for completion. As stated above, because of lack of data, we defer the selection of a project until CalWater's next GRC. Therefore, the moratorium should continue until the Commission's review of project information is completed in CalWater's next GRC.

### **4. Memorandum Account Request**

CalWater requests authority to establish a memorandum account to track costs associated with either installing a marine desalination unit or constructing a new well.

DRA, Young and Pareas are opposed to the memorandum account. DRA is opposed to a memorandum account to record the costs of constructing a new well because it believes CalWater does not need additional water supply to serve

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<sup>28</sup> CalWater originally proposed a five-year moratorium in its application, but later changed that to seven. See CalWater's application.

its current customers, and also because there is no guarantee that a new well will result in additional capacity. DRA states that it is generally opposed to memorandum accounts to track costs of projects that are not needed to serve existing customers and that may not yield additional capacity. DRA believes CalWater should follow the guidelines set forth in the Commission's System Improvement Policy (SIP) for such plant additions. Young recommends the same.

CalWater requests authority to establish a memorandum account to book the cost associated with either installation of a desalination unit or construction of a new well. Since in sections above we rejected CalWater's requests for the installation of a desalination unit, we need not address the memorandum account treatment for that option here. In the following section, we discuss whether a memorandum account should be authorized to record costs associated with remedies to lift the moratorium.

A brief history of memorandum accounts will help put this issue in context. Generally, the Commission's ratemaking is done on a prospective basis in utilities' general rate cases; however, the Commission has established a four-pronged test to determine if a memorandum account is appropriate for tracking specific expenses for future consideration of their recovery in utility rates. Resolution W-4276 states that memorandum accounts are appropriate when the following conditions are met:

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 GRC 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.

Thus, in determining whether to authorize a memorandum account for costs associated with remedies to lift the moratorium, we look to see if the above four prongs are met.

The first and second prongs of the test refer to the costs caused by events that occurred between GRCs and which were unforeseeable. Examples of such events include the rolling black outs from the power outage in 2001 and the events of September 11, 2001, which, as the Commission noted were of exceptional nature and could not have been anticipated in the utilities' GRCs.<sup>29</sup> The history of the moratorium indicates that CalWater's request does not meet these standards. The moratorium had been in place for nearly two years when CalWater acquired Coast Springs from Dominguez in 2000. At the time of acquisition, CalWater was aware that it was under the obligation to make necessary improvements to remove the moratorium. CalWater has completed two GRCs since the acquisition and could have proposed these remedies to lift the moratorium in those GRCs.<sup>30</sup> It did not do so. We find that CalWater fails to meet the first two prongs of the memorandum account test, and we decline to authorize a memorandum account for CalWater to record the improvement costs associated with lifting the moratorium in Coast Springs. Such expenses can be reasonably foreseen and planned for by CalWater in its next GRC. DRA has proposed that CalWater follow the Commission's SIP. That is consistent with the

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<sup>29</sup> See D.02-07-011 and Resolution W-4276.

<sup>30</sup> CalWater made some improvements for which it sought recovery in its last GRC.

policy established in D.06-08-011 and we order CalWater to follow the SIP and plan for expenses related to improvements to lift the moratorium in its next GRC. In its comments on the proposed decision, CalWater argues it should be authorized a memorandum account for the expenses associated with examining the remedies in the proposed decision as well as with the preparation of a redundancy report and the follow up on the CH2MHILL, because these expenses are significant and caused by an event of an exceptional nature that is not under CalWater's control. The proposed decision has appropriately considered and rejected these types of expenses for memorandum account treatment.

## **5. DRA's Motions**

### **5.1. DRA's Request to Review CalWater's Failure to Comply With D.03-03-037**

DRA has requested that the Commission look into whether CalWater should be fined for failure to comply with D.03-03-037 with respect to maintaining the waiting list for Coast Springs.

Public Utilities Code Section 702 requires every public utility to obey and comply with every order, decision, direction or rule of the Commission. The Commission considers such violations serious and may sanction the violator.

As noted above, D.03-03-037 provided specific directions to CalWater on establishing a waiting list. One of those requirements was that only the names of applicants who submitted written applications should be placed on the waiting list. Contrary to this directive, CalWater placed the names of four individuals and Parcel K who had not submitted applications on the waiting list. CalWater explains that it placed some customers without submitted applications on the waiting list, because they were elderly or had strokes, and wanted to work with

them rather than remove them from the list. CalWater does not justify why Parcel K was placed on the waiting list without an application.

CalWater was aware that D.03-03-037 required that any revisions or exception to the adopted standard procedures would require CalWater to obtain Commission approval, yet it failed to do so, and applied different standards to the persons on the waiting list. The procedure in D.03-03-037 was established to ensure that the application and the approval process are fair and transparent.<sup>31</sup> CalWater's actions jeopardize that goal.

There is additional concern with CalWater's treatment of the waiting list. One of the directives of D.03-03-037 is that "each list must at a minimum identify the applicant, the location to be served, and the date a written application was received." Yet, CalWater seems to misinterpret that by arguing, "There is no D.03-03-037 requirement or CalWater requirement that application return dates be noted on the waiting list."<sup>32</sup> We find that CalWater's waiting list does not comply with D.03-03-037 and as such CalWater is in violation of that order. However, after reviewing CalWater's response to the errors in the waiting list, we find that CalWater's failure to follow Commission order was not deliberate. When considering the totality of circumstances in this case, we do not believe a monetary fine is warranted at this time.<sup>33</sup> Instead, we order CalWater to follow the directions of D.03-03-037 and correct its waiting list promptly. We caution CalWater that a similar violation in the future will result in a monetary fine.

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<sup>31</sup> See D.03-03-037, p. 11.

<sup>32</sup> CalWater Reply Brief, p. 15.

<sup>33</sup> See D.98-12-075.

In its response to the proposed decision, CalWater seeks guidance from the Commission on how to place Parcel K development with respect to the waiting list. Specifically, CalWater asks the Commission to clarify whether it is required to file for exemption from the moratorium to serve Parcel K ahead of others in the waiting list and under what conditions. CalWater states that developers are generally governed by Tariff Rule 15 in lieu of a written application for individuals. CalWater also cites D.89-12-020 and D.06-01-005 where the Commission considered requests for exceptions to serve certain developers ahead of other prospective customers.

In those decisions, parties petitioned the Commission to modify the moratorium decisions to consider exceptions for certain developers with access to their own water supplies. We cannot determine in this proceeding if Parcel K should be granted a similar exception. CalWater may file a petition to modify to seek Commission authorization for exception for Parcel K development. CalWater may also contact the water division for questions regarding Tariff Rule 15.

## **5.2. DRA's Request for Commission Review of CalWater's Procedures**

DRA filed a motion on October 3, 2007 requesting, among other things, that the Commission review CalWater's procedures for handling personal customer information and consider if remedial measures are appropriate. DRA's concern was caused by the release of confidential customer information that was attached to CalWater's opening brief. The confidential customer information, including customers' social security numbers was released publicly when CalWater electronically served its brief on the service list. After CalWater was notified by DRA of the release of the information, it asked all the parties to delete

the electronic filing, redacted the confidential customer information from its filing, and resubmitted it. An Administrative Law Judge's (ALJ) ruling dated October 3, 2007 ordered CalWater to file a declaration providing the status of its effort to inform the affected individuals, which CalWater filed on October 10, 2007. CalWater's declaration indicated that it had notified all the affected individuals of the situation in writing via Federal Express and offered to provide credit monitoring services to minimize the possibility of identity theft.<sup>34</sup>

CalWater's release of customer information was inadvertent but caused by failure to have adequate safeguards to protect the privacy of the information contained in customers' service applications. Although CalWater took immediate action to remedy the problem, the release of the confidential information was the result of careless practices. An investigation of CalWater's business practices would be beyond the scope of this proceeding, but such issues are appropriate for GRC proceedings. We reject DRA's motion without prejudice here, and order CalWater to present in its next GRC the procedures it follows and the methods it uses to protect customer information.

## **6. Young's Motion**

On September 28, 2007, Young filed a motion requesting final oral argument before the Commission. Young withdrew his request on February 14, 2008. Young's motion for oral argument is therefore moot.

## **7. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were

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<sup>34</sup> See Declaration of Lynne P. McGhee (Oct. 10, 2007), p. 4.

allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by CalWater and joint comments were filed by DRA, Young and Pareas on February 28, 2008. Reply comments were filed by DRA and CalWater on March 4, 2008. Some corrections and clarifications have been incorporated throughout the proposed decision in response to the comments. Specifically, discussion has been added to address the waiting list, DRA's request to impose a fine, redundancy and reliable supply issues, memorandum account request, the remedial measures, and Young's motion for final oral argument. Findings of facts, conclusions of law and ordering paragraphs have also been added.

## **8. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner and Maryam Ebke is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The moratorium has been in place since CalWater acquired Coast Springs from Dominguez.
2. The expense associated with the moratorium could have been reasonably foreseen and planned for by CalWater in its previous GRCs.
3. All parties agree that CalWater must continue the service connection moratorium in Coast Springs.
4. Coast Springs does not have sufficient supplies to add new customers.
5. CalWater's cost estimate for the desalination unit does not include all costs of building a unit.
6. The proposed desalination unit would produce more water than needed to serve the applicants on the service list.

7. D.03-03-037 established a procedure for maintaining a waiting list in Coast Springs

8. CalWater has placed four individuals and 14 spaces associated with Parcel K on the waiting list that are without submitted applications.

9. The options proposed by the parties may be more economical than a desalination unit and could provide faster and more effective ways to obtain additional supplies in Coast Springs.

10. The Commission has established a four-pronged test to determine if a memorandum account is appropriate.

11. CalWater does not meet the Commission's four-pronged test for establishing a memorandum account.

12. CalWater's treatment of the waiting list for new service connections in Coast Springs is inconsistent with the directive of D.03-03-037.

13. Based on the totality of the circumstances in this case, imposing a fine for non-compliance is not warranted.

14. An investigation of CalWater's business practices would be beyond the scope of this proceeding.

15. Generally, DHS requires an additional capacity of one gpm for every eight customers.

16. CalWater would need about 0.875 gpm for seven additional customers.

17. Many of the proposed options to increase water supply discussed herein have the potential to directly affect CalWater's water supply and help lift the moratorium if pursued.

18. Specific information, such as cost, the amount of additional water that each project could produce, the required permits, and the amount of time

required to complete each project are needed in order to determine the most viable solutions.

19. Young's motion for oral argument before the Commission is moot.

### **Conclusions of Law**

1. The service connection moratorium in Coast Springs should be extended.

2. CalWater's request for authority to establish a memorandum account to record costs associated with the selected projects to lift the moratorium should be denied.

3. CalWater should pursue costs associated with system improvements to lift the moratorium in its next GRC, due in 2009.

4. CalWater should examine all the remedial measures and options as described herein and file a report with its next GRC.

5. CalWater should file a plan for providing redundancy and back up service in Coast Springs in its next GRC.

6. CalWater's request for authorization to establish a memorandum account should be rejected.

7. DRA's motion to fine CalWater should be rejected.

8. DRA's motion to review CalWater's procedures for handling personal customer information should be denied without prejudice.

9. CalWater should present in its next GRC the procedures it follows and the methods it uses to protect customer information.

10. CalWater should file a Tier 2 advice letter presenting evidence correcting the waiting list.

**O R D E R**

**IT IS ORDERED** that:

1. The service connection moratorium in Coast Springs Water Systems (Coast Springs) is extended until the Commission reviews CalWater's plan for obtaining additional water supplies in CalWater's next general rate case proceeding.
2. California Water Service Company's (CalWater) request to establish a memorandum account to record the cost of remedies to lift the moratorium is denied.
3. CalWater shall explore the system improvement projects ordered herein, as well as others that appear reasonable, and submit a report to the Commission with its next GRC, identifying each project's estimated cost, the amount of additional water the project expects to produce, the required permits, and the amount of time the project would require for completion.
4. CalWater shall follow the Commission's System Improvement Policy and plan for expenses related to remedies to lift the moratorium in its next GRC.
5. CalWater shall file a plan for providing redundancy and back up service in Coast Springs with its next general rate case.
6. The motion of the Division of Ratepayer Advocates (DRA) to investigate whether CalWater should be fined for failure to comply with Commission Decision 03-03-037 is denied.
7. The motion of the DRA to investigate CalWater's procedures for protecting customer information is denied without prejudice.
8. CalWater shall present the procedures it follows and the methods it uses to protect customer information in its next general rate case.
9. CalWater shall file a Tier 2 advice letter presenting evidence correcting the waiting list no later than 10 days from the date of this decision.

10. The motion of Jeffrey Young requesting oral argument before the Commission is denied as moot.

11. Application 06-11-021 is closed.

This order is effective today.

Dated March 13, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners