

WATER/RSK/JB5/TKM/jlj

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

DIVISION OF WATER AND AUDITS
Water and Sewer Advisory Branch

RESOLUTION NO. W-4836
July 29, 2010

R E S O L U T I O N

**(RES. W-4836), CALIFORNIA AMERICAN WATER COMPANY (CAL AM).
ORDER AUTHORIZING RECOVERY OF A SURCHARGE OF \$3.5
MILLION PAID TO THE CALIFORNIA DEPARTMENT OF FISH AND
GAMES ON BEHALF OF NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION RECORDED IN THE NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION/ENDANGERED SPECIES ACT
MEMORANDUM ACCOUNT.**

SUMMARY

By Advice Letter (AL) 825, filed on January 15, 2010, Cal Am requests Commission authorization to amortize recovery of \$3.5 million paid to the California Department of Fish and Game (CDFG) on behalf of the National Oceanic and Atmospheric Administration (NOAA) on April 8, 2009 and recorded in the NOAA/Endangered Species Acts (ESA) Memorandum Account. The NOAA/ESA Memorandum Account was established to track payments by Cal Am to NOAA for ESA mitigation activities on the Carmel River. Cal Am filed a supplement, AL 825-A, on March 17, 2010 to clarify the preliminary statement in its tariff for the NOAA/ESA Memorandum Account. AL 825-A requests that all authorized costs recorded in the NOAA/ESA Memorandum Account only be recovered from customers on the Monterey main system. Customers on the Hidden Hills, Ryan Ranch, and Bishop subsystems are excluded from any proposed surcharge as they do not take water from the Carmel River.

This resolution grants recovery of \$3.5 million plus interest only from customers on the Monterey main system through a volumetric-based surcharge across all tiers for 18 months starting August 1, 2010.

BACKGROUND

By AL 652, filed on July 24, 2006, as supplemented on August 14, 2006, Cal Am requested authority to establish the NOAA/ESA Memorandum Account. AL 652-A was filed pursuant to a Settlement Agreement between Cal Am and NOAA. The NOAA/ESA Memorandum Account tracks payments Cal Am is required to pay NOAA or its designee for ESA mitigation. AL 652-A was approved by the Division of Water and Audits effective August 24, 2006.

In March 2009, Cal Am and NOAA amended the 2006 Settlement Agreement that extends the Term of Agreement from 2013 to 2016. The March 2009 Settlement Agreement between Cal Am and NOAA provides that Cal Am is to pay an initial lump-sum payment of \$3.5 million followed by \$7.7 million spread over seven annual payments of \$1.1 million. In a partial settlement agreement between Cal Am and the Division of Ratepayer Advocates (DRA) in A.08-01-027 et al., DRA agreed to Cal Am's request to continue the NOAA/ESA Memorandum Account. (Partial Settlement Agreement, November 24, 2008, Section 4.3 attached as Appendix A to Decision (D.) 09-07-022). The Commission in D.09-07-022 (Ordering Paragraph 1) approved the Partial Settlement Agreement between DRA and Cal Am.

By AL 782-W, filed on July 17, 2009, Cal Am extended the applicable date that the NOAA/ESA Memorandum Account would remain open from June 2013 to July 1, 2016. AL 782-W was made effective July 17, 2009.

Cal Am filed AL 825 on January 15, 2010 as a Tier 3 filing consistent with General Order 96-B, Water Industry Rules, Section 7.3.3(7). Cal Am requests Commission authorization to amortize the initial lump-sum payment of \$3.5 million paid to CDFG on April 8, 2009 and recorded in the NOAA/ESA Memorandum Account. Cal Am proposes to recover the \$3.5 million payment through a volumetric-based surcharge across all tiers for 18 months beginning July 1, 2010.

Cal Am filed a supplement to AL 825 on March 17, 2010. AL 825-A amends the preliminary statement in Cal Am's tariff for the NOAA/ESA Memorandum Account to clarify that any amortization authorized by the Commission will be recovered only from customers on the Monterey main system. The Carmel River is the focus of mitigation efforts and costs tracked in the NOAA/ESA Memorandum Account. There are a number of satellite systems in the Monterey District serving the Bishop, Hidden Hills, Ryan Ranch, Toro, Ambler, Ralph Lane, and Chular areas. Customers on these systems would be exempt from any potential surcharge as they do not rely on Carmel River water for their supply.

NOTICE

Copies of AL 825 and AL 825-A were mailed in compliance with General Order 96-B on January 15, 2010 and March 17, 2010, respectively.

PROTESTS

No protest was received.

DISCUSSION

Cal Am requests that the \$3.5 million, plus interest (approximately \$16,000), be transferred to the expense balancing account for recovery beginning July 1, 2010 in conjunction with other rate increases Cal Am intends to file for in the first half of 2010. This amount represents over 8 percent of Cal Am's authorized 2009 revenues. Cal Am requests an amortization period of 18 months to avoid overlap between the recovery of the \$3.5 million payment made in 2009 and the future payments scheduled in 2010 and 2011 under its settlement agreement with NOAA. Recovery of the 2010 and 2011 payments will be requested as part of Cal Am's statewide rate case with final rates to be effective January 1, 2012.

The standard practice is to amortize under-collections of 5% to 10% of gross revenues over a two-year period (see Standard Practice U-27-W). Cal Am's justification for an 18-month amortization is to avoid overlap with amortization of future payments in 2010 and 2011 and the "pancaking" effect this would have on rates. An 18-month amortization is reasonable for the reasons given. We will authorize Cal Am to transfer the \$3.5 million plus interest to an expense balancing account to be amortized over 18 months beginning August 1, 2010.

Cal Am submitted a copy of the cancelled check for the \$3.5 million payment made to CDFG to support its filing. The four prongs established for recovery of costs booked to a memorandum account as outlined in Ordering Paragraph No. 5 in Resolution W-4824 are inapplicable in this matter. The dollars booked to the NOAA/ESA Memorandum Account are pursuant to a settlement agreement that Cal Am entered into with the United States Department of Commerce to address compliance with the Federal Endangered Species Act resulting from Cal Am's water demands in the Carmel River on behalf of its ratepayers. The \$3.5 million is to cover remediation measures to reduce the impact of Cal Am's water demands in the Carmel River on fish (steelhead trout) and their habitat. Cal Am is required to comply with the Federal Endangered Species Act as a result of its operations in the Carmel River on behalf of supplying water to its ratepayers and therefore a review for prudence in action with respect to the incurrence of these costs, the reasonableness with respect to the amount of the costs incurred, or the ratepayer responsibility for the costs is unnecessary here. The \$3.5 million have not been accounted for by other authorized rates. CDFG is currently in the process of planning how the money will be utilized to mitigate the environmental impact on the Carmel River due to Cal Am's operations. Cal Am should obtain reports from CDFG on annual basis to determine how the funds are eventually expended and submit copies of these reports in future requests to amortize balances in the NOAA/ESA Memorandum Account.

Pursuant to Public Utilities Code Section 311(g) (2), the comment period has been waived as AL 825-A is uncontested and this resolution grants the relief requested.

FINDINGS AND CONCLUSIONS

1. California American Water Company was authorized to establish the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account pursuant to approval by the Division of Water and Audits of Advice Letter No. 652-A effective August 24, 2006.
2. The Commission in Decision 09-07-022 (Ordering Paragraph 1) approved the Partial Settlement Agreement between the Division of Ratepayer Advocates and California American Water Company to continue the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account to track payments to the National Oceanic and Atmospheric Administration or its designee for Endangered Species Act mitigation activities on the Carmel River per a March 2009 agreement between California American Water Company and the National Oceanic and Atmospheric Administration.
3. Advice Letter 825 was filed by California American Water Company on January 15, 2010.
4. Advice Letter 825-A was filed by California American Water Company on March 17, 2010.
5. No protest to either Advice Letter 825 or Advice Letter 825-A was received.
6. Advice Letter 825-A requests authorization to amortize the \$3.5 million balance in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account plus interest over 18 months beginning July 1, 2010.
7. The \$3.5 million balance in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account is over 8 percent of authorized 2009 revenues for California American Water Company.
8. Standard practice as outlined in Standard Practice U-27-W is to amortize memorandum account balances of 5 percent to 10 percent of gross revenues over a two-year period.
9. California American Water Company requests an 18-month amortization to avoid overlap with the amortization of future payments tracked in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account.
10. Amortization of the \$3.5 million balance plus interest over 18 months beginning August 1, 2010 is reasonable.
11. California American Water Company's work papers are adequate for determining the reasonableness of entries in the National Oceanic and Atmospheric

Administration Memorandum Account based on copy of the April 8, 2009 cancelled check for payment made to the California Department of Fish and Game.

12. The four prongs established for recovery of costs booked to a memorandum account as outlined in Ordering Paragraph No. 5 in Resolution W-4824 are inapplicable in this matter.
13. Division of Water and Audits' recommendation for recovery of \$3.5 million plus interest through a volumetric-based surcharge across all tiers spread over 18 months starting August 1, 2010 is reasonable and should be approved.
14. Costs tracked in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account are to cover mitigation activities on the Carmel River in compliance with the Federal Endangered Species Act due to California American Water Company's operations on behalf of its ratepayers.
15. Only customers on the Monterey main system rely on supplies from the Carmel River.
16. It is reasonable that the preliminary statement for the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account be amended to clarify that any surcharge to amortize balances would be levied on customers of the Monterey main system only.
17. It is reasonable that California American Water Company transfer the \$3.5 million balance plus interest in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account to an expense balancing account to be amortized through a volumetric surcharge over all tiers to customers on the Monterey main system for a period of 18 months beginning August 1, 2010.
18. The surcharges shown in the tariff sheets attached to AL 825-A are reasonable and should be approved effective August 1, 2010.

THEREFORE IT IS ORDERED THAT:

1. California American Water Company is authorized to transfer the \$3.5 million balance plus interest in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account to an expense balancing account for recovery in rates.
2. California American Water Company is authorized to recover \$3.5 million plus interest for its payment to the California Department of Fish and Game. The recovery shall be through a volumetric-based surcharge across all tiers over 18 months starting August 1, 2010 from customers on the Monterey main system only.
3. The tariff sheets attached to Advice Letter 825-A are approved effective August 1, 2010.

4. 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 July 29, 2010; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners