

WATER/RSK/PTL/OE2/jlj

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

DIVISION OF WATER AND AUDITS  
Water and Sewer Advisory Branch

RESOLUTION W-4878  
June 9, 2011

**R E S O L U T I O N**

**(RES. W-4878), DEL ORO WATER COMPANY (DOWC), FERNDALE DISTRICT. THIS RESOLUTION AUTHORIZES A SURCHARGE OF \$3.80 FOR FORTY-EIGHT MONTHS FOR RECOVERY OF LEGAL AND ENGINEERING EXPENSES EXPENDED FROM AUGUST 2008 TO JANUARY 2011 DUE TO NEGOTIATIONS WITH THE CALIFORNIA DEPARTMENT OF FISH AND GAME (CDFG), FOR ITS INVESTIGATIONS INTO WATER DIVERSIONS FROM MULTIPLE SPRINGS TRIBUTARY TO FRANCIS CREEK, FERNDALE, CA.**

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**SUMMARY**

By Advice Letter (AL) 280, filed on February 4, 2011, and supplemented by AL 280-A, filed February 28, 2011, to correct the customer notification method and mailing date, DOWC, a Class B water utility, seeks to recover expenses of \$139,884.21, expended from August 2008 to January 2011, which has been recorded in its Extraordinary Events Legal/Engineering Memorandum Account (EEL/EMA)<sup>1</sup>, for its negotiations with the CDFG, concerning its investigations into water diversions from multiple springs tributary to Francis Creek, Ferndale, CA. This Resolution authorizes DOWC to collect a surcharge of \$3.80 per customer over a period of 48 months to recover costs incurred in these negotiations.

**BACKGROUND**

DOWC owns and operates spring and ground water collection facilities in the Traulsen and Francis Creek watersheds, located near the town of Ferndale in Humboldt County. DOWC uses these facilities as a primary source of water supply to its customers in the

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<sup>1</sup> On August 21, 2008, through Advice Letter 195 effective August 21, 2008, the Commission granted DOWC the establishment of an Extraordinary Events Legal/Engineering Memorandum Account (EEL/EMA).

Ferndale District. On July 10, 2008, the CDFG inspected these spring and ground water collection facilities and notified DOWC by a letter, dated August 19, 2008, that its water collection system resulted in a substantial diversion of the waters of Traulsen and Francis Creeks and adversely affected fish or wildlife, and therefore, DOWC was required to submit a notification for a Lake and Streambed Alteration Agreement (LSAA)<sup>2</sup> with CDFG.

In response to CDFG's letter, DOWC commissioned a detailed technical analysis of the source of supply to its water collection facilities in the Traulsen and Francis Creek water sheds, and review of the legal basis for CDFG's request for submission of notification for a LSAA. Based on this analysis, DOWC was successful in convincing the CDFG that its water collection facilities did not substantially divert the waters of Traulsen and Francis Creeks or otherwise adversely affect fish or wildlife resources. CDFG informed DOWC of this decision via a letter dated December 20, 2010.

The total expense accrued in the EEL/EMA from after August 21, 2008 through January 31, 2011 is \$139,884.21.

## **NOTICE AND PROTESTS**

AL 280 was served on February 4, 2011, in accordance with the provisions of General Order 96-B. A notice of the proposed rate increase was included with the February monthly billing to all DOWC, Ferndale District, customers on February 16, 2011. No protests were received.

## **DISCUSSION**

The increase requested herein is for the purpose of recovering through a surcharge, on a dollar-for-dollar basis, legal and engineering expenses which DOWC incurred in its EEL/EMA.

On July 10, 2008, CDFG inspected the spring and ground water collection facilities owned by DOWC. Based on the information it gathered during the site visit, CDFG notified DOWC by a letter dated August 19, 2008, that its water collection system resulted in a substantial diversion of the waters of Traulsen and Francis Creeks, and therefore, DOWC was required to submit a notification for a LSAA with CDFG. CDFG

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<sup>2</sup> Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to submit a notification for a LSAA to the CDFG before beginning any activity that will substantially change, obstruct, divert or use any material from the bed, channel, or bank of a river, stream, or lake.

was conducting environmental review on Francis Creek for fisheries restoration and flood control work. All the springs CDFG inspected contribute flow to Francis Creek, and CDFG believed DOWC's water facilities substantially diverted flow from this creek. When the CDFG finds any conditions that may have an effect that can substantially impact diversions and water supplies, the CDFG is authorized to impose conditions in a LSAA to protect fish and wildlife species.

This inspection and findings of the CDFG led to the DOWC to commission a detailed technical analysis of the source of supply of its water collection facilities in the Traulsen and Francis Creek water sheds, and a review of the legal basis of CDFG's request that DOWC submit a notification for a LSAA. Based on DOWC's legal findings and technical analysis, on December 20, 2010, CDFG reversed course and informed DOWC that its water collection facilities did not substantially divert the waters of Traulsen and Francis Creeks and did not adversely affect fish or wildlife resources and that a LSAA was not needed for its water collection facilities.

When a utility seeks recovery of costs recorded in a memorandum account, it has the burden to show that: 1) it acted prudently when it incurred these costs; 2) the utility paid reasonable amounts for these costs; 3) the memorandum account costs are not covered by other authorized rates; and 4) it is appropriate for rate payers to pay for these costs in addition to otherwise authorized rates. (See, e.g., Ordering Paragraph 5 of Res. W-4824.)

Based on the events discussed above, we find that DOWC acted prudently in incurring the costs recorded in the EEL/EMA. These costs were incurred in order to protect DOWC's water rights in the Traulsen and Francis Creek water sheds. While it is apparent that the investigation initiated by the CDFG was beyond the control of DOWC, the utility acted responsibly and appropriately in commissioning the technical studies discussed above because by doing so DOWC was able to address CDFG's concerns and to protect its water rights in the Traulsen and Francis Creek water sheds.

With respect to the 2<sup>nd</sup> prong, Division Staff reviewed DOWC'S expenditures of \$139,884.21 recorded in its invoices, including itemized and detailed invoices from the utility's attorneys, which DOWC provided to Staff, and has found these expenditures to be prudent and reasonable.

With respect to the 3<sup>rd</sup> prong discussed above, Division Staff has reviewed DOWC Ferndale District's last general rate case (GRC), authorized in June 26, 2008 (see Res. W-4697), and has ascertained that DOWC could not have anticipated the investigation, which was initiated by the July 10<sup>th</sup>, 2008 inspection of the CDFG, and that the expenses accrued in response to the CDFG's investigation could not have been included in the utility's rates. Therefore, DOWC did not receive revenue for the recently incurred

expenses accrued in the EEL/EMA. Accordingly, recovering these expenses now would not amount to double recovery and is reasonable.

The Division Staff finds it appropriate for ratepayers to pay for these costs, since they were accrued to protect the water rights of DOWC, thereby ensuring that the utility has a reliable and sufficient water supply, which is beneficial to its customers. Accordingly, it is appropriate for ratepayers to pay for these category of costs in addition to otherwise authorized rates and, therefore, DOWC meets the 4<sup>th</sup> prong discussed above.

To minimize the impact of this amount on rate payers the surcharge has been spread over a course of forty-eight months. Also, per guidance in Standard Practice U-27-W, Rule 56b, memorandum account amortizations surcharges are to be spread over 3 years for under-collections over 10% of gross revenue. The sum of \$139,884.21 is over 10% of the current gross revenue of \$450,642 for DOWC, Ferndale District. The Division recommends a surcharge of \$3.80 per customer per month, for a period of forty-eight months. This surcharge will not result in a rate of return greater than the last authorized for DOWC, Ferndale District.

### **COMMENTS**

This is an uncontested matter in which the resolution grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise 30-day period for public review and comment is being waived.

### **COMPLIANCE**

There are no outstanding Commission orders requiring system improvements. The utility has been filing annual reports as required.

### **FINDINGS**

1. Del Oro Water Company (DOWC), Ferndale District requests recovery of legal and engineering expenses for its negotiations with the California Department of Fish and Game (CDFG), concerning CDFG's investigations into water diversions from multiple springs tributary to Francis Creek, Ferndale, CA.
2. On July 10, 2008, CDFG inspected DOWC's spring and ground water collection facilities and notified DOWC by a letter dated August 19, 2008, that its water collection system resulted in a substantial diversion of the waters of Traulsen and Francis Creeks and adversely affected fish or wildlife, and therefore, DOWC was required to submit a notification for a Lake and Streambed Alteration Agreement (LSAA) with CDFG.

3. On December 20, 2010, CDFG reversed its course and, based on DOWC's legal findings and technical analysis, informed DOWC that its water collection facilities did not substantially divert the waters of Traulsen and Francis Creeks and did not adversely affect fish or wildlife resources and that a LSAA was not needed for its water collection facilities.
4. In response to CDFG's letter, DOWC commissioned a detailed technical analysis of the source of supply to its water collection facilities in the Traulsen and Francis Creek water sheds and review of the legal basis for CDFG's request for submission of notification for a LSAA.
5. As a result of this commission, DOWC incurred and recorded in its EEL/EMA during the period from after August 21, 2008 through January 31, 2011, a total amount of \$139,884.21.
6. The expenses recorded in DOWC's EEL/EMA of \$139,884.21 are prudent, reasonable, and not covered by other authorized rates; also it is appropriate for rate payers to pay for these costs in addition to otherwise authorized rates.
7. DOWC could not have reasonably anticipated these expenses in the EEL/EMA in its last GRC, which became effective in June 26, 2008.
8. It is appropriate for ratepayers to pay for these costs, since they were accrued to protect the water rights of DOWC, thereby ensuring that the utility has a reliable and sufficient water supply, which is beneficial to its customers.
9. AL 280 was served on February 4, 2011, in accordance with the provisions of General Order 96-B. A notice of the proposed rate increase was included with the February monthly billing to all DOWC, Ferndale District customers on February 16, 2011, and no protest was received.
10. DOWC should be permitted to transfer the amounts in the EEL/EMA to a balancing account for recovery.
11. DOWC should be permitted to recover the amounts in the balancing account by imposing a surcharge of \$3.80 per customer per month for forty-eight months.
12. This surcharge will not result in a rate of return greater than the last authorized for DOWC, Ferndale District.

**THEREFORE IT IS ORDERED THAT:**

1. Del Oro Water Company, Ferndale District, is permitted to transfer the amount of \$139,884.21 in its Extraordinary Events Legal/Engineering Memorandum Account to a balancing account for recovery over a period of forty-eight months. Accrued interest at the 90-day commercial paper rate may be added on the uncollected amounts from the effective date of this Resolution.
2. Del Oro Water Company, Ferndale District, is permitted to recover the amounts in the balancing account reflected in Ordering Paragraph 1 above by imposing a surcharge of \$3.80 per customer per month for forty-eight months.
3. Del Oro Water Company, Ferndale District, shall track the revenue from the \$3.80 monthly surcharge reflected in Ordering Paragraph 2 above in a balancing account and account for any over or under collected revenues in its next general rate case.
4. Within 5 days from the effective date of this resolution, Del Oro Water Company, Ferndale District, shall file a supplement to Advice Letter 280 to incorporate in its rate schedules the surcharge reflected in Ordering Paragraph 2 above, and concurrently cancel its presently effective Schedule FD- 1A. The effective date of the revised rate schedule shall be five days after filing.
5. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at the Public Utilities Commission of the State of California on June 9, 2011; the following Commissioners voting favorably thereon:

/s/ PAUL CLANON

Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
President

TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON

Commissioners