

WATER/RSK/BMD/JB5/RKK/jlj

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

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

**RESOLUTION NO. W-4912**  
April 19, 2012

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

**(RES. W-4912), CALIFORNIA AMERICAN WATER COMPANY (CAL AM).  
ORDER AUTHORIZING RECOVERY THROUGH A VOLUMETRIC  
SURCHARGE FOR THE \$2.2 MILLION PLUS INTEREST PAID TO THE  
CALIFORNIA DEPARTMENT OF FISH AND GAME ON BEHALF OF  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
RECORDED IN THE NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION/ENDANGERED SPECIES ACT MEMORANDUM  
ACCOUNT.**

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**SUMMARY**

By Advice Letter (AL) 929, filed on January 27, 2012, Cal Am requests Commission authorization to recover \$2.2 million paid to the California Department of Fish and Game (CDFG) on behalf of the National Oceanic and Atmospheric Administration (NOAA) 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 authorized in Decision (D.) 09-07-022, effective July 9, 2009 and implemented by Advice Letters 782 and 652-A.

This resolution grants recovery of \$2.2 million plus accrued interest of \$6,873 from customers on the Monterey main system through a volumetric-based surcharge across all tiers for 24 months starting May 1, 2012. Customers on the Hidden Hills, Ryan Ranch, and Bishop subsystems are excluded from the proposed surcharge as they do not take water from the Carmel River.

**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 activities on the Carmel River. AL 652-A was approved by the Division of Water and Audits effective August 24, 2006.

By AL 782-W, effective July 17, 2009, an extension was granted to keep the NOAA/ESA Memorandum Account open from June 2013 to July 1, 2016.

D.09-07-022, Ordering Paragraph 1, adopted a settlement agreement between Cal Am and Division of Ratepayer Advocates. That agreement allowed Cal Am to continue recording payments made to NOAA or its designee in the NOAA Memorandum Account pursuant to a 2006 settlement agreement between Cal Am and NOAA. The Settlement Agreement required Cal Am to pay NOAA an initial lump-sum payment of \$3.5 million followed by \$7.7 million spread over seven annual payments of \$1.1 million for ESA related mitigation activities in the Carmel River.

Res. W-4836, dated July 29, 2010 authorized Cal Am to recover, through a surcharge, an initial lump-sum payment of \$3.5 million plus interest for monies paid to the CDFG. That amount was tracked and recorded in the NOAA / ESA Memorandum Account and is being recovered from customers on the main Monterey system through a volumetric based surcharge across all tiers for 18 months beginning July 1, 2010.

Cal Am filed AL 929 on January 27, 2012 as a Tier 3 filing consistent with General Order 96-B, Water Industry Rules, Section 7.3.3(7). Cal Am made two separate payments of \$1.1 million (on June 16, 2010 and June 10, 2011) and recorded them in the NOAA Memorandum Account. Cal Am requests that the \$2.2 million, plus accrued interest of \$6,873, be transferred to the expense balancing account for recovery effective May 1, 2012.

Cal Am proposes to recover the \$2,206,873 through a volumetric-based surcharge across all tiers for 24 months from May 1, 2012 through April 1, 2014. The surcharge will be recovered from customers on the main Monterey system. Customers in the Bishop, Hidden Hills, Ryan Ranch, Toro, Ambler, Ralph Lane, and Chualar areas are exempt from the surcharge as they do not rely on Carmel River water for their water supply.

### **NOTICE**

Copies of AL 929 were served to Cal Am's services list, in compliance with Section 4.3 of the General Rules of Order 96-B, on January 27, 2012. Service was made in compliance with General Order 96-B, General Rules, Sections 4.3 and 7.2 and Water Industry Rules, Section 4.1. Cal Am provided notice of the rate increase by publication and furnished proof of publication of the filing in two local newspapers.

### **PROTESTS**

No protests were received.

## DISCUSSION

Cal Am is requesting permission to transfer \$2,206,873 to an expense balancing account. That amount represents 5.05 percent of Cal Am's authorized 2011 revenues. The requested amount will be amortized over a 24-month period.

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). We will authorize Cal Am to transfer the \$2,206,873 to an expense balancing account to be amortized over 24 months beginning May 1, 2012.

To support its filing, Cal Am submitted copies of the cancelled checks for the \$2.2-million payment made to CDFG. The four prongs established for recovery of costs booked to a memorandum account as outlined in Ordering Paragraph No. 5 in Res. W-4824 are inapplicable in this matter for the following reasons: First, 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 \$2.2 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. Second, 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. Finally, the requested amounts (\$2.2 million plus interest) have not been accounted for by other authorized rates.

By Res. W-4836, Cal Am was required to obtain from CDFG, on an annual basis, details of how funds were utilized for mitigation of the environmental impact on the Carmel River from Cal Am's operations. Cal Am was required to submit copies of those reports to DWA in future requests to amortize balances in the NOAA/ESA Memorandum Account. Cal Am did not provide those reports as part of its AL 929 filing.

In response to a staff inquiry, Cal Am provided an "Annual Report of Cal Am Settlement Funds" from the CDFG.<sup>1</sup> That document provided the details of utilization of \$4.6 million of funds (initial payment of \$3.5 million received in 2009 and the first annual payment of \$1.1 million in 2010). Cal Am states that it is unable to provide a utilization report for the second annual payment of \$1.1 million since that report has not

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<sup>1</sup> Letter from Joyce Ambrosius, Supervisor, National Marine Fisheries Services to Craig Anthony, General Manager, Central Division, California American Water, Dated January 25, 2011.

been furnished by CDFG. Cal-Am should be required to provide this report as a condition of any future amortization request.

CDFG indicates that from the \$4.6 million funds received by it, no allocations were made in 2009. In 2010, \$1.65 million was allocated for planning and design of three priority projects: the Carmel Area Wastewater District water augmentation project; Sleepy Hollow ford removal and bridge replacement; and Sleepy Hollow fish rearing facility water intake. In January 2011, \$145,000 was allocated for a feasibility study of a proposed floodwall barrier to improve management of the Carmel River Lagoon. CDFG plans to reserve \$3.4 million for construction of the water augmentation and Sleepy Hollow projects, and \$2 million for removal of the Old Carmel River Dam. The Department may charge 13% of each payment for a dedicated position to manage the settlement funds, as permitted by the settlement agreement, and also have a reserve of approximately \$1.4 million for unexpected contingencies. Cal Am has no control over how the funds are spent by CDFG.

The 30-day comment period for this Resolution has been waived in accordance with the provisions of Public Utilities Code Section 311(g) (2), as this is an uncontested matter where the 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. This was pursuant to a March 2009 agreement between California American Water Company and the National Oceanic and Atmospheric Administration.
3. Advice Letter 929 was filed by California American Water Company on January 27, 2012. California American Water Company served the advice letter and provided notice of the rate increase as required by General Order 96-B.
4. Advice Letter 929 requests authorization to transfer the \$2.2 million balance in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account plus accrued interest of \$6,873 to the expense balancing account for recovery effective May 1, 2012.

5. No protest to Advice Letter 929 was received.
6. The balance in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account is over 5 percent of authorized 2011 revenues for California American Water Company.
7. 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.
8. Amortization of the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account balance over 24 months beginning May 1, 2012 is reasonable.
9. 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 copies of the cancelled checks for payments made to the California Department of Fish and Game.
10. 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.
11. Division of Water and Audits' recommendation for recovery of \$2.2 million plus accrued interest of \$6,873 through a volumetric-based surcharge across all tiers spread over 24 months starting May 1, 2012, is reasonable and should be approved.
12. 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.
13. Only customers on the Monterey main system rely on supplies from the Carmel River.
14. It is reasonable that California American Water Company transfer the \$2.2 million balance plus accrued interest of \$6,873 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 24 months beginning May 1, 2012.
15. The surcharges shown in the tariff sheets attached to AL 929 are reasonable and should be approved effective May 1, 2012.
16. Resolution W-4836, approved on July 29, 2010, required Cal Am to obtain reports from the California Department of Fish and Game, on an annual basis, to determine how the funds are eventually expended and submit copies of those reports in future

requests to amortize balances in the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account.

17. Cal Am provided a fund utilization report pursuant to a Division of Water and Audits' inquiry.
18. It is reasonable to require Cal Am to furnish a fund utilization report, as a condition of any future amortization request, at the time Cal Am requests amortization showing how any future dollars requested for amortization have been used for mitigation of the environmental impact on the Carmel River from Cal Am's operations.

**THEREFORE IT IS ORDERED THAT:**

1. California American Water Company is authorized to transfer the \$2.2 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 \$2.2 million plus accrued interest of \$6,873 for its payment to the California Department of Fish and Game. The recovery shall be through a volumetric-based surcharge across all tiers over 24 months starting May 1, 2012 from customers on the Monterey main system only.
3. The tariff sheets attached to Advice Letter 929, which are also attached to this Resolution, are approved effective May 1, 2012.
4. California American Water Company is ordered, as a condition of any future amortization of the National Oceanic and Atmospheric Administration/Endangered Species Act Memorandum Account, to submit a funds utilization report with its next amortization request that lists how all funds paid to the California Department of Fish and Game by California American Water Company have been used for mitigation of the environmental impact on the Carmel River from California American Water Company's operations.



CALIFORNIA-AMERICAN WATER COMPANY  
 1033 B. AVENUE, SUITE 200  
 CORONADO, CA 92118

CANCELLING

Revised C.P.U.C. SHEET NO. 6395-W

Revised C.P.U.C. SHEET NO. 6062-W

Schedule No. MO-1  
 Monterey District Tariff Area  
GENERAL METERED SERVICE  
 (continued)

SPECIAL CONDITIONS (continued):

22. Per Advice Letter 929, a volumetric-based surcharge is included on each bill to recover \$2,206,873 in payments made to the National Oceanic and Atmospheric Administration (NOAA) for Endangered Species Act (ESA) mitigation activities on the Carmel River Dam. Customers in the Monterey Main system will see a surcharge per 10 cubic feet added to the general metered quantity rate in each tier as outlined in the table below. This surcharge is effective from May 1, 2012 through April 30, 2014.

**MONTEREY MAIN SYSTEM**

<b>Residential, Multi-Residential and Sale for Resale:</b>	<u>NOAA Surcharge Per 10 cubic feet</u>
Block 1: For the first 10 cu. ft. x Customer Allotment.....	\$0.0071
Block 2: For the second 10 cu. ft. x Customer Allotment.....	\$0.0128
Block 3: For the third 10 cu. ft. x Customer Allotment.....	\$0.0253
Block 4: For the fourth 10 cu. ft. x Customer Allotment.....	\$0.0505
Block 5: All Water over 40 cu. ft. x Customer Allotment.....	\$0.0884

**Non-Residential:**

**Commercial, Industrial, Public Authority and Golf Courses:**

Block 1: For all water delivered up to monthly allotment, per 10 cu. ft.	\$0.0128
Block 2: For the next 15% of monthly allotment delivered, per 10 cu. ft.	\$0.0379
Block 3: For all water delivered over Block 2, per 10 cu. ft.	\$0.0884

**Dedicated Irrigation:**

Block 1: For all water delivered up to monthly allotment, per 10 cu. ft.	\$0.0253
Block 2: For all water delivered over monthly allotment, per 10 cu. ft.	\$0.0884

**Special Use:**

For all water delivered, per 10 cu. ft.	\$0.0253
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23. Moratorium: In portions of the Monterey District served, in whole or part, by Carmel River diversions, and subject to the following conditions and restrictions, California-American Water Company shall deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use.

- a. California-American Water Company shall not deny such requests or prohibit such increased use where all necessary written approvals for project construction and connection to California-American Water Company's system had been obtained prior to October 20, 2009;
- b. California-American Water Company shall not deny the installation of additional meters at an existing service provided that the additional metering does not result in an increase in water use.

(continued)

(TO BE INSERTED BY UTILITY)	ISSUED BY	(TO BE INSERTED BY C.P.U.C.)
ADVICE LETTER NO. <u>929</u>	<u>D. P. STEPHENSON</u>	DATE FILED _____
	<small>DATE</small>	EFFECTIVE _____
DECISION NO. _____	<u>DIRECTOR - RATES &amp; REGULATION</u>	RESOLUTION NO. _____
	<small>TITLE</small>	

CALIFORNIA AMERICAN WATER COMPANY  
 1033 B. AVENUE, SUITE 200  
 CORONADO, CA 92118

Revised C.P.U.C. SHEET NO. 6396-W  
 CANCELING Revised C.P.U.C. SHEET NO. 6064-W

Schedule No. MO-1-LIRA (continued)  
 Monterey District Tariff Area  
LOW INCOME RATEPAYER ASSISTANCE PROGRAM (LIRA)

SPECIAL CONDITIONS APPLICABLE TO ALL CUSTOMERS (continued):

20. Per Advice Letter 929, a volumetric-based surcharge is included on each bill to recover \$2,206,873 in payments made to the National Oceanic and Atmospheric Administration (NOAA) for Endangered Species Act (ESA) mitigation activities on the Carmel River Dam. Customers in the Monterey main system will see a surcharge per 10 cubic feet added to the general metered quantity rate in each tier as outlined in the table below. This surcharge is effective from May 1, 2012 through April 30, 2014.

**MONTEREY MAIN SYSTEM**

**Residential and Multi-Residential:**

	NOAA Surcharge Per 10 Cf
Block 1: For the first 10 cu. ft. x Customer Allotment.....	\$0.0071
Block 2: For the second 10 cu. ft. x Customer Allotment....	\$0.0126
Block 3: For the third 10 cu. ft. x Customer Allotment.....	\$0.0253
Block 4: For the fourth 10 cu. ft. x Customer Allotment. ....	\$0.0505
Block 5: All Water over 40 cu. ft. x Customer Allotment. ....	\$0.0884

21. Moratorium: In portions of the Monterey District served, in whole or part, by Carmel River diversions, and subject to the following conditions and restrictions, California-American Water Company shall deny requests for new service connections and prohibit any increased use of water at existing service addresses resulting from a change in zoning or use:

- a. California-American Water Company shall not deny such requests or prohibit such increased use where all necessary written approvals for project construction and connection to California-American Water Company's system had been obtained prior to October 20, 2009;
- b. California-American Water Company shall not deny the installation of additional meters at an existing service provided that the additional metering does not result in an increase in water use.
- c. This special condition does not authorize California-American Water Company to deny service to:
  - i. the area served by the Carmel Area Wastewater District Water Entitlement pursuant to Monterey Peninsula Water Management District Ordinances 39 and 109 and Rule 23.5, prior to January 1, 2017 ;
  - ii. the area served by the Sand City Water Entitlement pursuant to Monterey Peninsula Water Management District Ordinance 132 and Rule 23.6;
  - iii. Security National Guaranty, Inc. under its frontloading agreement;
  - iv. the Ralph Lane, Chular, Bishop, Ambler Park, Ryan Ranch, Hidden Hills, and Toro subsystems within the Monterey District; and

(Continued)

(TO BE INSERTED BY UTILITY)	ISSUED BY	(TO BE INSERTED BY C.P.U.C.)
ADVICE LETTER NO. 929	D. P. STEPHENSON	DATE FILED
	<small>NAME</small>	EFFECTIVE
DECISION NO.	DIRECTOR - RATES & REGULATION	RESOLUTION NO.
	<small>TITLE</small>	

CALIFORNIA AMERICAN WATER COMPANY  
1033 B. AVENUE, SUITE 200  
CORONADO, CA 92118

CANCELING

Revised C.P.U.C. SHEET NO. 6397-W

Revised C.P.U.C. SHEET NO. 5615-W

Schedule No. MO -4 (continued)  
Monterey Peninsula District Tariff Area

SPECIAL CONDITIONS (continued):

20. Per Advice Letter 929, a volumetric-based surcharge is included on each bill to recover \$2,206,873 in payments made to the National Oceanic and Atmospheric Administration (NOAA) for Endangered Species Act (ESA) mitigation activities on the Carmel River Dam. Customers in the Monterey main system will see a surcharge of \$0.0253 per 10 cubic feet added to the general metered quantity rate. This surcharge is effective from May 1, 2012 through April 30, 2014.

(D)  
(D)  
(C)  
|  
(C)

(TO BE INSERTED BY UTILITY)

ISSUED BY

(TO BE INSERTED BY C.P.U.C.)

ADVICE LETTER NO. 929

D. P. STEPHENSON

DATE FILED \_\_\_\_\_

NAME

EFFECTIVE \_\_\_\_\_

DECISION NO. \_\_\_\_\_

DIRECTOR - RATES & REGULATION

RESOLUTION NO. \_\_\_\_\_

TITLE

**CALIFORNIA-AMERICAN WATER COMPANY**  
 1033 B Avenue, Suite 200  
 CORONADO, CA 92118

	<u>Revised</u>	C.P.U.C. SHEET NO.	<u>6398-W</u>
CANCELLING	<u>Revised</u>	C.P.U.C. SHEET NO.	<u>6315-W</u>

Schedule No. MO-4H (continued)  
 Monterey District Tariff Area  
PRIVATE FIRE HYDRANT SERVICE

SPECIAL CONDITIONS (continued):

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|--|-----|
|  | (D) |
|  | (D) |
| 20. Per Advice Letter 929, a volumetric-based surcharge is included on each bill to recover \$2,208,873 in payments made to the National Oceanic and Atmospheric Administration (NOAA) for Endangered Species Act (ESA) mitigation activities on the Carmel River Dam. Customers in the Monterey main system will see a surcharge of \$0.0253 per 10 cubic feet added to the general metered quantity rate. This surcharge is effective from May 1, 2012 through April 30, 2014. | (C) |
| 21. Per Advice Letter 924, General Office Audit Costs and intervenor compensation paid to Consumer Federation of California and TURN will be recovered through a meter surcharge for one billing cycle effective January 6, 2012. The total amount of \$233,072.12 will be recovered from all classes of customers.  | (C) |

Meter Size	Meter Surcharge
< or equal to 4"	\$0.05
6	\$0.09
8	\$0.15
10	\$0.21

(TO BE INSERTED BY UTILITY)	ISSUED BY	(TO BE INSERTED BY C.P.U.C.)
ADVICE LETTER NO. <u>929</u>	<u>D. P. STEPHENSON</u>	DATE FILED _____
	<small>NAME</small>	EFFECTIVE _____
DECISION NO. _____	<u>DIRECTOR - Rates &amp; Regulation</u>	RESOLUTION _____
	<small>TITLE</small>	