

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**01-23-09
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January 23, 2009

TO PARTIES OF RECORD IN INVESTIGATION 07-06-020

This proceeding was filed on June 21, 2007, and is assigned to Commissioner John A. Bohn and Administrative Law Judge (ALJ) Linda Rochester. This is the decision of the Presiding Officer, ALJ Rochester.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ MICHELLE COOKE for KAREN V. CLOPTON

Karen V. Clopton, Chief
Administrative Law Judge

KVC:hkr

Attachment

ALJ/LRR-POD/hkr

PRESIDING OFFICER'S DECISION (Mailed 1/23/2009)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting
Investigation into the Water and Service Quality
of Alco Water Company (Alco).

Investigation 07-06-020
(Filed June 21, 2007)

(See Attachment for a List of Appearances.)

**PRESIDING OFFICER'S DECISION
FINDING IT IN THE PUBLIC INTEREST FOR ALCO
TO SERVE ADDITIONAL CUSTOMERS
IN ITS NEWLY FILED SERVICE AREA,
TAKING STEPS TO IMPROVE SERVICE QUALITY
AND FINING ALCO FOR DISCOVERY ABUSES**

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**PRESIDING OFFICER'S DECISION
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Summary

This decision finds that Alisal Water Company, doing business as Alco Water Company (Alco), has water of sufficient quality and quantity and that it is in the public interest to allow Alco to serve additional customers in the service area that was added to Alco's existing certified service area through Advice Letter 107. However, to provide heightened oversight of Alco's operations, and to improve its customer service and compliance with General Order 103, this decision orders Alco to improve its customer service by revising its existing customer complaint tracking system or developing a new one, and by instituting a consumer information program with the aid of the Commission's Public Advisor. Pursuant to Pub. Util. Code § 2107, Alco is fined \$5,000.00 for abuse of the discovery process in this proceeding. Alco is also required to file a General Rate Case in compliance with the provisions of the Rate Case Plan for Class A water companies. This proceeding is closed.

1. Background

Alco is a Class B water company regulated by the California Public Utilities Commission (Commission) serving approximately 8,800 customers in the eastern portion of the City of Salinas (Salinas). Alco was originally certified as Adcock Water Company in December 1934. In January 1953, Adcock Water Company was transferred to Alisal Water Corporation and began doing business as Alco Water Company.

Salinas updated its General Plan in 2002 and identified three future growth areas: the West Area, Central Area and East Area. These areas are known as the Salinas Future Growth Area (SFGA). On March 23, 2006, Alco filed Advice Letter (AL) 107, seeking an extension of its existing service territory. The expansion area sought by Alco in AL 107 is a portion of the Central Area and all of the East Area identified in the Salinas General Plan. Both areas identified in Alco's AL 107 are contiguous to Alco's Salinas district and not currently served by a public utility of like character as defined in General Order (G.O.) 96-B and Pub. Util. Code § 1001. AL 107 also sought to expand Alco's service territory to encompass the Bubar, Chemical Lime and Rancho Cielo properties, whose owners or representatives specifically requested Alco to provide service.¹ In total, the SFGA and the 3 properties encompass 2,179 acres comprising approximately 7,465 lots, developable over 20 years.

On April 6, 2006, California Water Service Company (Cal Water) filed a protest to AL 107, requesting it be rejected as premature since Alco had not been asked to provide service to the SFGA. On April 19, 2006, Salinas filed a late protest similar to that of Cal Water. The Salinas protest also questioned Alco's ability to serve additional territory based on a 1990 lawsuit with a developer and a 1997 federal court judgment requiring Alco to make specific improvements to its Salinas district system.

The Division of Water and Audits (DWA) accepted Alco's AL 107 on April 25, 2006, essentially rejecting Cal Water's and Salinas' protests. On May 3,

¹ The Bubar, Chemical Lime and Rancho Cielo properties are not within the SFGA.

2006, Cal Water filed a request for full Commission review of DWA's disposition of AL 107, pursuant to G.O. 96-B, Rule 5.1.

By Resolution W-4630, dated April 12, 2007, the Commission affirmed DWA's disposition of AL 107. However, the resolution ordered staff to prepare an Order Instituting Investigation (OII) examining Alco's customer relations, customer service, and service and water quality, and to determine if Alco's provision of water service to the newly filed territory is consistent with the public interest. The resolution affirmed the authorization for Alco to extend non-potable water service to the Rancho Cielo, Chemical Lime, and Bubar properties, but ordered Alco not to extend service to additional customers in the new service area without Commission approval.

In the meantime, on April 10, 2007, Cal Water filed Application (A.) 07-04-010 for authority to extend its service territory into the portion of the SFGA that is the subject of Alco's AL 107. Alco filed a timely protest to Cal Water's application and asked the Commission to dismiss the application

On June 21, 2007, the Commission issued an OII commencing investigation (I.) 07-06-020 to determine if Alco is competent and capable of serving additional water customers in Salinas and whether such service is in the public interest. I.07-06-020 was also to determine if Alco has violated any order, law, regulation or standard regarding its water and service quality and if so, whether any fines or penalties should be imposed to ensure that Alco's service is in the public interest. The Commission ordered the DWA to prepare a report on Alco's water and service quality and present it in the proceeding.

On July 19, 2007, a ruling by the Administrative Law Judge (ALJ) denied Alco's motion to dismiss Cal Water's application to extend its service into the SFGA. The ruling coordinated A.07-04-010 with this I.07-06-020 since both

proceedings involve a desire to serve the SFGA. Cal Water's application is inactive pending the outcome of this investigation.

On August 30, 2007, a prehearing conference was held in I.07-06-020 to discuss the scope of the proceeding, set a schedule, and determine the category of the proceeding and the need for hearings. At the PHC it was announced that the Division of Ratepayer Advocates (DRA) would assume the DWA role in preparing the report ordered by the OII.

The Scoping Memo and Ruling of the assigned Commissioner and ALJ was issued in I.07-06-020 on October 15, 2007. The scoping memo determined the scope and schedule of the investigation and set two public participation hearings. The scoping memo included specific questions to determine whether Alco's water and service quality were sufficient to serve an expanded customer base. By email on December 20, 2007, DRA sought a 5-week extension to the deadline for filing the report based on the unexpected and necessary absence of a key member of the project team. Parties stipulated to the extension. On January 10, 2008, an ALJ ruling granted DRA's request for an extension, but limited the extension to 3 weeks and limited discovery to only an additional week. The ruling also extended by three weeks the timetable for all other milestones in the proceeding. The evidentiary hearings were reset to begin on March 17, 2008.

Two public participation hearings were noticed and held in Salinas on February 21, 2007. Both the afternoon and evening sessions were well attended with many Salinas residents relating their water and service quality experiences as Alco customers.

On March 14, 2008, three days before the evidentiary hearings were to begin, the parties contacted the ALJ and requested time to consider Alternative

Dispute Resolution (ADR). The request was granted, but a vote of approval from the Salinas City Council was required before the parties could enter into ADR. The Salinas City Council met on Tuesday evening, March 18, 2008 and rejected ADR. Because ADR was rejected 2 days into what would have been the evidentiary hearings, it was necessary to reschedule the evidentiary hearings. The hearings were reset to begin on May 12, 2008, the earliest date available, but resulting in a 6-week delay in the proceeding. All subsequent filing dates were also pushed out. Due to the extensions of time granted to the parties, it was impossible for this proceeding to be resolved within the 12-month statutory deadline which expired on June 20, 2008. On May 16, 2008, the Commission issued an order extending the statutory deadline to December 22, 2008.

Evidentiary hearings were held May 12 - 16, 2008. Initial briefs were filed on June 30, 2008 and reply briefs were filed on July 22, 2008.

On December 4, 2008, the Commission issued Resolution W-4725, which authorized Alco to supply potable water to five properties, including the Rancho Cielo property, that are in the service area added to Alco's existing certified service area through its AL 107. Resolution W-4725 reiterated that Alco shall not provide service to additional customers in its new service area without Commission approval. On December 18, 2008, the Commission issued an order extending the statutory deadline for this proceeding to April 30, 2009.

2. Issues Before the Commission

In order to address the issues raised in the OII, the scoping memo posed a series of overarching questions for parties to address in their testimony as well as supplemental questions. The primary questions were:

- Does Alco supply water of adequate quality in the Salinas district?

- Does Alco supply water of adequate quantity in the Salinas district?
- Is Alco responsive to customer service issues?
- Has Alco violated any provisions of G.O. 103 or past Commission decisions regarding water and service quality to the Salinas District?

The scoping memo expressly excluded testimony related to violations by Alco in other districts, except to the extent that Alco is out of compliance with the order from a court resulting from violations in other districts.

2.1. Water Quality

The provisions of G.O. 103, Section II(1)(a) - (c) govern general water quality standards, water supply and testing of water for water utilities in California. G.O. 103 requires that the water supply meet the California Department of Public Health (DPH)² water quality standards and the United States Environmental Protection Agency Drinking Water Standards.

DRA offered the expert testimony of Jan Sweigert, the Senior Sanitary Engineer for the Monterey District of DPH which has regulatory oversight for public water systems in Monterey, San Benito and Santa Cruz counties. This oversight includes supervising the inspection and evaluation of water systems, preparation of domestic water supply permits, issuance of compliance orders and citations, and the evaluation of water quality data and facilities pertaining to production, treatment and storage and distribution of potable water. The Alco water system is one of the water systems regulated by DPH's Monterey District.

² Until July 1, 2007, DPH was known as the Department of Health Services.

Sweigert's testimony is based on a review of the Monterey District's files regarding Alco's compliance with the California Safe Drinking Water Act and applicable regulations. The review included test results of water quality monitoring conducted by Alco, correspondence and enforcement documents. The period reviewed includes January 1, 2002 through August 31, 2007, although the testimony notes that documents from before January 1, 2002 and after August 31, 2007 were also reviewed and referenced in the testimony.³

According to Sweigert's testimony, since January 1, 2002, Alco has not been out of compliance with state water quality standards and has only exceeded federal standards once. This instance occurred because the federal standard for arsenic maximum contaminate level dropped from 50 micrograms per litre to 10 micrograms per litre in January 2006. The state acceptable contaminate level was and continues to be 50 micrograms per litre. When the federal change was implemented, three of Alco's wells exceeded the new federal maximum contaminant level. When Alco was notified by DPH that three of its wells were above the acceptable federal level, Alco remained in compliance by moving the three wells from active status to stand-by status.⁴ Although the three wells continue to exceed the federal standard for arsenic level, all Alco wells actively supplying water to Salinas District customers continue to comply with both state and federal water quality standards.

Sweigert's testimony describes an incident in December 2004 when the independent sampler contacted DPH with concerns about Alco staff interfering

³ DRA Ex. 8, p. 3.

⁴ RT. pp. 121 - 122.

with the process of obtaining samples that were truly representative of the water in the distribution system at all times.⁵ The sampler stated that Alco staff had requested that samples he had taken be discarded and replaced with new samples. In a letter, DPH directed Alco to avoid activities that could appear to be interference.⁶ No fines were imposed by DPH.

Regarding Alco's compliance with monitoring and reporting requirements, Sweigert's testimony recites a November 2005 instance of Alco failing to comply with the synthetic organic chemicals monitoring requirement. DPH issued a notice of violation and Alco returned to compliance in December 2005. No fine was imposed.⁷

Sweigert reported in her testimony that DPH's most recent inspection of the Alco system occurred on September 19, 2007, and included all water sources, chlorination treatment, distribution system, water quality monitoring program, and operation and maintenance. An inspection report was issued on December 5, 2007,⁸ and included several instances of non-compliance with monitoring and reporting results. However, Sweigert testified that some of the monitoring results were not in the DPH database at the time the report was issued, but were subsequently available. At hearing, Sweigert was asked to provide an update on the status of all listed deficiencies after returning to the

⁵ In November 2000, DPH had directed Alco to use an independent sampler following a citation by Monterey County Environmental Health for a violation of the total coliform maximum contaminant level in the Vierra Canyon water system.

⁶ DRA Ex. 8, p. 4.

⁷ DRA Ex. 8, p. 3.

⁸ *Id.*, p. 5.

DPH office. The update was received the next day by email and reported that all sampling results had been submitted to DPH. No fines were imposed by DPH for these instances.

Sweigert's testimony also included a review of all complaints reported by Alco in its annual reports. For calendar years 2002 through 2006, there were 53 complaints for dirt or visible contaminants in the water and 140 complaints regarding high and low water pressure. The system water pressure was found to be within the minimum and maximum pressure ranges allowable. In addition to the complaints reported by Alco, DPH has a record of complaints regarding low pressure, yellow water, a water leak and intestinal illness.⁹ During cross examination by Alco, Sweigert acknowledged that DPH issues notices of violations to other Commission-regulated water utilities regarding monitoring and reporting failures and that Alco's monitoring compliance record over the past five years was not out of the ordinary.¹⁰

The overall system appraisal included in the DPH report on the September 2007 inspection states:

The system is adequately operated and maintained. The staff is conscientious about properly operating and maintaining the water system, and is knowledgeable about water quality issues. The staff properly communicates with the Department regarding about [*sic*] water quality issues and problems when required. The system needs to manage monitoring schedules to preclude noncompliance with required monitoring.¹¹

⁹ *Id.*, pp. 8-10.

¹⁰ RT p. 132.

¹¹ DRA Ex. 8, Attachment 1, p. 13.

DRA also offered the expert testimony of Robert Howd, a senior toxicologist with the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. In his current position he is responsible for supervising the preparation of risk assessments for regulated chemicals in drinking water. For this proceeding, DPH provided Howd with the test results of Alco drinking water samples for the period from January 1, 2001 through August 31, 2007, as well as another report dated December 7, 2007 on analyses of hexavalent chromium and perchlorate in Alco wells from 2001 to 2003.¹² In summary, Howd's testimony states that he can see no reason to criticize the quality of the Alco water supply and cannot identify any likely causes of excess skin rashes,¹³ vomiting,¹⁴ headaches,¹⁵ fatigue,¹⁶ upset stomach,¹⁷ diarrhea,¹⁸ or hair loss¹⁹ from the data on chemical contaminants.

Howd's testimony responded to reports of ammonia and chlorine smell and provided reason for the smells. Howd's testimony states that the ammonia smell could be the result of excess ammonia if water is treated by chloramination

¹² DRA Ex. 50, p. 1:6-22.

¹³ *Id.*, p. 1:23-27.

¹⁴ *Id.*, p. 3:14-15.

¹⁵ *Id.*, p. 4:16-17.

¹⁶ *Id.*, p. 6:13-17.

¹⁷ *Id.*, p. 7:18-19.

¹⁸ *Id.*, p. 8:14-15.

¹⁹ *Id.*, p. 9:5-6.

or the result of urine and fecal contamination, but that low levels of ammonia would have no impacts and high ammonia levels would make consumption of the water unlikely.²⁰ Regarding the reports of a chlorine smell, Howd's testimony states that residual chlorine smell or taste is common in water disinfected by chlorination. According to Howd, this residual helps prevent bacteria and mold in the water system and would have no observable toxicological impact.²¹

2.1.1. Discussion and Analysis

The testimony of DRA's witnesses Sweigert and Howd concluded that Alco's water quality and monitoring and reporting comply with all state and federal requirements for the periods under review. However, DRA, Cal Water and Salinas continue to contend that Alco does not meet all water quality requirements because three of Alco's wells do not comply with recently changed federal water quality standards for arsenic levels.

While it is correct that three of Alco's wells no longer meet the federal standards, under cross-examination, DRA's own witness, Sweigert, agreed that Alco remained in compliance by placing the wells on stand-by status. Stand-by status restricts the use of the wells to emergencies and restricts the length of use to only 5 days at a time. The non-compliant wells are no longer part of the active water source for the Alco water system. The Commission concurs with Sweigert's assessment and is satisfied with Alco's actions in this instance.

²⁰ *Id.*, p. 9.

²¹ *Id.*, p. 10.

The federal court ordered Alco to construct a storage tank. The storage tank is still in the preliminary planning stages and was the subject of testimony by DRA, Cal Water and Salinas. The storage tank is relevant to Alco's water quality since it will allow Alco to put its three stand-by wells back into active status. Water from the storage tank can be mixed with the water from the three non-compliant wells to dilute the arsenic to acceptable levels. This will add water supply to the Alco system. The storage tank is of considerable importance to Alco's system and the status of its construction is of significant interest to the Commission. For this reason, starting March 2009, we require that Alco report quarterly to DWA on the status of the storage tank construction, including explanations of any delays in construction.

DRA, Cal Water and Salinas expressed concern about the report of Alco staff interfering with the independent sampler. DPH issued a letter of warning, but imposed no fine. It appears that in the almost 4 years since the December 2004 incident, Alco has not interfered with the independent sampler. The Commission is satisfied with this record.

Regarding Alco's instances of non-compliance with reporting requirements, DPH declined to impose any penalties for those transgressions and the Commission will follow DPH's lead. As to the December 2007, DPH report listing outstanding monitoring reports, Sweigert indicated that Alco is now in full compliance. While Alco needs to continue to work on meeting timely report-filing requirements, Sweigert testified that Alco's current record of reporting compliance is not out of the ordinary. Given Alco's history, this is encouraging news.

Based on the received evidence discussed above, we conclude that Alco supplies water of adequate quality in the Salinas district.

2.2. Water Pressure

The standards for variations in water pressure are contained in G.O. 103 Section II 3.a. It states:

- a. Variations in Pressure. The utility shall maintain normal operating pressures of not less than 40 p.s.i.g.²² nor more than 125 p.s.i.g. at the service connections, except that during periods of hourly maximum demand the pressure at the time of peak seasonal loads may not be less than 30 p.s.i.g. and that during periods of hourly minimum demand the pressure may be not more than 150 p.s.i.g. Subject to the minimum pressure requirement of 40 p.s.i.g., variations in pressures under normal operation shall not exceed 50% of the average operating pressure. The average operating pressure shall be determined by computing the arithmetical average of at least 24 consecutive hourly pressure readings.

DRA offered the expert testimony of Frank Pierce of Lee & Pierce who performed a Pressure and Fire Evaluation Study to identify water service pressure issues described in the OII. Pierce is a registered Environmental Assessor 1 and a registered Professional Engineer. Pressure studies were conducted at 14 residential locations and 2 Alco system supply wells. The 14 residential locations included 13 addresses identified as the residences of customers who had complained of low water pressure and a residence owned by Pierce used as a supplemental location. Alco supplied the testing equipment with connection hardware and computer software, and installed the site connection points by replacing the residential water meter with both the data logger and a pressure meter. At each location the testing equipment was secured

²² Pounds per square inch gauge.

with a lock box under the control of Lee & Pierce. The pressure testing was conducted for a period of one month, with four locations tested per week.

All customers who had complained about low pressure at their residences were sent letters requesting them to contact Lee & Pierce to schedule a water pressure evaluation. Only 6 of the 13 customers responded to the request, so while the pressure at the street connection was tested for all 13 customers, only 6 customers had their residential pressure tested. According to Pierce, the low-pressure readings at the six tested residences appear to be residential plumbing issues and not a system pressure problem. This type of discrepancy appeared at all residential locations where a low pressure concern was identified.²³ The table below represents a comparison of the pressure readings at the street connections and the six residential locations of customers who participated in the survey. All of the street connection pressure readings, including the calculated averages, fall within the acceptable range of G.O. 103 requirements.

²³ DRA Ex. 31, p. 1.

Summary of Water Pressure Readings in PSI²⁴

	Max Pressure	Min Pressure	Average
Location 2	78	30	
Street	89	64	80
Location 4	91	88	
Street	102	78	94
Location 5	65	15	
Street	82	55	72
Location 9	65	35	
Street	88	47	77
Location 12	63	59	
Street	74	52	64
Location 13	70-84	19	
Street	95	62	82

Pierce recommends additional future evaluation in a number of areas. The recommendations include a review of well production levels during the November and December period, additional pressure evaluation at selected system locations and a random user survey of 10% of the residential customers.

Pierce sums up the survey results stating that based on the evaluation of all data generated in this limited evaluation, it appears that the low flow and pressure problems experienced by the complaining residential users are most likely caused by their residential plumbing conditions.²⁵

²⁴ DRA Ex. 31.

²⁵ *Id.*, p. 7.

In addition to the Pierce & Lee study, DRA staff Mohsen Kazemzadeh conducted a pressure study of residential locations. Similar to the Pierce & Lee study, Kazemzadeh's study found that all pressure readings complied with the G.O. 103 requirements.²⁶

Cal Water asserts that Alco's water quantity cannot be verified because Alco has not maintained adequate records of pressure testing. DRA requested Alco's annual pressure tests for the past five years. Alco provided the pressure tests for 2002 through 2007 showing one pressure test each year conducted at a single location, Alco's business address.²⁷

DRA claims that Alco is not complying with the pressure survey requirements of G.O. 103 because Alco took only a single annual pressure test at a single location. Cal Water also contends that Alco is out of compliance with G.O. 103 because pressure tests were not conducted at multiple locations and the Pierce study recommends that tests be done at multiple locations.

Alco states that annual pressure tests meet the G.O. 103 pressure survey requirements which state that pressure surveys should be taken "...at regular intervals, but not less than once each year." Alco states that its system is a single pressure system which allows the pressure at various points in the system to be determined based on the pressure at a single point. The pressure at other points in the system is determined via a conversion calculation using the elevation at the testing site and the other locations.

²⁶ DRA Ex. 15, p. 1-6.

²⁷ DRA Ex. 15 and Alco Ex. 47, Appendix H.

2.2.1. Discussion and Analysis

The testimony of DRA's witnesses Pierce and Kazemzadeh convinces us that the Alco water system pressure is adequate. Since all street connection pressure test readings comply with G.O. 103 requirements, the reports of low water pressure appear to be problems with the residential plumbing.

Alco's contention that a single zone pressure system only requires a test at one location in order to determine the pressure at other locations in the system is accurate. While Alco correctly asserts that its annual testing complies with G.O. 103's minimum testing frequency requirements, it is unclear whether Alco's annual tests included calculations of the pressure at other points in the system. Section II 3.e. of G.O. 103 states that:

"... each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the pressures maintained at representative points on its system."

According to Sweigert, complaints regarding Alco's water pressure are the most frequent. So while minimal compliance requires only an annual test at a single location, it would be reassuring to the Commission and Alco's customers if Alco conducted the tests on a more frequent basis, at least quarterly, and included the calculations indicating the pressure at other points in the system. For that reason, Alco should conduct more frequent water pressure surveys and include the calculations to demonstrate the pressure at other locations in the system.

While all pressure readings are within the acceptable range, we note some fluctuations within that range. Here again, Alco's yet-to-be-constructed water storage tank is significant. Once constructed and in use, the water pressure

fluctuations in Alco's system will decrease. It is important for the Commission to be informed as to its status and any impediments to its construction.

2.3. Water Quantity Needed to Serve Existing and New Customers

There is no dispute among the parties regarding the equation for determining the necessary water requirement. Both Alco and DRA use the same equation and inputs and obtain the same numerical result. The equation is:

$$Q=N*c*f$$

Q = flow requirement in gallons per minute (GPM)

N = Number of customers served = 8,745

c = a GPM constant based on various factors = 3

f = a factor to reflect varying diversity = 0.3

$$Q = 8,745 * 3 * 0.3$$

$$Q = 7,871$$

The parties agree on the resulting flow requirement figure of 7,871 GPM, but have a difference of opinion on whether the figure represents the average day demand or the maximum hourly demand. DRA declares it is the average day demand, while Alco asserts it is the maximum hourly demand.

DRA cites Chart 1 of G.O. 103 as the basis for its claim. DRA then multiplies the gallons per minute result by 1.5 to obtain a calculated maximum day demand of 11,806 GPM, and then adds 2,500 GPM for fire flow requirements, producing a calculated total maximum daily requirement of 14,306 GPM. DRA determined the pumping capacity of Alco's five active wells

as 8,559 GPM.²⁸ Therefore, DRA's calculations indicate a daily water supply deficit of 5,700 GPM.²⁹

DRA contends this shortage will be exacerbated when 7,500 new connections are added in the SFGA and the maximum day demand, as calculated by DRA, increases to 24,431 GPM.³⁰

Alco's witness Fuog refers to Standard Practice (SP) U-22 to support its maximum hourly demand calculation. Section D of SP U-22 states:

6. Where only the month of maximum system use is known, the maximum hourly requirement can usually be estimated more accurately by using the empirical formula $Q = N \times c \times f$, where Q = flow in gallons per minute, N = number of customers, c = a constant ranging from 2 to 5 for metered systems and from 5 to 9 for flat-rate systems and f = a constant to reflect diversity ranging from 1.8 for ten customers to 0.69 for 100 customers to 0.34 for 500 customers, see Chart No. 2 in General Order No. 103.³¹

Fuog's testimony asserts that Section D of SP U-18 contains the correct calculation for determining average day demand. The average daily requirement calculation is given as:

$$\frac{\text{potential customers} \times \text{annual consumption in gallons}}{(\text{existing customers}) \times (\text{days in year}) \times (1,440 \text{ minutes per day})}$$

²⁸ DRA Ex. 15, p. 2-6.

²⁹ *Id.*, p. 2-7.

³⁰ *Id.*, p. 2-8.

³¹ Alco Ex. 42, Exhibit Tab C, p. 3.

Or

$$\frac{9,005 \times 1,509,994,332 \text{ gallons}}{(8,805) \times (365) \times (1,440)} = 2,938$$

Thus, according to Fuog's calculations, the Average Daily Requirement equals 2,938 GPM. Fuog used 9,005 connections in the calculation to represent the full build-out of the existing Salinas district (prior to the expansion in AL 107). Because there is no system-wide standard for fire-flow in Salinas, Alco used the highest flow figure for the largest building specified by the Salinas Fire Department: 3,500 GPM. If the 3,500 GPM fire-flow requirement is added to the calculated average day demand of 2,938 GPM, the result is 6,438 GPM. Fuog calculates Alco water production capacity from its five active wells as 8,819 GPM, exceeding the calculated requirement of 6,438 GPM by 2,381 GPM. Alco argues that DRA's use of the 1.5 multiplier to achieve its maximum day demand is unsupported.

2.3.1. Discussion and Analysis

After reviewing DRA's and Alco's testimony, we agree with Alco that SP U-22 identifies the equation $Q = N * c * f$ as the calculation for maximum hourly demand. Because DRA mistakenly considered this equation to produce the average day demand, all of DRA's subsequent calculations and conclusions based on this assumption are incorrect.

DRA's conclusions regarding the impact of the future development are also puzzling. In addition to the inaccurate interpretation of the basic equation, DRA utilizes numbers representing a full build-out of the SFGA, which includes 7,500 new connections. However, DRA's calculations do not include any additional water supply sources for Alco such as the three wells on stand-by status, the previously mentioned water storage tank or the five additional wells

in various stages of the DPH permitting process. Additionally, full build-out of the SFGA is expected to occur over the next 25 years, which would allow time for additional water sources to be pursued. For these reasons, we do not agree with DRA's conclusions that Alco has insufficient water supply to meet the needs of the SFGA.

We conclude that Alco's calculations regarding water quantity are accurate and Alco currently meets and exceeds the water supply requirements of G.O. 103. Therefore, we also conclude that Alco has sufficient water quantity to serve additional customers in its newly filed service area.

2.4. Customer Service

DRA claims that Alco's records of customer complaints do not comply with G.O. 103, because Alco's records do not always include the date of disposition. G.O. 103 requires that:

“the utility... shall keep a record of all complaints which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof for a period of two years subsequent to the final settlement of the complaint.”

Alco responds that it keeps all records of complaints in its computer data base and therefore meets the two-year retention requirement in G.O. 103.

Alco witness Adcock testified that Alco uses the customer data base to track all contact with customers. For example, requests from customers to move a billing date are placed in the same field of the database as complaints regarding water pressure or water appearance. When Alco prepares its complaint reports, it queries the database for different types of complaints. When necessary, Alco prints out all customer contacts and sorts the data by hand to separate the

complaints from the ordinary customer inquiries or contacts. Then the complaints are sorted by type.

DRA found discrepancies in Alco's complaint reports to DPH and the Commission regarding the number and types of complaints. Alco claims the discrepancies were a result of how DRA sought the information in its data requests.

As described earlier in this decision, Sweigert's testimony included a review of all complaints reported by Alco in its annual reports. The annual reports indicate a total of 193 complaints for calendar years 2002 through 2006. In addition to the complaints reported by Alco, DPH has a record of complaints regarding low pressure, yellow water, a water leak and intestinal illness.³²

At the PPH in Salinas numerous citizens spoke about their experiences with Alco. Although statements made at the PPHs are not sworn testimony, they reveal a pattern of dissatisfaction. One speaker, Walter McCommons, was particularly credible. In brief, while Alco was in the process of replacing meter boxes, a large hole was dug in McCommons' front yard. The hole was covered with a sheet of oriented strand board. McCommons' mother is 90 years old and likes to walk around the yard. McCommons was concerned about possible injury to his mother due to the hole in his yard, covered or otherwise. Starting on November 8, 2007, McCommons contacted Alco staff in person or via telephone six times in an attempt to get the hole in his yard filled. The work was finally completed on December 5, 2007, after McCommons called Alco, requested the telephone number for the Commission (which Alco was unable to provide),

³² DRA Ex. 8, pp. 8-10.

and threatened to get a general contractor to do the work and present the bill to Alco.³³

2.4.1. Discussion and Analysis

The number of Alco complaints reported is not excessive. However, Alco's process for recording and reporting complaints is inefficient and could result in underreporting of complaints. Hand sorting customer contacts for a company with 8,800 customers is replete with inefficiencies and the potential for error. Also, while G.O. 103 does not explicitly require the complaint disposition date be recorded, the resolution date is necessary in order to verify that the two-year record retention requirement has been met. Additionally, the disposition date would provide important customer service information regarding the time period between complaint and resolution.

In order to improve its complaint tracking, Alco should standardize its complaint entry by type and include all information required by G.O. 103, as well as the disposition date.³⁴ Alco should work with the Commission's Public Advisor to improve the existing complaint tracking process or develop a new system.

Alco should also work with the Commission's Public Advisor to develop a consumer information mailer that will provide Alco customers with information about the complaint process and the Commission. Alco should mail the

³³ RT p. 33 -37.

³⁴ The Commission is currently exploring revisions to G.O. 103 in Rulemaking 07-12-015. For general application, the issue of recording the disposition date of complaints will be addressed in that proceeding.

information to its customers, separately from their water bills, twice a year. The first mailing should occur no later than June 30, 2009.

2.5. Discovery

The discovery process is a critical underpinning of the evidentiary hearing. It is the device used by one party to obtain facts and information about the case from the other party, in order to assist the party's preparation for trial.

Discovery in Commission proceedings is conducted almost wholly through the use of data requests with occasional depositions. Commission proceedings are less formal than a court and may also differ procedurally from the proceedings at other administrative agencies. The California Code of Civil Procedure provides a guideline for the Commission, but is not strictly applied. For Commission proceedings, the discovery process is governed by Article 10 of the Rules of Practice and Procedure (Rules). Rule 10.1 of the Rules reads:

Without limitation to the rights of the Commission or its staff under Pub. Util. Code Section 309.5 and 314, any party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding,

As Rule 10.1 states, except for privileged information, information relevant to a specific proceeding is subject to discovery. Ideally, the ALJ becomes involved in the discovery process only when parties, after more informal attempts, have failed to resolve the issue themselves. In these instances Rule 11.3 applies and parties may file a motion to compel or limit discovery, describing with specificity the relief sought and upon which the ALJ will rule.

This proceeding was remarkable for the rancor among the parties regarding the discovery process. DRA propounded between 140 and 160 detailed data requests between September 7, 2007 and January 22, 2008,

seeking comprehensive information from Alco on a wide range of issues. DRA claims that Alco refused to respond to data requests or responded so late in the process that the parties had inadequate time to review and analyze the information prior to the deadline for testimony.

Alco asserts that it did in fact respond to data requests in a timely manner, but sometimes the exact information requested was not available. For example, DRA requested Alco's daily production logs. Alco initially responded by stating that daily production logs are not kept, but ultimately sent DRA its monthly production logs.

DRA highlights one instance in particular of Alco's alleged intransigence. DRA requested customer contact information for the customers who had complained about Alco's service, with the intent of undertaking a customer survey. Alco initially refused to provide the information at all. Then Alco provided DRA with a list of customer account numbers with no cross referenced list of names, addresses or telephone numbers. When DRA subsequently requested that Alco supply the contact information associated with the account numbers, Alco asserted third parties' rights to privacy under the California Constitution, Article 1, Section 1. Alco provided the customer contact information after the ALJ granted DRA's motion to compel. Alco claims there was no harm done since DRA, finding a customer survey too costly, decided against it anyway.

2.5.1. Discussion and Analysis

While the discovery process in this proceeding was something less than the ideal free-flow of information it is intended to be, all parties here bear some responsibility. Claims of thwarted discovery by DRA, Cal Water and Salinas ring somewhat hollow when considered in the context of the six-week delay in

the schedule due to parties' abandoned efforts at ADR. That delay provided an opportunity for parties to cure discovery issues and to request the opportunity to file supplemental testimony. However, during that time no party filed a motion to compel, requested a teleconference or pre-hearing conference or in any other manner contacted the ALJ to discuss discovery problems.

The ALJ received only one motion to compel discovery from DRA in December 2007 which was granted and one from Salinas in January 2008 which was also granted.³⁵ Until April 15, 2008, when DRA filed a motion for issue and evidentiary sanctions against Alco, the ALJ had no inkling that the rulings granting the motions to compel had not resolved the problems. On May 9, 2008, Alco filed a motion for sanctions against DRA.³⁶

Much of the first day of evidentiary hearing was spent discussing discovery issues. The ALJ admitted into evidence, as a resource only, the full record of the data requests, responses and records of communication between Alco and DRA. The exhibit filled a 3.5-inch 3-ring binder and included additional information on two Compact Discs.

In many instances, but not always, Alco responded to the numerous data requests in a timely and fairly cooperative manner. In the absence of an exhaustive review of the data requests and responses themselves, it appears that if Alco did not have the exact information sought in a data request, a reasonable

³⁵ Most of the issues in the Salinas motion to compel were resolved without ALJ intervention.

³⁶ The ALJ denied both motions during the evidentiary hearing.

approximation was usually produced and if not always within DRA's timeframe, usually within a reasonable time after the DRA deadline.

Alco's claim that no harm was done because the customer survey would not have been done anyway, misses the point entirely. DRA's ultimate decision regarding how or if the information is utilized is not the crux of the issue. Alco's cooperation or lack thereof, is.

Pursuant to Pub. Util. Code § 309.5, DRA is the arm of the Commission specifically charged with representing and advocating on behalf of public utility customers and subscribers within the Commission's jurisdiction. DRA's discovery rights are the same as any other Commission employee and the obligation to protect confidential information, described in Pub. Util. Code § 583, applies equally to DRA. Alco paradoxically asserts that it was protecting the rights of its customers from the very group specifically created to protect their interests. However, it is impossible to imagine how DRA could function as required if it does not have access to the necessary information.

This is not uncharted territory for Alco. The decision in *United States v. Alisal* was a primer for Alco regarding appropriate behavior during the discovery process of an investigation. In the decision, Alco was admonished and fined for its actions relating to discovery. It appears that Alco is still struggling with that lesson.

Due to Alco's lack of cooperation regarding supplying DRA the requested customer contact information, we fine Alco \$5,000.00 pursuant to Pub. Util. Code § 2107, for abuse of the discovery process in this proceeding. This fine will be borne solely by the shareholders.

On the other side, DRA has a responsibility to ensure that its data requests seek information that will be helpful to the record in this proceeding. The data

requests should not be overly broad or vague or unduly burdensome to the respondent. Some of DRA's data requests were redundant and others sought information completely unrelated to this proceeding.

For instance, in its first set of data requests DRA sought a record of all complaints Alco received in the last three years. Another question in the same set of data requests sought the number of complaints regarding inaccurate meters for the past five years. At least three years' worth of that information was provided in the response to the previous question.³⁷ Another DRA data request sought cost information regarding removing contaminants from wells that would be drilled in the SFGA. Information based on the cost of removing hypothetical contaminants from hypothetical wells is highly speculative and dispositive of no issue related to this proceeding.³⁸ Similarly, DRA's data request seeking records for the past five years of employee complaints regarding working conditions is not within the scope of this proceeding.³⁹

2.6. Miscellaneous Issues

DRA raises several ancillary issues regarding affiliate transactions under the rubric of "technical, managerial and financial fitness." While they appear to warrant further pursuit, we conclude that they should be addressed in a General Rate Case (GRC) rather than considered within the limited scope of the investigation conducted here.

³⁷ Ex. 63, Tab 1, p. 5-6.

³⁸ *Id.* p. 4.

³⁹ *Id.* p. 5.

In this proceeding DRA, Cal Water and Salinas express concern about Alco's high debt to equity ratio. DRA provided a comparison of the debt to equity ratio of all Class A and B water utilities.⁴⁰ Alco has the highest debt to equity ratio of all water utilities, with 85% debt to 15% equity. The water company with the next highest debt to equity ratio has 58% debt to 42% equity.

The Commission recently issued D.08-11-035 in Alco's debt restructuring proceeding. That decision adopts the settlement between DRA and Alco requiring Alco to bring its debt to equity ratio down to 75% debt and 25% equity within three years. It also orders Alco to file a GRC by June 1, 2009, or seek an extension if necessary.

The Rate Case Plan developed in D.07-05-062 for Class A water utilities requires an examination of all aspects of a utility's operations, including, but not limited to, utility plant, capital structure, capital budget, customer service, rates, and billing. While Alco currently has 8,800 service connections, less than the 10,000 connections required for Class A water utility treatment, the development of the SFGA may increase Alco's service connections to 10,000 or more in the near future. With that in mind, we find that the ancillary areas of concern identified by DRA in this proceeding are more appropriately examined in the GRC ordered by D.08-011-035, and that the GRC should comply with the Rate Case Plan for Class A water utilities.

3. Conclusion

The purpose of this proceeding was to investigate Alco's water and service quality to determine if it is in the public interest for Alco to serve additional

⁴⁰ Ex. 15, p. 5-5.

customers in its newly filed service area. Alco has a troubled history and memories in the Salinas district are long. However, the scoping memo specifically called for a review of Alco's current operations and ability to serve the new service area rather than a focus on past misdeeds that were reviewed and resolved in the federal investigation.

We rely heavily on the testimony of DRA's witnesses regarding Alco's water and service quality and compliance with the monitoring and reporting requirements of G.O. 103. As discussed above, Alco's water quality and quantity meet state and federal standards, although Alco's pressure testing, complaint tracking and customer service require some improvement. The additional testing and reporting requirements we adopt will improve Alco's service and begin to restore the confidence of its customers and community leaders.

Based on the record, we conclude that it is in the public interest for Alco to be allowed to serve additional customers in its newly filed service territory. We also conclude that Alco should work with the Public Advisors office to improve its complaint tracking and provide customer information. Additionally, Alco should file a formal GRC application to provide heightened oversight of its operations and prepare it to eventually operate as a Class A utility. Finally, we conclude that Alco should be fined \$5,000.00 for abuses during the discovery phase of this investigation.

4. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Linda A. Rochester is the assigned ALJ in this proceeding.

Findings of Fact

1. DPH's Monterey District has regulatory oversight of Alco's water system.

2. Alco has not been out of compliance with state water quality standards since January 2002.

3. Three of Alco's wells exceeded federal water quality standards when the federal standard for arsenic levels changed. Alco remained in compliance by moving the three wells to stand-by status.

4. The independent sampler reported an incident in which Alco staff asked that samples taken by the independent sampler be replaced with new samples.

5. Alco was cautioned by DPH to avoid the appearance of interference with the independent sampler. No fine was imposed.

6. Alco has received several notices of violations from DPH for non-compliance with reporting requirements. Alco returned to compliance and no fine was imposed.

7. Alco is currently in full compliance with reporting requirements.

8. DPH reports that Alco's monitoring compliance record over the past five years is not out of the ordinary.

9. The DPH report on Alco's latest inspection finds that Alco's system is adequately operated and maintained, and that Alco staff is conscientious about properly operating and maintaining the water system and is knowledgeable about water quality issues.

10. DRA's witness Howd found no reason to criticize the quality of the Alco water supply and cannot identify any likely causes of the physical ailments or odors described by customers from the data on chemical contaminants.

11. Construction of Alco's planned water storage tank will allow Alco to put its three stand-by wells back into active status, thus adding water supply to the Alco system and reducing water pressure fluctuations.

12. DRA witness Pierce conducted water pressure tests at street connections in 14 locations, at 6 residences of customers who had previously complained of low pressure and at 2 Alco wells.

13. The tests revealed water pressure levels within the acceptable ranges of G.O. 103.

14. The low pressure readings at the residences appear to be due to residential plumbing issues and not a system pressure problem.

15. The Pierce study recommends pressure tests at more locations.

16. Alco tests its water pressure annually at a single location, which complies with the minimal requirements of G.O. 103.

17. Because Alco is a single zone pressure water system, the pressure in various locations of the system can be determined from the pressure at the testing site via a calculation using the elevation at the testing site and the elevation at the other locations.

18. Alco and DRA use the same equation to determine flow requirements, but disagree about what the results mean.

19. DRA cites G.O. 103 and asserts the equation produces the average day demand.

20. Alco asserts the equation is based on instructions in SP U-22 and produces the maximum hourly demand.

21. DRA's results would indicate that Alco's water supply is insufficient.

22. Alco's results indicate its water supply exceeds the standards of G.O. 103.

23. DRA asserts that Alco is out of compliance with G.O. 103 because the date of complaint disposition is not recorded and therefore does not allow verification of compliance with record retention requirements.

24. Alco states that it retains all records of complaints in its database and is therefore compliant with G.O. 103.

25. The actual date of disposition will allow verification of retention requirement compliance as well as provide information on the length of time it takes Alco to resolve complaints.

26. Alco records all customer contacts, including complaints, in a single database.

27. Alco's complaint reporting is not standardized and sometimes requires hand sorting which is inefficient and could result in inaccuracies.

28. Alco's records indicate 193 complaints were filed between 2002 and 2006.

29. The customer statements at the PPH in Salinas indicate some customer dissatisfaction with Alco's responsiveness to customer complaints.

30. DRA propounded between 141 and 160 detailed data requests between September 7, 2007 and January 22, 2008.

31. Alco responded to most, but not all data requests in a timely and cooperative manner, providing the information sought or a reasonable approximation if the exact information was not available.

32. Only DRA and Salinas filed motions to compel discovery. The ALJ granted both motions.

33. In response to a data request, Alco provided customer account numbers only, with no cross reference to customers' names, addresses or phone numbers.

34. When requested by DRA to provide the customers' names, addresses and phone numbers corresponding to the account numbers, Alco asserted third party privacy rights.

35. DRA is the arm of the Commission specifically charged with representing and advocating on behalf of customers.

36. Alco was admonished and fined for discovery abuses in the federal investigation in *United States v. Alisal*.

37. DRA raises several issues that are more appropriately dealt with in a GRC.

38. D.08-11-035 ordered Alco to file a GRC by June 1, 2009 for test year 2010.

39. A GRC consistent with the Rate Case Plan for Class A water utilities will provide heightened oversight and prepare Alco to operate as a Class A utility.

Conclusions of Law

1. Alco is in compliance with all state and federal water quality standards for monitoring and reporting requirements.

2. Alco's wells actively supplying water to the Salinas District meet applicable state and federal water quality standards.

3. Alco should be required to report quarterly on the status of its water storage tank construction.

4. Alco supplies water of adequate quality in its Salinas district.

5. Alco's water system meets all applicable standards for water pressure. The Alco water system pressure is adequate.

6. Starting with the first quarter of 2009, Alco should perform quarterly system pressure tests, using the readings at one point and calculating the pressure at a minimum of four other points in the system. The results of the quarterly pressure tests should be sent to DWA.

7. Alco's calculation of water supply is correct and exceeds the G.O. 103 standards.

8. Alco has sufficient water quantity to serve additional customers in its newly filed service area.

9. The number of Alco complaints reported is not excessive.

10. Alco should improve its customer complaint tracking system by standardizing complaint entry into the system, and by ensuring that the date of resolution or disposition is included so that compliance with the record retention requirements of G.O. 103 can be verified.

11. With the assistance of the Public Advisor's Office, Alco should develop a consumer information mailer and provide it to customers twice per year in a separate mailing from monthly bills.

12. The provisions of Pub. Util. Code § 583, requiring Commission employees to protect the confidential information of utility customers, apply to DRA.

13. Pursuant to Pub. Util. Code § 2107, Alco should be fined \$5,000.00 for abuse of the discovery process in this proceeding, due to Alco's lack of cooperation regarding supplying customer contact information to DRA. Ratepayers should not bear the responsibility for paying this fine.

14. It is reasonable to require that the GRC ordered by D.08-11-035 comply with the Rate Case Plan for Class A water utilities.

15. It is in the public interest for Alco to be allowed to serve additional customers in its newly filed service territory.

16. This order should be effective today in order to allow Alco to serve additional customers in its newly filed service territory.

O R D E R

IT IS ORDERED that:

1. Alisal Water Company, doing business as Alco Water Company (Alco), is authorized to serve additional customers in the service area that was added to Alco's existing certified service area through Advice Letter 107. The related

restrictions in Ordering Paragraph 2 of Resolution W-4630 and Finding 3 of Resolution W-4725 are rescinded.

2. Alco shall provide quarterly progress reports to the Director of the Commission's Division of Water and Audits (DWA) regarding the construction status of the water storage tank, including explanations of any delays in construction. The first quarterly report shall be due no later than March 31, 2009 and the requirement shall continue until construction of the storage tank is complete.

3. Alco shall conduct quarterly pressure tests, calculating the pressure at multiple locations in the water system. Alco shall provide the results of these quarterly pressure tests to the Director of the Commission's DWA. The first quarterly report shall be due no later than March 31, 2009 and the requirement will continue until a decision in the General Rate Case (GRC) ordered by Decision (D.) 08-11-035 has been issued.

4. In addition to the items described in D.08-11-035, Alco's GRC application shall comply with the Rate Case Plan contained in D.07-05-062, and include any other issues deemed appropriate by the assigned Commissioner and Administrative Law Judge assigned to the proceeding.

5. With the assistance of the Commission's Public Advisor's Office, Alco shall:

- a. Revise its existing complaint tracking system or develop a new one addressing the flaws identified in section 2.4.1 of this decision; and
- b. Develop a consumer information mailer and provide it to customers twice each year. The mailer shall be sent in a separate mailing from the water bill and the first mailer shall be sent no later than June 30, 2009.

Alco shall present a proposal for its complaint tracking system in the GRC application described in Ordering Paragraph 4 of this decision.

6. Alco is fined \$5,000.00 for abuse of the discovery process in this proceeding. Within 30 days from the effective date of this order, Alco shall remit to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102, a check for \$5,000.00 made payable to the state of California's General Fund. The number of this decision shall be shown on the face of this check. This fine shall be borne solely by Alco's shareholders.

7. Investigation 07-06-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT

***** **SERVICE LIST** *****

**Last Updated on 22-JAN-2009 by: JVG
I0706020 LIST**

***** **PARTIES** *****

Lynne P. Mcghee
Attorney At Law
CALIFORNIA WATER SERVICE COMPANY
1720 NORTH FIRST STREET
SAN JOSE CA 95112
(408) 367-8228
lmcghee@calwater.com
For: California Water Service

Vanessa W. Vallarta
CHRISTOPHER A. CALLIHAN
City Attorney
CITY OF SALINAS
200 LINCOLN AVENUE
SALINAS CA 93901
(831) 758-7256
vanessav@ci.salinas.ca.us
For: City of Salinas

Keith Switzer
Vice President Of Regulatory Affairs
GOLDEN STATE WATER COMPANY
630 EAST FOOTHILL BOULEVARD
SAN DIMAS CA 91773
(909) 394-3600 X759
kswitzer@gswater.com
For: Golden State Water Company

Cleveland Lee
Legal Division
RM. 5122
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1792
cwl@cpuc.ca.gov
For: DRA

Joseph M. Karp
Attorney At Law
WINSTON & STRAWN, LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94111-5894
(415) 591-1000
jkarp@winston.com
For: Alco Water Service

***** **STATE EMPLOYEE** *****

Fred L. Curry
Division of Water and Audits
RM. 3106
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1739
flc@cpuc.ca.gov

Mohsen Kazemzadeh
Division of Water and Audits
AREA 3-C
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2148
mxk@cpuc.ca.gov

Geraldine Kim
Legal Division
RM. 5027
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1470
vo2@cpuc.ca.gov
For: DRA

Raj Naidu
Division of Water and Audits
AREA 3-B
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5573
rkn@cpuc.ca.gov

Linda Rochester
Administrative Law Judge Division
RM. 5024
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3372
lrr@cpuc.ca.gov

Jasjit S. Sekhon
Division of Ratepayer Advocates
RM. 3200
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1254
sek@cpuc.ca.gov
For: DRA

***** SERVICE LIST *****
Last Updated on 22-JAN-2009 by: JVG
10706020 LIST

***** INFORMATION ONLY *****

Robert T. Adcock
General Manager
ALCO WATER SERVICE
249 WILLIAMS RD.
SALINAS CA 93905
(831) 424-0441
For: Alco Water Company

Fernando Armenta
Chairman
ALCO WATER SERVICE SUB-COMMITTEE
168 W. ALISAL STREET
SALINAS CA 93901
(831) 755-5011

Thomas R. Adcock
Vice President
ALCO WATER SERVICE, INC.
249 WILLIAMS ROAD
SALINAS CA 93905
(831) 424-0441
tom@alcowater.com
For: ALCO WATER SERVICE, INC.

Darlene M. Clark, Esq.
Regulatory Counsel
CALIFORNIA AMERICAN WATER
4701 BELOIT DRIVE
SACRAMENTO CA 95838-2434
(916) 568-4217
darlene.clark@amwater.com
For: California American Water

John K. Hawks
Executive Director
CALIFORNIA WATER ASSOCIATION
MAIL CODE E3-608
601 VAN NESS AVENUE, SUITE 2047
SAN FRANCISCO CA 94102-3200
(415) 561-9650
jhawks_cwa@comcast.net
For: California Water Association

Francis S. Ferraro
Vice President
CALIFORNIA WATER SERVICE COMPANY
1720 NORTH FIRST STREET
SAN JOSE CA 95112
(408) 367-8225
sferraro@calwater.com

David P. Stephenson
Director Of Rate Regulation
CALIFORNIA-AMERICAN WATER COMPANY
4701 BELOIT DRIVE
SACRAMENTO CA 95838
(916) 568-4222
dstephens@amwater.com
For: California American Water

Christopher A. Callihan
Sr. Deputy City Attorney
CITY OF SALINAS
200 LINCOLN AVENUE
SALINAS CA 93901
(831) 758-7256
chrisc@ci.salinas.ca.us
For: CITY OF SALINAS

Fred G. Yanney
Attorney At Law
FULBRIGHT & JAWORSKI, LLP
555 SOUTH FLOWER STREET
LOS ANGELES CA 90071
(213) 892-9200
fyanney@fulbright.com
For: Golden State Water Company

David Nemecek
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER
SAN FRANCISCO CA 94111
(415) 788-0900
dnemecek@manatt.com
For: City of Salinas

Lenard G. Weiss
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO CA 94111
(415) 291-7460
lweiss@manatt.com
For: City of Salinas

Sarah Leeper
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO CA 94111
(415) 291-7461
sleeper@manatt.com

I.07-06-020 ALJ/LRR-POD/hkr

***** SERVICE LIST *****
Last Updated on 22-JAN-2009 by: JVG
10706020 LIST

Martin A. Mattes
Attorney At Law
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO CA 94111-4799
(415) 398-3600
mmattes@nossaman.com
For: California Water Association

Edward Jackson
PARK WATER COMPANY
PO BOX 7002, 9750 WASHBURN ROAD
DOWNEY CA 90241-7002
(562) 923-0711
ed.jackson@parkwater.com

Kathleen O'Connor
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO CA 94111
(415) 591-1578
koconnor@winston.com
For: Alco Water Service

(END OF ATTACHMENT)

***** SERVICE LIST *****
Last Updated on 22-JAN-2009 by: JVG
10706020 LIST

***** PARTIES *****

Lynne P. Mcghee
Attorney At Law
CALIFORNIA WATER SERVICE COMPANY
1720 NORTH FIRST STREET
SAN JOSE CA 95112
(408) 367-8228
lmcghee@calwater.com
For: California Water Service

Vanessa W. Vallarta
CHRISTOPHER A. CALLIHAN
City Attorney
CITY OF SALINAS
200 LINCOLN AVENUE
SALINAS CA 93901
(831) 758-7256
vanessav@ci.salinas.ca.us
For: City of Salinas

Keith Switzer
Vice President Of Regulatory Affairs
GOLDEN STATE WATER COMPANY
630 EAST FOOTHILL BOULEVARD
SAN DIMAS CA 91773
(909) 394-3600 X759
kswitzer@gswater.com
For: Golden State Water Company

Cleveland Lee
Legal Division
RM. 5122
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1792
cwl@cpuc.ca.gov
For: DRA

Joseph M. Karp
Attorney At Law
WINSTON & STRAWN, LLP
101 CALIFORNIA STREET, 39TH FLOOR
SAN FRANCISCO CA 94111-5894
(415) 591-1000
jkarp@winston.com
For: Alco Water Service

***** STATE EMPLOYEE *****

Fred L. Curry
Division of Water and Audits
RM. 3106
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1739
flc@cpuc.ca.gov

Mohsen Kazemzadeh
Division of Water and Audits
AREA 3-C
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-2148
mxk@cpuc.ca.gov

Geraldine Kim
Legal Division
RM. 5027
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1470
vo2@cpuc.ca.gov
For: DRA

Raj Naidu
Division of Water and Audits
AREA 3-B
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 355-5573
rkn@cpuc.ca.gov

Linda Rochester
Administrative Law Judge Division
RM. 5024
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-3372
lrr@cpuc.ca.gov

Jasjit S. Sekhon
Division of Ratepayer Advocates
RM. 3200
505 VAN NESS AVE
San Francisco CA 94102 3298
(415) 703-1254
sek@cpuc.ca.gov
For: DRA

***** SERVICE LIST *****
Last Updated on 22-JAN-2009 by: JVG
10706020 LIST

***** INFORMATION ONLY *****

Robert T. Adcock
General Manager
ALCO WATER SERVICE
249 WILLIAMS RD.
SALINAS CA 93905
(831) 424-0441
For: Alco Water Company

Fernando Armenta
Chairman
ALCO WATER SERVICE SUB-COMMITTEE
168 W. ALISAL STREET
SALINAS CA 93901
(831) 755-5011

Thomas R. Adcock
Vice President
ALCO WATER SERVICE, INC.
249 WILLIAMS ROAD
SALINAS CA 93905
(831) 424-0441
tom@alcowater.com
For: ALCO WATER SERVICE, INC.

Darlene M. Clark, Esq.
Regulatory Counsel
CALIFORNIA AMERICAN WATER
4701 BELOIT DRIVE
SACRAMENTO CA 95838-2434
(916) 568-4217
darlene.clark@amwater.com
For: California American Water

John K. Hawks
Executive Director
CALIFORNIA WATER ASSOCIATION
MAIL CODE E3-608
601 VAN NESS AVENUE, SUITE 2047
SAN FRANCISCO CA 94102-3200
(415) 561-9650
jhawks_cwa@comcast.net
For: California Water Association

Francis S. Ferraro
Vice President
CALIFORNIA WATER SERVICE COMPANY
1720 NORTH FIRST STREET
SAN JOSE CA 95112
(408) 367-8225
sferraro@calwater.com

David P. Stephenson
Director Of Rate Regulation
CALIFORNIA-AMERICAN WATER COMPANY
4701 BELOIT DRIVE
SACRAMENTO CA 95838
(916) 568-4222
dstephens@amwater.com
For: California American Water

Christopher A. Callihan
Sr. Deputy City Attorney
CITY OF SALINAS
200 LINCOLN AVENUE
SALINAS CA 93901
(831) 758-7256
chrisc@ci.salinas.ca.us
For: CITY OF SALINAS

Fred G. Yanney
Attorney At Law
FULBRIGHT & JAWORSKI, LLP
555 SOUTH FLOWER STREET
LOS ANGELES CA 90071
(213) 892-9200
fyanney@fulbright.com
For: Golden State Water Company

David Nemecek
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER
SAN FRANCISCO CA 94111
(415) 788-0900
dnemecek@manatt.com
For: City of Salinas

Lenard G. Weiss
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO CA 94111
(415) 291-7460
lweiss@manatt.com
For: City of Salinas

Sarah Leeper
Attorney At Law
MANATT, PHELPS & PHILLIPS, LLP
ONE EMBARCADERO CENTER, 30TH FLOOR
SAN FRANCISCO CA 94111
(415) 291-7461
sleeper@manatt.com

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***** SERVICE LIST *****
Last Updated on 22-JAN-2009 by: JVG
10706020 LIST

Martin A. Mattes
Attorney At Law
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
50 CALIFORNIA STREET, 34TH FLOOR
SAN FRANCISCO CA 94111-4799
(415) 398-3600
mmattes@nossaman.com
For: California Water Association

Edward Jackson
PARK WATER COMPANY
PO BOX 7002, 9750 WASHBURN ROAD
DOWNEY CA 90241-7002
(562) 923-0711
ed.jackson@parkwater.com

Kathleen O'Connor
WINSTON & STRAWN LLP
101 CALIFORNIA STREET
SAN FRANCISCO CA 94111
(415) 591-1578
koconnor@winston.com
For: Alco Water Service

(END OF SERVICE LIST)