BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to review the existing guiding framework set forth in Decision 99-10-064 (consistent with the Public Water System Investment and Consolidation Act of 1997) regarding acquisitions involving water utilities under the Commission's jurisdiction.	Rulemaking 22-04-003 (Filed April 7, 2022)

CALIFORNIA WATER ASSOCIATION
REPLY COMMENTS ON PROPOSED DECISION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

I. INTRODUCTION

Pursuant to Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), California Water Association ("CWA") submits its reply comments responding to opening comments submitted on the Proposed Decision ("PD"). While CWA and Public Advocates Office ("Cal Advocates") both share the baseline goal of improving California's water system consolidation framework, Cal Advocates' proposed modifications would introduce rigid, punitive hurdles that run directly counter to the State's goals in this area.

II. DISCUSSION

A. The Commission should reject Cal Advocates' arguments on gain-on-sale treatment for water system acquisitions.

Cal Advocates argues that the PD errs by treating gain-on-sale allocation as inconsistent with the policy goals of a Public Utilities Code Section 2720 review.[1] They assert that seller-side gain allocation is a distinct transaction effect that should operate as a "ratepayer-protective offset" to prevent a "windfall" to the seller.[2] The Commission should reject this position. As both CWA and the Small Water Companies have detailed in this proceeding, extending gain-on-sale rules to full-system acquisitions creates a severely misaligned incentive structure.[3] Forcing small or distressed system owners to surrender sales gains to customers eliminates any logical financial incentive for those owners to divest. This would freeze the voluntary consolidation market, locking struggling communities into fragmented systems that lack the capital and operational capabilities of larger water utilities. The PD correctly concluded that imposing such mechanisms creates a redundant, burdensome, and conflicting regulatory barrier. Cal Advocates attempt to keep an opening for the Commission to revisit the gain-on-sale issue in individual acquisition proceedings should be denied as well.

B. The Commission should reject Cal Advocates' arguments on acquisition premium concepts and onerous valuation tools.

Cal Advocates requests that the Commission modify the PD to track "purchase-price premiums over book value" and preserve universal options for mandatory third-party appraisals or valuation trend analyses.[4] These requests should be denied. Under Public Utilities Code

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[1] Cal Advocates Opening Comments on PD, pp. 1-2.
[2] *Id.*, p. 2.
[3] CWA Opening Comments on Staff Proposal (January 31, 2025), pp. 20-26; Small Water Companies Opening Comments on Staff Proposal (January 31, 2025), pp. 4-12.
[4] Cal Advocates Opening Comments on PD, pp. 3-5.

Section 2720, the Legislature explicitly mandated the Fair Market Value ("FMV") standard based on a willing buyer and willing seller model. Book value is a historical accounting construct that fails to capture the time-value of money, real asset worth, or current market conditions. Forcing a regulatory focus on book-value variations undermines the statutory framework of Public Utilities Code Section 2720 established by the Legislature. The Commission should reject this unjustified recommendation.

Furthermore, the PD properly determined that mandating third-party appraisals or complex trend analyses creates an administrative and financial burden disproportionate to its usefulness, particularly for small or distressed systems.[5] The extensive package of documentation already required under Section 10.2 of D.20-08-047—such as due diligence documentation, business plans, and engineering assessments—provides the Commission with more than sufficient record data to judge transaction prudence on a case-by-case basis.[6] The Commission should reject Cal Advocates' attempts to undermine the Legislature's clear directive in Public Utilities Code Section 2720, which will unnecessarily complicate and delay beneficial water system acquisitions.

C. The Commission should reject Cal Advocates' arguments on grant funding.

Cal Advocates objects to Ordering Paragraph No. 17 of the PD, asserting that allowing grant seeking to be discretionary permits utilities to ignore public funding and shift avoidable costs onto ratepayers.[7] In particular, Cal Advocates requests that the Commission mandate extensive due-diligence tracking and explanations for why grant funds were not actively pursued.[8] The Commission should maintain the language in the PD. Forcing mandatory grant tracking hurdles ignores the reality that State Water Resources Control Board ("SWRCB") grant timelines move on a parallel tracker that cannot always be synchronized with transaction closing deadlines. The PD correctly separated the SWRCB's grant-funding procedures from the core acquisition approval process to prevent unnecessary transactional friction. While water utilities should be strongly encouraged to seek out mitigating grants, turning grant acquisition into a rigid compliance mechanism will layer on delay and threaten the viability of critical, fast-moving consolidations. For these reasons, the Commission should reject Cal Advocates' arguments.

[5] PD, pp. 39-42.
[6] D.20-08-047, pp. 89-93.
[7] Cal Advocates Opening Comments on PD, pp. 5-7.
[8] *Id.*, p. 7.

D. The Commission should reject Cal Advocates' arguments on water rights.

Cal Advocates argues that the PD creates a blanket presumption that water rights are non-depreciable assets categorically included in rate base without a sufficient case-specific showing.[9] This characterization misconstrues the legal framework. As CWA explained in its own opening comments on the PD, because water rights are inherently tied to the structural value and long-term reliability of an acquired water system, their value is properly subsumed within the broader FMV framework mandated by Public Utilities Code Section 2720.[10] High demand for water rights means that incorporating their value into rate base provides a direct, stabilizing benefit to consumers by protecting the utility from volatile and expensive purchased-water markets during prolonged droughts. CWA stands by its request that itemized cost-benefit metrics should remain strictly discretionary, applying only if a water utility explicitly elects to treat water rights as an individual asset completely detached from the overall purchase price. Therefore, the Commission should reject Cal Advocates' recommendations regarding water rights.

E. The Commission should reject Cal Advocates' arguments on forecasting.

Cal Advocates asks the Commission to declare that utilities may not recover any "reasonably foreseeable" post-acquisition costs that were omitted or understated at the time of initial filing, while completely barring the use of memorandum accounts for not-at-risk systems.[11] This punitive proposal must be flatly rejected. As CWA explained in its opening comments on the PD, water infrastructure is largely underground, highly complex, and prone to latent defects or historical deferred maintenance that no level of reasonable due diligence can completely uncover before taking over daily operations.[12] The Commission should take these considerations into account as it evaluates proposed water system acquisitions. Cal Advocates' arguments are unrealistic and should be rejected.

Denying the use of memorandum accounts to track unforeseen emergency repair costs fundamentally penalizes acquiring utilities for timing mismatches between General Rate Case cycles and market-driven transactions. A memorandum account does not guarantee automatic recovery; it simply tracks exceptional expenses for subsequent Commission prudence review. It is for these same reasons why CWA recommends revising the PD to expand the type of water

[9] Cal Advocates Opening Comments on PD, pp. 7-8.
[10] CWA Opening Comments on PD, p. 5.
[11] Cal Advocates Opening Comments on PD, pp. 8-11.
[12] CWA Opening Comments on PD, p. 7.

system acquisitions that could qualify for use of memorandum account track costs that can not be reasonably forecasted. CWA respectfully urges the Commission to reject Cal Advocates' arguments and instead allow memorandum account structures to track these critical, unpredictable integration costs for **all** system types to ensure safe operational continuities.

F. The Commission should avoid duplicative reporting for any acquisition-tracking information dashboard.

The Leadership Counsel for Justice and Accountability ("LCJA") and Clean Water Fund ("CWF") recommend that the Commission work with the SWRCB to make acquisition-tracking information accessible to the public through a dashboard similar to the SAFER dashboard.[13] CWA supports interagency coordination and transparency. However, the Commission must ensure that the creation of any public-facing tracking dashboard does not result in duplicative or burdensome new reporting requirements for acquiring utilities. The Commission and SWRCB already collect extensive data during the acquisition review process. Any dashboard should be populated using this existing regulatory data rather than imposing separate, ongoing administrative reporting mandates on utilities, which would only divert resources away from the operational integration and improvement of acquired systems.

G. The Commission should not adopt blanket translation requirements.

LCJA and CWF urge the Commission to mandate translation requirements for all public notices and meetings in accordance with Section 18101.410 of Title 9 of the California Code of Regulations.[14] While CWA agrees that effective community engagement and language accessibility are vital for a successful consolidation, imposing a rigid, statewide translation mandate for every public notice and meeting—regardless of the specific demographic makeup of the acquired system's service area—is an inefficient approach. Translating highly technical legal and regulatory notices into multiple languages where there is no demonstrated local need introduces substantial administrative costs. These compliance costs are ultimately borne by customers as part of the cost of service. The Commission should instead continue to rely on targeted, demographics-based language access protocols that ensure non-English speaking communities receive vital information without imposing unnecessary financial burdens across the board. This can be done on a case-by-case basis without needing to modify the PD.

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[13] LCJA and CWF Opening Comments on PD, pp. 1-2.
[14] *Id.*, p. 2.

H. The Commission should authorize the use of memorandum accounts to facilitate acquisitions.

LCJA and CWF express concern regarding the impact of discrete large rate increases on low-income customers, specifically highlighting rate increases based on the use of memorandum accounts.[15] They request that sudden large changes in rates be considered throughout the acquisition process. CWA agrees that ratepayer affordability is a paramount concern; however, restricting or discouraging the use of memorandum accounts would severely chill the acquisition of failing and at-risk systems, as well as still-beneficial acquisitions of not-at-risk systems. As highlighted above in response to Cal Advocates' arguments, when an acquiring utility takes over a distressed system, unforeseen emergency repairs and deferred maintenance issues inevitably arise. Tracking these costs in a memorandum account does not guarantee automatic recovery, nor does it automatically result in "sudden large changes in rates" as LCJA and CWF describe. As CWA explained in its opening comments, the Commission retains full authority to review these accounts for prudence and to authorize recovery mechanisms—such as amortized surcharges or rate deferrals—that smooth out the financial impact and prevent rate shock.[16] Eliminating this vital regulatory tool out of fear of hypothetical rate impacts would penalize acquiring utilities and ultimately leave failing systems stranded without capable operators.

III. CONCLUSION

In conclusion, CWA respectfully asks that the Commission revise the Proposed Decision as outlined above and as reflected in **Appendix A**.

Respectfully submitted,

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[15] *Id.*, pp. 2-3.
[16] CWA Opening Comments on PD, pp. 7-8.