

Decision 22-12-001 December 1, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American
Water Company (U210W) to Obtain
Approval of the Amended and
Restated Water Purchase Agreement
for the Pure Water Monterey
Groundwater Replenishment Project,
Update Supply and Demand Estimates
for the Monterey Peninsula Water
Supply Project, and Cost Recovery.

Application 21-11-024

**DECISION AUTHORIZING CALIFORNIA-AMERICAN WATER COMPANY TO
ENTER INTO THE PURE WATER MONTEREY GROUNDWATER
REPLENISHMENT EXPANSION PROJECT, AND AUTHORIZING THE
CONSTRUCTION OF FOUR COMPANY-RELATED FACILITIES AND
ASSOCIATED RATEMAKING TREATMENT**

TABLE OF CONTENTS

Title	Page
DECISION AUTHORIZING CALIFORNIA-AMERICAN WATER COMPANY TO ENTER INTO THE PURE WATER MONTEREY GROUNDWATER REPLENISHMENT EXPANSION PROJECT, AND AUTHORIZING THE CONSTRUCTION OF FOUR COMPANY-RELATED FACILITIES AND ASSOCIATED RATEMAKING TREATMENT	1
Summary	2
1. Factual Background	3
1.1. Regional Desalination Project	3
1.2. MPWSP	5
1.2.1. Groundwater Replenishment	5
1.2.1.1. PWM Project	6
1.2.1.2. PWM Expansion Project	7
1.2.2. Desalination Plant and Remaining Cal-Am Facilities	9
2. Procedural Background	10
3. Jurisdiction	12
4. Issues Before the Commission	13
5. Need for Additional Water Supply Source for Cal-Am's Customers on the Monterey Peninsula	14
6. Authorization to Enter into the Amended and Restated Water Purchase Agreement and to Construct Three Company-Related Facilities	17
6.1. Sources of Supply Water	17
6.2. Development Costs	20
6.3. Prices for Sales of Treated Water	21
6.4. Contractual Details	22
6.4.1. Operative Provision No. 15 - Annual Budget Review	23
6.4.2. General Provision No. 18 - Rate Recovery for Treated Water	24
6.5. Environmental Effects	25
6.6. Necessary Permits	29
6.7. Water Quality	31
6.7.1. Concerns with Water Quality	32
6.8. Sources of Funding	35
6.9. Company-Related Facilities - Description, Construction Schedule, and Forecast Costs	36
6.9.1. EW-1, EW-2, and Chemical Treatment Facility	36
6.9.2. EW-3, EW-4, and Associated Piping	37
6.9.3. Carmel Valley Pump Station	38

TABLE OF CONTENTS

Title	Page
6.9.4. General Jim Moore Parallel Pipeline	38
6.10. Broader Principles	39
7. Ratemaking Treatment for Company-Related Facilities	41
7.1. Used and Useful Determination and Rate Base Adjustment Issues for the Parallel Pipeline, 1,100-foot section of the Transfer Pipeline, and the Carmel Valley Pump Station	45
7.1.1. Parties' Positions	45
7.1.2. Discussion	48
7.2. Addressing the Reasonableness of Company-Related Facilities	51
7.2.1. Parties' Positions	51
7.2.2. Discussion	53
7.3. Setting the AFUDC Rate at the Actual Weighted-Average-Cost-of-Debt	56
7.3.1. Parties' Positions	56
7.3.2. Discussion	57
7.4. Removing Labor Overhead from the AFUDC	60
7.5. Recovery of Costs above the Cost Cap	60
8. Public Comments	61
9. Comments on Proposed Decision	62
9.1. Authorization to Construct the EW-1/EW-2 Facility	62
9.2. Claims of Retroactive Reduction of Cal-Am's AFUDC	64
9.3. Status of the MPWSP	67
9.4. Parties' Request to Adopt Water Demand Estimate	68
9.5. Parties' Characterization of the PWM Expansion Project as an Alternative to the Desalination Plant	69
9.6. The Purpose of the Carmel Valley Pump Station	70
9.7. Use of a Saturation Adjustment	71
9.8. Other Technical and Factual Errors	72
10. Assignment of Proceeding	75
Findings of Fact	75
Conclusions of Law	83
ORDER	87

Appendix A – Amended and Restated Water Purchase Agreement

Appendix B – System Schematics

Appendix C – Mitigation and Monitoring Requirements

TABLE OF CONTENTS

Title	Page
Appendix D – Permits Required for Company Related Facilities	
Appendix E – Map of PWM Expansion Project Facilities and Other Relevant Facilities on the Monterey Peninsula	
Appendix F - Detailed Cost Estimate	

DECISION AUTHORIZING CALIFORNIA-AMERICAN WATER COMPANY TO ENTER INTO THE AMENDED AND RESTATED WATER PURCHASE AGREEMENT FOR THE PURE WATER MONTEREY GROUNDWATER REPLENISHMENT EXPANSION PROJECT, AND AUTHORIZING CONSTRUCTION OF FOUR COMPANY-RELATED FACILITIES AND ASSOCIATED RATEMAKING TREATMENT

Summary

This decision supports the proposed expansion to the Pure Water Monterey Groundwater Replenishment Project (PWM Expansion Project) as a near-term source of water for California-American Water Company's (Cal-Am's) customers on the Monterey Peninsula.

This decision authorizes Cal-Am to enter into the Amended and Restated Water Purchase Agreement with the Monterey Peninsula Water Management District and Monterey One Water for the PWM Expansion Project. Cal-Am is also authorized to construct four Company-related facilities up to the following cost caps: (1) \$16,723,704 for extraction wells EW-1 and EW-2, and the chemical treatment facility; (2) \$30,220,960 for extraction wells EW-3, EW-4, and associated piping; (3) \$6,475,243 for the Carmel Valley Pump Station; and (4) \$8,264,655 for the General Jim Moore Parallel Pipeline. Cal-Am is authorized to seek rate recovery for Company-related facilities costs up to the cost cap using a Tier 2 Advice Letter and is authorized to request cost recovery for costs incurred above the cost caps through its next applicable general rate case filing.

This proceeding remains open to consider updated water supply and demand estimates for the Monterey Peninsula Water Supply Project. Cal-Am must file a "Response to Inquiry" providing additional information discussing the extent of mercury above maximum contamination levels in the vicinity of aquifer storage and recovery well ASR-4, the potential for mercury to impact

extracted water from the EW-1/EW-2 facility, any proposed remedial action necessary to address the mercury contamination, and the potential cost impacts from mercury treatment as a Tier 3 advice letter to the Commission's Water Division within 30 days of the issuance date of this decision.

1. Factual Background

California American Water Company (Cal-Am or Company) has been looking to provide alternatives to Carmel River water sources to its customers on the Monterey Peninsula since 1995, when the State Water Resources Control Board (SWRCB) issued a cease and desist order requiring Cal-Am to stop the unlawful diversion of 10,730 acre-feet per year (AFY) of water from the Carmel River.¹ In 2009, the SWRCB issued a second cease and desist order with a firm December 31, 2016 deadline for compliance,² which the SWRCB subsequently extended to December 31, 2021.³

The instant application (Application (A.) 21-11-024) relates to two water supply projects contemplated by Cal-Am and approved by the Commission to address water supply issues on the Monterey Peninsula since 1996, including: (1) the Regional Desalination Project, discussed in Section 1.1; and (2) the Monterey Peninsula Water Supply Project (MPWSP), discussed in Section 1.2.

1.1. Regional Desalination Project

In Decision (D.) 10-12-016, the Commission authorized the Regional Desalination Project, the key components of which included: (1) a 10 million gallons per day (mgd) desalination plant owned, operated, and maintained by

¹ SWRCB Order WR 95-10 (Jul. 5, 1995).

² SWRCB Order WR 2009-0060.

³ SWRCB Order WR 2016-0016.

the Marina Coast Water District (MCWD); (2) six source water wells owned, constructed, operated, and maintained by the Monterey County Water Resources Agency; and (3) an outfall for the return of brine to the sea which would be owned, operated, and maintained by the Monterey Regional Water Pollution Control Authority (now operating as Monterey One Water (M1W)).⁴ A groundwater replenishment project was considered but not adopted at that time.⁵

Cal-Am facilities approved as part of the Regional Desalination Project included “three large diameter conveyance pipelines (the Transfer Pipeline, the Seaside Pipeline, and the Monterey Pipeline, which also includes the Valley Greens Pump Station), two distribution storage reservoirs (the Terminal Reservoirs), and aquifer storage and recovery facilities.”⁶ Construction of these new aspects of the Regional Desalination Project facilities was anticipated to begin in the fourth quarter of 2010 and be completed by the summer of 2014.⁷

In 2012, the Commission revisited the Regional Desalination Project and determined that Cal-Am’s withdrawal from that project was justified given the insurmountable problems that were fatal to that project and acknowledged that “we see no alternative but to move forward with ... the Monterey Peninsula

⁴ D.10-12-016 at 58; Application at 3.

⁵ The Seaside Groundwater Basin Replenishment Project proposed reverse osmosis treatment of recycled water from the M1W treatment plant at an Advanced Water Treatment Plant, for subsequent injection of treated water for groundwater recharge. (D.10-12-016 at 43.)

⁶ D.10-12-016 at 129, 205 (Ordering Paragraph (OP) 7).

⁷ *Id.* at 129.

Water Supply Project” instead to ensure reasonable water supply source for the region.⁸

1.2. MPWSP

In 2012, Cal-Am filed an application⁹ seeking approval for the MPWSP to meet the water supply needs of the Monterey Peninsula customers by 2016 from three sources: (1) aquifer storage and recovery (ASR);¹⁰ (2) groundwater replenishment; and (3) a desalination plant. Cal-Am also proposed an alternative of either a 9.6 mgd desalination plant or a 6.4 mgd desalination plant paired with groundwater replenishment. The Commission ultimately approved a modified MPWSP and adopted the latter alternative (6.4 mgd desalination plant paired with a groundwater replenishment component) in D.18-09-017.

1.2.1. Groundwater Replenishment

The instant application involves the groundwater replenishment component of the MPWSP, which consists of two related projects: (1) the Pure Water Monterey Groundwater Replenishment Project (PWM Project), previously approved in D.16-09-021 and discussed in Section 1.2.1.1 and (2) 2,250 AFY expansion of the PWM Project (PWM Expansion Project), proposed in A.12-04-019 and the instant application and described in Section 1.2.1.2.

⁸ D.12-07-008 at 19.

⁹ A.12-04-019.

¹⁰ The Monterey ASR project involves the injection of excess Carmel River water into the Seaside Groundwater Basin for later extraction and use. Future water sources for ASR may include the PWM Project, PWM Expansion Project, and a desalination plant.

1.2.1.1. PWM Project

In 2016, the Commission approved the groundwater replenishment component of the MPWSP called the PWM Project.^{11,12} The PWM Project is a water supply project operated by M1W, which provides: (1) purified recycled water for recharge of a groundwater basin that serves as a drinking water supply; (2) purified recycled water for urban landscape irrigation within the MCWD service area; and (3) recycled water to augment the existing Castroville Seawater Intrusion Project's agricultural irrigation supply.¹³ It "also includes a drought reserve component to support use of the new supply for crop irrigation during dry years."¹⁴ M1W operates the wastewater treatment plant and sells the treated groundwater to Monterey Peninsula Water Management District (MPWMD). MPWMD, in turn, sells the treated water to municipal and public utilities, including Cal-Am.

Under the Water Purchase Agreement (Original WPA) authorized by the Commission in 2016, M1W and MPWMD were contracted to supply 3,500 AFY of treated water to Cal-Am for a term of 30 years, at a first-year price of \$1,720/acre-feet (AF).¹⁵ The PWM Project was expected to begin operation in 2018.¹⁶ It began operation on February 7, 2020, delivering 990 AF in 2020 at a

¹¹ D.16-09-021.

¹² While this project is referred to by parties in this proceeding as the PWM Project, it is also referred to as "GWR" in prior Commission decisions. (D.16-09-021; D.18-09-017.)

¹³ Application, Appendix D at 1.

¹⁴ *Ibid.*

¹⁵ D.16-09-021.

¹⁶ *Id.* at 21.

cost of \$ 2,442/AF¹⁷ with expectation to deliver 3,500 AF in 2021.¹⁸ Though the water deliveries during 2021 reached 300 AF/month at a cost of \$2,808,¹⁹ one of the wells used for groundwater extraction, ASR-1, became inactive in September 2021, as discussed further in Section 6.7.1.

1.2.1.2. PWM Expansion Project

In 2018, the Commission initially considered the proposal to expand the PWM Project, which was expected to provide an additional 2,250 AFY of purified recycled water for injection into the Seaside Groundwater Basin and subsequent extraction of the same quantity to Cal-Am's existing potable water supplies, but deferred approval of the project because: (1) at that time, the PWM Project was not yet a proven technology; and (2) it did not meet groundwater peak annual flow or peak day flow requirements for Cal-Am's water supply needs.²⁰

However, the Commission directed Cal-Am to study and report on the feasibility of the PWM Expansion Project and potential for entering into a related water purchase agreement by filing a Tier 2 Advice Letter within 180 days of the issuance of D.18-09-017.²¹ Also, in the event that the 6.4 mgd desalination plant was not expected to be completed by December 31, 2021, the Commission allowed Cal-Am to file an application for approval of a water purchase agreement for an expansion to the PWM Project, for up to 2,250 AFY, through an application which included the following: (1) sources of supply water; (2) development costs; (3) prices for sales of the developed water; (4) contractual

¹⁷ Cal-Am AL 1298 at 2.

¹⁸ D.22-03-038 at 4.

¹⁹ Cal-Am AL 1336 at 2.

²⁰ D.18-09-017 at 211 (FOFs 18,19).

²¹ *Id.* at OP 37.

details; (5) environmental effects; (6) potential to obtain necessary permits; (7) water quality; (8) sources of funding; (9) possible related facilities; and (10) other information necessary and relevant for the Commission to make an informed, just and reasonable decision, including details as to supply and production, including not only during average rainfall years but also during a multi-year drought and the timing of expanded production.²²

In 2019, Cal-Am submitted AL 1231 as ordered in D.18-09-017 and reported that “the potential PWM expansion [was] still being developed and was not yet at a point where [Cal-Am] could determine whether it should be used.”²³ Cal-Am also stated that the authorized MPWSP desalination plant was proceeding according to schedule at that time and Cal-Am believed the desalination plant was expected to come online prior to December 31, 2021.²⁴

Meanwhile, for several years, M1W worked to prepare the environmental document for the PWM Expansion Project, and on April 26, 2021, the M1W certified the Supplemental Environmental Impact Report (SEIR) for the PWM Expansion Project.

On May 4, 2021, MPWMD filed a complaint before the Commission against Cal-Am, Case (C.) 21-05-005, alleging Cal-Am failed to ensure an adequate water supply to its customers on the Monterey Peninsula and requesting a Commission order requiring Cal-Am to enter into a water purchase agreement for the PWM Expansion Project.²⁵ M1W, MPWMD, and

²² *Id.* at 42-43.

²³ Cal-Am AL 1231 at 2.

²⁴ *Ibid.*

²⁵ C.21-05-005.

Cal-Am eventually agreed on the terms for a water purchase agreement for the PWM Expansion Project on September 22, 2021.²⁶

By ruling, dated October 26, 2021, the assigned Administrative Law Judge (ALJ) in C.21-05-005 ordered Cal-Am to file an application for Commission consideration of the WPA within 30 days of the date of the ruling.²⁷ On November 29, 2021, Cal-Am filed the instant application for, among other things, approval of the Amended and Restated WPA for the PWM Project expansion (Amended WPA). On March 3, 2022, C.21-05-005 was dismissed as moot.²⁸

1.2.2. Desalination Plant and Remaining Cal-Am Facilities

In 2018, the Commission authorized construction of a 6.4 mgd desalination plant²⁹ and the “Remaining Cal-Am Only Facilities.”³⁰ The Commission found that the desalination plant (expected to produce 6,250 AFY in non-drought years and 7,167 AFY in drought years) would meet Cal-Am’s need for an additional 4,956 AFY of water from a source other than the Carmel River by December 31, 2021, which would in turn allow Cal-Am to comply with SWRCB Order WR 2016-0016.³¹ At the time of the Commission’s authorization, the desalination plant was expected to be completed by December 31, 2021. The

²⁶ A.21-11-024 Application at Attachment A.

²⁷ D.22-03-038 at 8.

²⁸ D.22-03-038.

²⁹ The desalination portion of the project is made up of slant wells, source water pipelines, the desalination plant, product water pipelines, brine disposal facilities, ASR Wells, and related appurtenant facilities. (D.18-09-017 at 99.)

³⁰ “Remaining Cal-Am Only Facilities” consist of the Aquifer Storage and Recovery (ASR) Pipeline, the ASR Recirculation and Backflush Pipelines, and the Valley Greens Pump Station.

³¹ D.18-09-017 at 187.

Commission also indicated an intent to require Cal-Am to submit a separate application or to issue an Order Instituting Investigation (OII) to determine the reasonableness of Cal-Am's expenditures, if the desalination plant was not constructed in a timely manner or failed to operate appropriately.³² To date, the 6.4 mgd desalination plant has not been constructed.

2. Procedural Background

On November 29, 2021, Cal-Am filed this instant application, A.21-11-024 (Application), requesting: (1) authority for Cal-Am to enter the Amended WPA, included in Appendix A, and (2) authorization to construct, and associated rate recovery, for four Company-related facilities Cal-Am considers necessary to bring water purchased under the Amended WPA to Cal-Am's customers, and (3) updated supply and demand estimates for the MPWSP (Application). The four company-related facilities requested by the Application are (a) extraction wells EW-1 and EW-2, and a water treatment facility (EW-1/EW-2 facility); (b) extraction wells EW-3 and EW-4 and associated piping (EW-3/EW-4 facility); (c) the Carmel Valley Pump Station; and (d) the General Jim Moore Parallel Pipeline.

Under the Amended WPA for the PWM Expansion Project, Cal-Am stated that the amount of water it would purchase increases by 2,250 AFY, from 3,500 AFY to 5,750, and the total peak pumping capacity would also increase from 5.0 mgd to 7.6 mgd, as shown in Appendix B of this decision.³³

Four parties filed timely protests or responses to the Application. On January 3, 2022, Public Advocates Office of the California Public Utilities

³² *Id.* at 211 (OP 35).

³³ Cal-Am Exhibit CAW-01 at 4.

Commission (Cal Advocates) filed a protest to the Application while responses were filed by City of Marina, M1W, and MCWD. Cal-Am filed a reply to the responses and protests to its Application on January 13, 2022.

Coalition of Peninsula Business (CPB), MPWMD, and Landwatch Monterey County (Landwatch) filed motions for party status on December 29, 2021, January 3, 2022, and January 14, 2022, respectively. CPB and MPWMD were granted party status by assigned ALJ ruling on January 14, 2022, and January 21, 2022, respectively.

A prehearing conference (PHC) was held on January 25, 2022, during which Public Water Now (PWN) made an oral motion for party status. Landwatch and PWN were granted party status at the PHC. The assigned Commissioner issued a scoping memo on February 9, 2022.

Cal Advocates, City of Marina, MCWD, M1W, MPWMD, and PWN served intervenor testimony on March 11, 2022. Cal-Am also served supplemental testimony on water supply and demand estimates for its Monterey Peninsula customers to support the Amended WPA on March 11, 2022.

MCWD and MPWMD served supplemental testimony on April 1, 2022. Cal-Am also served rebuttal testimony on intervenor testimony on April 1, 2022. Cal-Am served rebuttal testimony on intervenor's supplemental testimony on April 8, 2022.

The parties filed a joint case management statement on April 14, 2022, indicating an evidentiary hearing was needed. An evidentiary hearing was held on May 3, 2022, and all testimony previously served in this proceeding was marked, identified, and received into evidence. Immediately following the evidentiary hearing, the assigned ALJ issued a ruling directing the service and

filing of a motion to admit two additional exhibits into evidence. Cal-Am served and filed a motion to admit two exhibits into the evidentiary record on May 6, 2022. Cal Advocates and MCWD filed responses to Cal-Am's motion to admit the two exhibits on May 13, 2022. Cal-Am filed a reply thereto on May 18, 2022. The assigned ALJ granted Cal-Am's motion to admit two additional exhibits into the evidentiary record by ruling, dated June 7, 2022.

Cal-Am, M1W, MPWMD, City of Marina, MCWD, and Cal Advocates filed opening briefs on May 31, 2022. Landwatch also filed a joinder in the opening brief of MPWMD, indicating its joinder in Section I, II, and III.A of the opening brief of MPWMD on May 31, 2022. Cal-Am, M1W, MPWMD, City of Marina, MCWD, Cal Advocates, and PWN filed reply briefs on June 20, 2022.

On June 20, 2022, Cal-Am filed a motion to strike portions of MPWMD's opening brief. On June 23, 2022, Cal-Am filed a motion to strike portions of MPWMD's reply brief. On June 27, Cal-Am filed a motion to file a corrected opening brief.

On June 30, 2022, Cal-Am's motion to file a corrected opening brief was denied by ALJ ruling. On July 5, 2022, MPWMD filed a joint response to Cal-Am's motions to strike its opening and reply briefs. On July 18, 2022, Cal-Am's motions to strike portions of MPWMD's opening and reply briefs were granted by ruling. On July 27, 2022, MPWMD filed its corrected opening and reply briefs. The Phase 1 of the instant proceeding was submitted on July 27, 2022.

3. Jurisdiction

Cal-Am is a public utility subject to the Commission's jurisdiction as a corporation that owns, controls, operates, and manages a water system within California pursuant to Public Utilities Code (Pub. Util. Code) Section 2701. The

Commission has the authority to review the Amended WPA, the Cal-Am related facilities which are components of the PWM Expansion Project and the related rate recovery issue in this application pursuant to Pub. Util. Code § 451, to ensure that Cal-Am is “maintaining such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public” as well as ensure that the terms of the Amended WPA are just, reasonable and in the public interest.

4. Issues Before the Commission

The issues addressed in this Phase 1 decision are:

1. Whether Commission approvals of the Amended and Restated Water Purchase Agreement and the Company-related facilities are reasonable, prudent, and in the public interest, considering the following: (1) sources of supply water, (2) development costs, (3) prices for sales of the developed water, (4) contractual details, (5) environmental effects, (6) potential to obtain necessary permits, (7) water quality, (8) sources of funding, (9) possible related facilities (*e.g.*, additional pipelines or pump stations), and (10) any other information relevant and necessary for the Commission to make an informed, just and reasonable decision including details as to supply and production including not only during average rainfall years but also during a multi-year drought and the timing of expanded production;
2. Whether the ratemaking proposals for the Amended and Restated Water Purchase Agreement and the Company-related facilities, are reasonable; and
3. Whether Cal-Am’s water supply and demand estimates support approval of the Amended and Restated Water Purchase Agreement.

In the Phase 2 of this proceeding, we will address the outstanding issues, including the review and approval of updated water supply and demand estimates for the MPWSP.

5. Need for Additional Water Supply Source for Cal-Am's Customers on the Monterey Peninsula

In D.18-09-017, the Commission stated that an application for approval of the Amended WPA:

... will be considered only to the extent the desalination plant authorized in this decision (*i.e.*, 6.4 million gallons per day) is delayed to the point that sufficient source water capacity is more likely than not to be unavailable after the December 31, 2021, deadline set by the [SWRCB] in its amended [cease and desist order].³⁴

It is undisputed that the desalination plant was not built by December 31, 2021. Approval of the Coastal Development Permit (CDP) needed for construction of the desalination plant is still pending before the California Coastal Commission (CCC). Besides the CCC's CDP permit, permitting for the desalination plant outfall needs to be secured before the desalination plant can operate. There has been evidence presented in this proceeding that M1W has not agreed to a design for the outfall and declines to conduct the necessary environmental review for the outfall, or to apply for the necessary permits needed for the outfall until the Commission approved the Amended WPA at issue in this application.³⁵ Likewise, it seems that "the City of Marina has not

³⁴ D.18-09-017 at 44.

³⁵ MPWMD Exhibit MPWMD-01, Attach. A at 1-2 (Cal. Coastal Com. Letter, Notice of Incomplete Application Np. 9-20-0603 – Cal-Am, dated February 8, 2022).

given at least preliminary approval for liner work that appears to require a CDP from the City.”³⁶

Furthermore, Cal-Am has not obtained new land use leases needed to construct and operate the MPWSP slant wells within the jurisdiction of the State Lands Commission and has not received three federal agency authorizations required for drilling and seawater transportation related to the MPSP.³⁷ The 6.4 mgd desalination plant is also at issue in pending litigation.³⁸ Therefore, with the lengthy delay to date, the continued need to secure of necessary permits, and active litigation challenges presenting uncertainties regarding the 6.4 mgd desalination plant, we find that there will continue to be delay in constructing the 6.4 mgd desalination plant.

There is also significant opposition to the desalination plant from community members that cannot be ignored. PWN, a non-profit with over 4,000 members who are Cal-Am customers, sponsored and helped pass ballot Measure J, to build a community-owned water system under the management of MPWMD.³⁹ PWN opposes construction of the desalination plant and advocates strongly for the PWM Expansion Project instead.⁴⁰ PWN also provided a letter from 28 Monterey County elected leaders who oppose the desalination project in favor of the PWM Expansion Project.⁴¹ The City of Marina, where the 6.4 mgd

³⁶ *Id.*, Attach. A at 2.

³⁷ MPWMD Exhibit MPWMD-01 at 6; MPWMD Exhibit MPWMD-02 at 3; City of Marina Reply Brief at 6-7.

³⁸ See e.g. *City of Marina v. Lonestar* (Case No. 20CV001387); City of Marina Reply Brief at 9.

³⁹ PWN Exhibit PWN-01 at 3.

⁴⁰ *Id.* at 3-10.

⁴¹ PWN Exhibit PWN-01, Attach. 3 at 1-3.

desalination plant is sited, also strongly opposes construction of the desalination plant due to environmental justice concerns and what they see as the relative merits of the PWM Expansion Project compared to the desalination plant.⁴² Therefore, lack of community support for the desalination plant also makes it likely that the desalination plant will continue to experience permitting challenges and construction delays. Given delays caused by permitting, litigation challenges, and lack of community support for the desalination plant, it is reasonable to consider the PWM Expansion Project as a nearer-term supplemental source of water for the Monterey Peninsula, reducing Cal-Am's need to divert water from the Carmel River.

All parties agree that the PWM Expansion Project is urgently needed to meet current system demands.⁴³ Cal-Am provided near-term water supply and demand estimates showing that the current, average five-year production supply is inadequate to meet the five-year average customer demand without an additional source of water such as the PWM Expansion Project.⁴⁴ MCWD and MPWMD also provided testimony supporting a near-term need for water need that would be met with the PWM Expansion Project.

We have considered the matter and find that short-term supply and demand estimates for water on Cal-Am's Monterey Main System support approval of the Amended WPA and the Company-related facilities associated with the PWM Expansion Project. We do not adopt short-term supply and demand estimates in this Phase 1 decision; however, during the Phase 2 of this

⁴² City of Marina Opening Brief.

⁴³ Cal-Am Exhibit CAW-03 at 2.

⁴⁴ *Id.* at 2-5.

proceeding, we will consider updated water supply and demand estimates for the MPWSP.

6. Authorization to Enter into the Amended and Restated Water Purchase Agreement and to Construct Three Company-Related Facilities

This decision considers the conditions for approval of the Amended WPA using the factors outlined in D.18-09-017, as discussed in Sections 6.1 to 6.9, below, and finds the terms of the Amended WPA and authorization of three of the four proposed Company-related facilities, reasonable, prudent, and in the public interest.

As discussed below, Cal-Am is authorized to enter into the Amended WPA and construct three of the four Company-related facilities, as part of the PWM Expansion Project.

6.1. Sources of Supply Water

We first review the sources of supply water available for the PWM Expansion Project to determine whether it is reasonable to project that M1W will be able to produce the additional 2,250 AFY of treated water required under the Amended WPA. M1W and MPWMD state that they require 3,081 AFY of supply water to produce the additional 2,250 AFY required for the PWM Expansion Project, for a total of 7,874 AFY of wastewater to produce 5,750 AFY of treated water for both the PWM Project and the PWM Expansion Project.⁴⁵

⁴⁵ Cal-Am Exhibit CAW-01, Attach. A at 2.

The final SEIR for the PWM Expansion Project adopts the Source Water Operational Plan Technical Memorandum prepared by M1W, which calculates the total source water available for M1W⁴⁶ on a typical year at 11,104 AFY.⁴⁷

M1W identified four categories of source water supply for the PWM Expansion Project: (1) municipal wastewater; (2) surface water diversions; (3) agricultural wash water; and (4) urban stormwater runoff.

Municipal wastewater sources from within and outside M1W's service area include: (1) secondary effluent not used for meeting MCWD and Salinas Valley Reclamation Plant (SVRP)/Castroville Seawater Intrusion Project demands; (2) SVRP Backwash; (3) Boronda; (4) Farmworker Housing; (5) Sump #1 and Sump #2; (6) approved PWM Base project Advanced Water Purification Facility (AWPF) backwashes; (7) approved PWM Project expansion AWPF backwashes; and (8) M1W's Amended and Restated Water Recycling Agreement summer water.⁴⁸ Surface water diversion sources consist of the Reclamation Ditch and Blanco Drain.⁴⁹ Agricultural wash water consists of the City of Salinas' industrial wastewater system wash water.⁵⁰ Urban stormwater runoff consists of the runoff from the City of Salinas' stormwater system.⁵¹

⁴⁶ The source waters in Mr. Stoldt's calculations did not include AWW, SRDF, or the Salinas IWTF Pond.

⁴⁷ MPWMD Exhibit MPWMD-01 at 9; M1W Exhibit M1W-01 Attach. A (Final SEIR, Chapter 3 at 3-16 to 3-21), Attach. B (Source Water Operational Plan Technical Memorandum) at 13.

⁴⁸ Cal-Am Exhibit CAW-01, Attach. A at 2.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Cal-Am questions the identified source waters' availability to meet the additional 2,250 AFY of source water supply, noting that uncertainty remains as to whether certain sources of supply water identified by M1W are sufficient, resilient, and reliable enough to supply the PWM Expansion Project.⁵² Cal-Am cites to its peer review analysis of water supply sources⁵³ as part of its Urban Water Management Plan for the Monterey County District, which found that the PWM Expansion Project would not produce the additional 2,250 AFY in both normal and dry years.⁵⁴ Cal-Am also points to prior disputes between the M1W and the City of Salinas as evidence of the uncertainty affecting M1W's and MPWMD's water supply sources.⁵⁵ However, Cal-Am still supports the Amended WPA and the PWM Expansion Project despite these concerns, viewing the terms of the Amended WPA as providing sufficient protection for ratepayers in the event of PWM Expansion Project underperformance.⁵⁶

M1W argues that the concerns raised by Cal-Am are concerns previously raised and completely addressed during the SEIR review process, including the report prepared by Hazen and Sawyer.⁵⁷ MPWMD agrees that sufficient supply water is available to meet the demands of the PWM Expansion Project.⁵⁸

⁵² Cal-Am Phase 1 Reply Brief at 29.

⁵³ M1W's water supply sources were analyzed by Hazen and Sawyer, a national consulting engineering firm.

⁵⁴ Cal-Am Exhibit CAW-01 at 7; Cal-Am Phase 1 Reply Brief at 29.

⁵⁵ Cal-Am Phase 1 Reply Brief at 29.

⁵⁶ *Id.* at 30.

⁵⁷ M1W Phase 1 Opening Brief at 7.

⁵⁸ MPWMD Phase 1 Opening Brief at 4.

Upon review, we find that the parties provided sufficient evidence to support a finding that the total source water in a typical year is 11,104 AFY, which will be adequate to meet the 7,874 AFY of supply water needed to support the PWM Expansion Project.⁵⁹ The concerns raised by Cal-Am are addressed by M1W and MPWMD as part of the SEIR. Accordingly, we find the identified source waters sufficient to support Commission authorizations for Cal-Am to enter into the Amended WPA and construct the authorized Company-related facilities, as part of the PWM Expansion Project.

6.2. Development Costs

We review the total estimated development costs of M1W's and MPWMD's facilities to determine whether those costs, which will be passed on to ratepayers through the sale-price of water, support Commission authorization for Cal-Am to enter into the Amended WPA. Development costs for M1W's and MPWMD's PWM Expansion Project related facilities total \$49.2 million, which includes the cost of additional water treatment facilities to increase M1W's capacity for producing treated water, along with additional injection wells.⁶⁰

No parties contested or commented on M1W's or MPWMD's estimated development costs. We have reviewed those costs and find that they are reasonable and support Commission authorization for Cal-Am to enter into the Amended WPA.

The estimated development costs identified as part of the Amended WPA do not include the cost of building Company-related facilities to be owned and

⁵⁹ Cal-Am Exhibit CAW-01, Attach. A; M1W Exhibit M1W-01 at 6-10, Attach. A to E; and MPWMD Exhibit MPWMD-01 at 8-10.

⁶⁰ Cal-Am Exhibit CAW-01 at 9.

operated by Cal-Am, for which Cal-Am requests a revenue requirement of \$81.065 million. Those Company-related facilities are discussed separately in Sections 6.9 and 7.

6.3. Prices for Sales of Treated Water

We now review the estimated price for the sale of treated water to determine whether it is reasonable. M1W's and MPWMD's estimated cost of purchased water is \$3,429/ AF in the 2024/2025 fiscal year.⁶¹ This is higher than the current price of water under the Original WPA, which is \$2,808/ AF for the 2022/2023 fiscal year.⁶² The annual cost of water under the Amended WPA is expected to escalate by 6% or more each year in the near-term.⁶³

PWN states that, while the cost of water resulting from the PWM Expansion Project is high, PWN still opines it is reasonable, because the project is publicly owned, has no shareholder profit, can receive public financing, and may receive grants that lower the project costs.⁶⁴ The City of Marina points out that the price of water for the PWM Expansion Project costs less than the 6.4 mgd desalination plant, estimated at \$6,100/ AF.⁶⁵ No other parties objected to or otherwise disputed the estimated prices for the sale of treated water under the Amended WPA.

⁶¹ Cal-Am, Exhibit CAW-01, Attach. A (Joint Response Letter), Attach. C (Pure Water FY 21-22 to FY 24-25 Cost of Water Estimate).

⁶² Cal-Am, Exhibit CAW-01 at 9.

⁶³ *Id.* at 10.

⁶⁴ PWN Exhibit PWN-01 at 10.

⁶⁵ City of Marina Exhibit MARINA-01 at 9, *citing* CCC Staff Report (dated August 2020), Append. B at 12.

Upon review, we find Cal-Am met its obligation to provide the estimated price of treated water pursuant to D.18-09-017 and find the price supports Commission authorizations for Cal-Am to enter into the Amended WPA and to build the authorized Company-related facilities, as part of the PWM Expansion Project.

6.4. Contractual Details

We review the terms of the Amended WPA to determine whether they are reasonable, prudent, and in the public interest. The Amended WPA increases Cal-Am's treated water allotment from 3,500 AFY to 5,750 AFY over a 30-year term, upon operation of the PWM Expansion Project.⁶⁶ Under the Amended WPA, Cal-Am also has an option to extend the agreement for up to 10 additional years.⁶⁷

The Amended WPA also provides for a performance guarantee in the event the PWM Expansion Project fails to deliver 5,750 AFY of water. MPWMD will owe Cal-Am a shortfall of water, which it can use to offset the cost of drawing replacement water from the Seaside Basin.⁶⁸ Cal-Am also has a right to terminate the Amended WPA in the event M1W and MPWMD fail to deliver the additional water by February 1, 2026, or if the MPWMD fails to meet performance guarantees.⁶⁹

In addition, the Amended WPA extends the process for determining the rate of payment by Cal-Am to MPWMD under the Original WPA.⁷⁰ Specifically,

⁶⁶ Cal-Am Exhibit CAW-01 at 10.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Cal-Am Exhibit CAW-02 at 12.

Operative Provision Number (No.) 16 is extended under the Amended WPA and allows Cal-Am to pay only for: (1) the cost of water it receives and can use, (2) water based on the actual cost of water, and (3) its proportionate costs.⁷¹

Finally, the Amended WPA extends budgeting provisions approved in Operative Provision No. 15 and ratemaking provisions in General Provision No. 18 of the Original WPA, as discussed in Sections 6.4.1 to 6.4.2, below. No parties raised any concerns or objections to any of the terms of the Amended WPA.

Upon consideration, we find the Amended WPA terms reasonable and provide further detail and direction for Cal-Am in Sections 6.4.1 to 6.4.2, below.

6.4.1. Operative Provision No. 15 – Annual Budget Review

Operative Provision No. 15 provides for the annual budgeting process by the PWM public agencies (MPWMD and M1W), requiring them to estimate both fixed project costs as well as project operation and maintenance (O&M) expenses by no later than May 1st of each year, and requiring the budget to be available for review at least 15 days prior to adoption by MPWMD's or M1W's respective boards.⁷² No parties opposed adoption of Operative Provision No. 15.

In D.16-09-021, the Commission also required Cal-Am to participate in the ratemaking proceedings required by Operative Provision No. 15. Cal-Am states that it provided the required comments on budgets prepared by MWPMD and M1W under the Original WPA pursuant to D.16-09-021 and recommends the

⁷¹ Application, Attach. A at 13-14 (Section 16); Cal-Am Exhibit CAW-02 at 12-13.

⁷² Cal-Am Exhibit CAW-02 at 12.

Commission continue to require Cal-Am to participate in MPWMD's and M1W's budgeting process for the duration of the Amended WPA.⁷³

No parties opposed or otherwise objected to Cal-Am's proposal. Upon consideration, the Commission agrees with Cal-Am and extends the same budget proceeding participation requirements for the PWM Project to Cal-Am for the duration of the Amended WPA.⁷⁴ Cal-Am will file and serve written comments on the M1W's and MPWMD's budget proposal in each applicable MPWMD and M1W rate proceeding. The written comments must state any and all concerns Cal-Am has with MPWMD's or M1W's proposals and provide alternative recommendations, as appropriate. If Cal-Am has no concerns, the written comments must state that it has no concerns. At the time Cal-Am files and serves its comments on MPWMD or M1W, it will simultaneously serve an electronic copy of the comments on the Commission's Director of the Water Division and on the service list for this proceeding.

6.4.2. General Provision No. 18 – Rate Recovery for Treated Water

General Provision No. 18 of the Amended WPA extends the rate recovery process under the Original WPA. Rate recovery will consist of six different provisions as follows: (1) defines all costs Cal-Am pays to MPWMD for water as purchased water costs, which Cal-Am records in the Modified Cost Balancing Account (MCBA) and recovers from its customers as pass-through costs; (2) requires MPWMD to provide written notice of the Company Water Rate to Cal-Am between May 1st and June 1st of every year, or every time MPWMD

⁷³ *Ibid.*

⁷⁴ D.16-09-021 at 54 (OP 2).

changes the upcoming fiscal year purchased water cost; (3) requires Cal-Am to file a Tier 1 advice letter for rate recovery within 60 days following receipt of MPWMD's written notice for the Company Water Rate; (4) it requires approval of rate recovery for changes to the Company Water Rate to be requested as a Tier 1 advice letter; (5) does not obligate Cal-Am to pay MPWMD for purchased water costs until the Commission approves payment recovery in rates; and (6) provides access to the books and records of the MPWMD and M1W to review the accuracy and reasonableness of all costs related to the Company Water Rate.⁷⁵ Cal-Am notes that the Commission directed Cal-Am, and other water companies, to eliminate the MCBA in its next general rate case (GRC). Cal-Am plans to make this change in its 2022 GRC application, and may request an Incremental Cost Balancing Account as an alternative balancing account to record the costs currently recorded in the MCBA.⁷⁶

Upon review, we agree that the rate recovery process in the Original WPA is appropriately extended to the Amended WPA. We also agree that Cal-Am appropriately plans to replace the MCBA with another balancing account through the GRC process.

6.5. Environmental Effects

The PWM Expansion Project, which includes proposed construction of Cal-Am's facilities, including water extraction wells, treatment facilities, and conveyance piping, constitutes a "project" for purposes of environmental review under the California Environmental Quality Act of 1970 (CEQA), as amended,

⁷⁵ *Id.* at 13.

⁷⁶ *Id.* at 13-14.

Public Resources Code Section 21000, *et seq.*⁷⁷ CEQA applies to discretionary projects to be carried out or approved by public agencies.⁷⁸ A basic purpose of CEQA is to inform governmental decision-makers and the public about potential, significant environmental effects of the proposed activities.

Under CEQA, the lead agency is either the public agency that carries out the project,⁷⁹ or the one with the greatest responsibility for supervising or approving the project as a whole.⁸⁰

Here, M1W is the lead agency for the PWM Expansion Project because the project is located in the M1W service area and M1W is undertaking the construction of the majority of the project, in partnership and with funding from MPWMD and Cal-Am. The Commission is a responsible agency because it has authority to authorize construction and ratemaking treatment for Cal Am's facilities, including water extraction wells, treatment facilities, and conveyance piping.

As a responsible agency under CEQA, the Commission must also consider the lead agency's environmental documents and findings before acting on or approving the Company-related facilities, which are components of the PWM Expansion Project.⁸¹

⁷⁷ On July 16, 2018, the Board of Supervisors approved a Categorical Exclusion (CE) under the National Environmental Policy Act. (Application at 2.)

⁷⁸ Public Resources Code Section 21000 *et seq.*

⁷⁹ CEQA Guidelines (Title 14 of the California Code of Regulations), § 15051(a).

⁸⁰ CEQA Guidelines (Title 14 of the California Code of Regulations), § 15051(b).

⁸¹ CEQA Guidelines, §§ 15050(b) and 15096.

M1W prepared the SEIR for the PWM Expansion Project in 2021 which identified a number of environmental effects from the PWM Expansion Project.⁸² In Resolution 2021-05, the M1W Board adopted the mitigation measures over which it had control. However, the M1W Board recognized that it could not fully implement all of the mitigation measures set forth in the SEIR, because it did not have control over the proposed Cal-Am facilities, including water extraction wells, treatment facilities, and conveyance piping.⁸³

The SEIR also found that both: (1) the impact of construction noise and (2) secondary effects of growth inducement either would or could remain significant following mitigation measures described in the SEIR.⁸⁴

The SEIR evaluated alternatives, including a no project alternative, and adopted a statement of overriding consideration finding that the benefits of the PWM Expansion Project outweighed the significant adverse environmental effects that are not mitigated to less than significant levels.⁸⁵ The SEIR for the PWM Expansion Project was adopted by the M1W Board in Resolution 2021-05.⁸⁶

As a responsible agency, the Commission must consider the environmental effects identified in the SEIR relating to the portion of the project that is before the Commission for approval.⁸⁷ That means the Commission must consider the environmental consequences of those Company-related facilities, which are components of the PWM Expansion Project.

⁸² Application, Attach. C, Exhibit A.

⁸³ *Id.* at 10.

⁸⁴ *Id.* at 9-10.

⁸⁵ *Id.* at 11-15.

⁸⁶ *Ibid.*

⁸⁷ 14 Cal. Code Regs. § 15096(f).

The Commission has authority to mitigate or avoid only the direct and indirect environmental effects of those parts of the project which it is called on to carry out or approve.⁸⁸ The Commission must adopt any mitigation measures within the Commission's jurisdiction that avoid or mitigate the part of the project the Commission approves,⁸⁹ unless the changes or alterations are infeasible for specific economic, legal, social, technological, or other considerations.⁹⁰ The Commission must balance any unavoidable impacts against specific economic, legal, social, technical, or other benefits.⁹¹ Finally, the Commission must file a Notice of Determination with the CEQA Clearinghouse certifying that the Commission has considered the environmental document.⁹²

The M1W Board stated that "[Cal-Am] has confirmed that it would implement all of the mitigation measures that the SEIR identifies for the [Cal-Am] facilities" and that "these mitigation measures are within the jurisdiction of other public agencies issuing regulatory approvals for [Cal-Am] and should be approved by those other agencies."⁹³

The Commission reviewed and considered M1W's SEIR for the PWM Expansion Project, which includes proposed construction of Cal Am's facilities, including water extraction wells, treatment facilities, and conveyance piping, and adopts the following mitigation measures associated with the construction of those Company-related facilities as detailed in the mitigation monitoring and

⁸⁸ 14 Cal. Code Regs. §§ 15042 and 15096(g).

⁸⁹ 14 Cal. Code Regs. §§ 15091(a)(2) and 15096(g)(1).

⁹⁰ 14 Cal. Code Regs. § 15096(g)(2).

⁹¹ 14 Cal. Code Regs. § 15096(h).

⁹² 14 Cal. Code Regs. § 15096(i).

⁹³ *Ibid.*

report, attached to this decision as Appendix C: AE-2, AE-3, AE-4, AQ-1, BT-1a to BT-1d, BT-1f, BT-1h to BT-1k, BT-1m, BT-4, CR-2b, CR-2c, EN-1, NV-1a, NV-1c, NV-1e, NV-1f, NV-2, PS-3, TR-2, TR-3, and TR-4.

CEQA Guidelines Section 15093 requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

Here, we find that there is compelling public health and safety need to meet the projected regional water supply demand; therefore, the Commission also adopts the statement of overriding considerations for the PWM Expansion Project and approves it. The Commission's Energy Division will file a Notice of Determination with the CEQA clearinghouse stating that the Commission considered the environmental documents related to the PWM Expansion Project.

6.6. Necessary Permits

The PWM Expansion Project requires M1W to obtain a number of permits from federal, state, and local agencies. First, M1W must obtain permits related to water quality requirements. M1W must update the PWM Project Biological Opinion from the United States Fish and Wildlife Service under the Endangered Species Act. M1W reports that it submitted a Biological Assessment to reinstate the consultation for the modifications needed to the Biological Opinion.⁹⁴

M1W also needs to obtain regulatory approval for increased injection of recycled water into the Seaside Basin from the SWRQCB, Division of Drinking Water (DDW) and the Central Coast Regional Water Quality Control Board

⁹⁴ Cal-Am Exhibit CAW-01 at 11.

(RWQCB). Specifically, M1W needs to submit a revised Engineering Report to show that its injection plans meet the log removal requirements for pathogenic microorganism control. The Engineering Report would first be approved by DDW and then adopted by the RWQCB.

In addition, M1W must submit a Report of Wastewater Discharge to the RWQCB to amend their current operating Waste Discharge Requirements/Water Recycling Requirements permit. Furthermore, M1W needs to update its National Pollutant Discharge Elimination System permit with the RWQCB to the ocean. The Office of National Marine Sanctuaries/Monterey Bay National Marine Sanctuary must also authorize the permit as complying with the Sanctuary Guidelines. Finally, MPWMD and the Watermaster must amend the Seaside Groundwater Basin Watermaster Storage Permit.

M1W also needs to obtain several permits from municipalities and local agencies. M1W must obtain a grading and ordinance permit from the City of Seaside, potentially amend its County User Permit from Monterey County, obtain an encroachment permit from the City of Seaside, and obtain a well drilling permit from the Monterey County Health Department.

Similarly, Cal-Am's Company-related facilities, which are part of the PWM Expansion Project, also require several permits, as summarized in Appendix D.

No parties disputed or objected to M1W, MPWMD, or Cal-Am's requirements to obtain the necessary permits enumerated herein. We have considered the matter and find that the permits listed herein contain a true and accurate summary of permits necessary for operation of the PWM Expansion Project. Permitting related to water quality has been an issue for the PWM Project, and we discuss this further in Section 6.7.

6.7. Water Quality

To be deemed potable, source water requires treatment for virus and microbe reduction pursuant to California Code of Regulations (CCR) Title 22 Section 60320.208. The source water must achieve at least 12-log enteric virus reduction, 10-log *Giardia* cyst reduction, and 10-log *Cryptosporidium* oocyst reduction for projects with groundwater recharge with recycled water.⁹⁵

Three separate treatment processes are required in the treatment train, and each separate process is credited with no more than a 6-log reduction, and at least three processes must have at least a 1-log reduction. For virus treatment, each month the recycled water is retained underground, the process is credited a 1-log virus reduction if verified by an added tracer study.

M1W plans to treat the 2,250 AFY additional source water for *Giardia* and *Cryptosporidium* using its current treatment train process at the AWPf, using membrane filtration, reverse osmosis, and advanced oxidation. This process is already certified to achieve a 12.9 to 13.2-log reduction in *Giardia* and *Cryptosporidium*, which meets the 10-log reduction requirement.⁹⁶

M1W also plans to remove viruses at the AWPf using reverse osmosis and advanced oxidation, which is certified to achieve an 8.9 to 9.2-log reduction in enteric virus.⁹⁷ M1W's modeling studies showed that the shortest simulated travel time from the PWM injection well (DIW-1) to the nearest drinking water well (Paralta) was 3.3 months, which would create an additional 2.2 log reduction based on a 0.67-log reduction per month based on intrinsic tracer study

⁹⁵ *Id.* at 14.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

results, pursuant to CCR Title 22.⁹⁸ M1W requested approval of an additional virus log reduction based on chloramine treatment prior to injection and was anticipating DDW approval in December 2021.⁹⁹

6.7.1. Concerns with Water Quality

Water quality has been a concern for the PWM Project and may pose a risk for the PWM Expansion Project. Currently, the PWM Project is no longer delivering treated water to well ASR-1 due to the PWM Project's failure to achieve the required 12-log virus reduction required for treated water. In October 2020, MPWMD conducted an intrinsic tracer study of underground travel times for water from M1W's injection wells to well ASR-1, and found that the underground travel time for treated water was much shorter than its 2019 modeling predicted.¹⁰⁰ MPWMD notified M1W of the results of its tracer study in May 2021.¹⁰¹ On July 9, 2021, M1W provided written notice to the DDW of its intrinsic tracer study.¹⁰² The California State Water Resources Control Board, DDW determined that the underground travel time for treated water was too short to qualify for a log reduction for virus pursuant to CCR title 22, Article 5.2, Sections 60320.224(a) and (b).¹⁰³

By letter, dated September 14, 2021, DDW ordered Cal-Am to discontinue use of ASR-1 for groundwater extraction and put a hold on permit review of

⁹⁸ *Id.* at 15.

⁹⁹ *Ibid.*

¹⁰⁰ Cal-Am Exhibit CAW-04, Attach. 4 at 1.

¹⁰¹ *Id.*, Attach. 5 at 1.

¹⁰² *Id.*, Attach. 4 at 1.

¹⁰³ *Ibid.*

ASR-2 for groundwater extraction purposes.¹⁰⁴ The DDW letter also indicated that “the water that reached the Santa Margarita ASR Well 01 during the 2020 extraction period potentially did not meet the 12-log virus reduction required by CCR, Title 22, Article 5.2, Section 60320.208(a).”¹⁰⁵

M1W, MPWMD, and Cal-Am explored extraction from ASR Wells ASR-3 and ASR-4, both located at Seaside Middle School, as an alternative way to meet the underground retention time requirement. Cal-Am applied for a permit amendment to use well ASR-4 for extraction purposes.¹⁰⁶ However, mercury at concentrations above the maximum contamination level was detected in groundwater samples extracted from well ASR-4,¹⁰⁷ and DDW indicated that well ASR-4 could not be used as a drinking water supply source until Cal-Am proposed a system to reduce the mercury concentration in the well.¹⁰⁸

The presence of mercury at ASR-4 is of concern for the PWM Expansion Project because the proposed EW-1/EW-2 facility is also located at the Seaside Middle School. As the primary extraction site for the PWM Expansion Project, Cal-Am must demonstrate that mercury contamination in groundwater at the Seaside Middle School will not impact PWM Expansion Project wells EW-1 or EW-2, since Cal-Am’s current budget contemplates disinfection but not treatment of extracted groundwater for mercury.

¹⁰⁴ *Id.*, Attach. 4 at 1-2.

¹⁰⁵ *Ibid.*

¹⁰⁶ Previously, well ASR-4 was permitted to water injection.

¹⁰⁷ Mercury samples collected from ASR-4 on June 16, 2021 and July 6, 2021 had mercury results of 4.3 ug/L and 6.1 ug/L, respectively. The MCL for mercury is 2 ug/L. Cal-Am Exhibit CAW-04, Attach. 6 at 1.

¹⁰⁸ Cal-Am Exhibit CAW-04, Attach. 6 at 1-2.

Therefore, our approval of Cal-Am's authority to construct and approval of the budget cost cap for the EW-1/EW-2 facility are deferred to Phase 2 of this proceeding in order to consider additional information regarding the extent of mercury above maximum contamination levels in the vicinity of ASR-4, the potential for mercury to impact extracted water at the EW-1/EW-2 facility, any proposed remedial action necessary to treat mercury in extracted water, which Cal-Am must provide by filing a "Response to Inquiry" within 30 days of the issuance date of this decision, and the potential cost impacts from any anticipated mercury treatment as a Tier 3 advice letter to the Commission's Water Division within 30 days of the issuance date of this decision. Water Division is directed to increase the cost cap herein authorized for the EW-1/EW-2 facility, as reasonable, to address additional remediation measures.

Returning to our discussion of groundwater concerns at well ASR-1, M1W, MPWMD, and Cal-Am also explored the idea of increasing groundwater extraction by reducing M1W's injection rates, to increase the underground retention time, but ultimately could not come to an agreement on this alternative.¹⁰⁹

With the current inability to use the ASR-1 well for groundwater extraction, Cal-Am is proposing to use extraction wells EW-3 and EW-4 as the primary extraction source for the PWM Project water, replacing ASR-1. Assuming there are no further problems with contaminants or underground retention times at the EW-3/EW-4 facility, the water quality issues in the PWM Project create additional need for the PWM Expansion Project but also highlight

¹⁰⁹ Cal-Am Exhibits CAW-10, 11.

the risk to ratepayers that their investment will not yield the expected benefits of a new supplemental water source.

6.8. Sources of Funding

We review the sources of funding for reasonableness. M1W and MPWMD's total estimated cost for the PWM Expansion Project is \$49.171 million. M1W and MPWMD assume that about half of the funding will come as a loan from the Clean Water State Revolving Fund (SRF) and half will come from a loan from the Water Infrastructure Finance and Innovation Act (WIFIA) program.¹¹⁰ MW1 and MPWMD expect that the annual debt of \$2.1 million to service the loan would be paid by the sale of treated water to Cal-Am.¹¹¹

M1W also intends to pursue grants from: (1) United States Bureau of Reclamation Water Smart/Title XVI grant funding; (2) SWRCB Water Recycling Program (Propositions 1, 13, and/or 68); and (3) Department of Water Resources, Integrated Regional Water Management Program and Urban Multi-Benefit Drought grants.¹¹²

In the event MW1 is unable to secure a loan from the SRF, it intends to finance its portion of the full balance using a WIFIA loan, less any amounts received through grants. In the alternative, M1W will access the capital markets with public financing to fund the PWM Expansion Project.¹¹³

¹¹⁰ Cal-Am Exhibit CAW-01, Attachment A at 10.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Id.*, Attachment A at 10.

No parties disputed the reasonableness of M1W's and MPWMD's proposed sources of funding for the PWM Expansion Project. Upon review, we find the proposed sources of funding reasonable and support Commission authorization for Cal-Am to construct the authorized Company-related facilities noted below (*see* Section 6.9) and to enter into the Amended WPA.

**6.9. Company-Related Facilities –
Description, Construction Schedule,
and Forecast Costs**

Cal-Am seeks authorization to construct the following Company-related facilities, as part of the PWM Expansion Project, and proposes related ratemaking treatment: (1) EW-1, EW-2, and water treatment facilities; (2) EW-3, EW-4, and associated piping; (3) the Carmel Valley Pump Station; and (4) the General Jim Moore Parallel Pipeline. All parties agree that these Company-related facilities are necessary to support the PWM Expansion Project. This decision authorizes Cal-Am to construct the proposed Company-related facilities (described in Sections 6.9.2, 6.9.3, and 6.9.4 below). This decision does not authorize the EW-1/EW-2 facility described in Section 6.7.1. These Company-related facilities are shown in Appendix E of this decision, Figure 1 and described in Sections 6.9.1 through 6.9.4, below.

**6.9.1. EW-1, EW-2, and Chemical
Treatment Facility**

Cal-Am proposes to construct four extraction wells related to the PWM Expansion Project (EW-1 through EW-4). EW-1 and EW-2 are located in an easement on a portion of the Monterey Peninsula Unified School District property at Seaside Middle School,¹¹⁴ which Cal-Am plans to use as the new,

¹¹⁴ *Id.* at 21.

primary extraction point for PWM Expansion Project treated water. EW-1 and EW-2 are both in the permitting and design phase, with construction expected to start in the second quarter of 2023, and operation expected by the end of the third quarter of 2024.¹¹⁵

A chemical treatment facility located at EW-1 and EW-2 will disinfect PWM Expansion Project water prior to delivery of treated water to Cal-Am's distribution pipeline for delivery to customers. Additional piping is proposed to connect EW-1, EW-2, and the chemical treatment facility to Cal-Am's main transmission piping.

6.9.2. EW-3, EW-4, and Associated Piping

Cal-Am also proposes to construct extraction wells EW-3 and EW-4 and associated piping on United States Army Land northeast of the EW-1/EW-2 site.¹¹⁶ EW-3 and EW-4 are both in the permitting and design phase, with construction expected to start in the fourth quarter of 2022 and operation expected by the end of the first quarter of 2025.¹¹⁷ Wells EW-3 and EW-4 are located in the same place as two wells previously approved for ASR wells ASR-5 and ASR-6, which were approved in D.10-12-016 and D.18-09-017 but never built.

Cal-Am states that these two new wells are necessary to replace the loss of ASR-1 for groundwater extraction, increase the capacity of groundwater extraction for the PWM Expansion Project, increase reliability of groundwater extraction, and free up existing ASR wells (ASR-1 to ASR-4) for simultaneous

¹¹⁵ Cal-Am Exhibit CAW-12 at 1.

¹¹⁶ Cal-Am Exhibit CAW-01 at 22.

¹¹⁷ *Ibid.*

injection of Carmel River water during the wet season.¹¹⁸ Along with wells EW-1 and EW-2, these wells are intended to help Cal-Am increase the peak pumping capacity of PWM Project in order to meet expected peak customer demand.¹¹⁹

6.9.3. Carmel Valley Pump Station

The Carmel Valley Pump Station is a pump station designed to pump water from the Forest Lake reservoirs to the Upper Carmel Valley. It was first proposed by Cal-Am as the Valley Greens Pump Station for Phase 1 of the Regional Desalination Project, but it was never built.

The Valley Greens Pump Station was also approved as part of the “Remaining Cal-Am only facilities” for the MPWSP in D.18-09-017.¹²⁰ Cal-Am subsequently changed the location of the Valley Greens Pump Station¹²¹ and relabeled the pump station as the Carmel Valley Pump Station to better reflect its purpose, which is to provide water to the Upper Carmel Valley.¹²² Cal-Am anticipated the Carmel Valley Pump Station would be completed in July 2022.

6.9.4. General Jim Moore Parallel Pipeline

Cal-Am seeks authorization to construct a 36-inch diameter pipeline designed to carry water from Extraction Wells EW-3 and EW-4 to the connection with the Monterey Pipeline at the Hilby Pump Station, as shown in Appendix E, Figure 1.¹²³ The total length of the pipeline is 12,600 feet, 7,000 feet of which is

¹¹⁸ Cal-Am Phase 1 Opening Brief at 17-18.

¹¹⁹ Cal-Am Exhibit CAW-01 at 4.

¹²⁰ D.18-09-017 at 99.

¹²¹ The original Valley Green Pump Station would have been constructed near the intersection of Carmel Valley Road and Valley Greens Drive. (D.10-12-016 at 67.)

¹²² RT 48:2-18.

¹²³ Exhibit PAO-1 at 1-9.

considered the Parallel Pipeline and 5,600 feet of which is considered the Transfer Pipeline.¹²⁴

This pipeline is intended to supplement the existing pipeline along General Jim Moore Boulevard, allowing for the simultaneous injection and extraction of water from the Seaside Basin.¹²⁵

In this application, Cal-Am requests recovery of a 7,000-foot section of the General Jim Moore Parallel Pipeline and a 1,100-foot section of pipeline Transfer Pipeline, with an expected in-service date of July 2022.¹²⁶ The Transfer Pipeline was originally approved for the Regional Desalination Project to convey desalinated water to the Monterey Peninsula, beginning at the desalination plant in the City of Marina and ending in the City of Seaside, near the intersection of Auto Center Parkway and Del Monte Boulevard. The 1,100-foot section of the Transfer Pipeline extends between ASR wells ASR-1/ASR-2 and ASR-3/ASR-4. The cost for the remaining portion of the Transfer Pipeline (also referred to as the “ASR Pipeline” in Appendix E, Figure 1), and extending from wells ASR-3/ASR-4 to EW-3/EW-4, is incorporated into the budgets for the EW-1/EW-2 and EW-3/EW-4 facilities.

6.10. Broader Principles

To the extent they are not considered in the criteria discussed in preceding Sections 6.1 through 6.9, we must also consider broader principles, including whether Commission support for the PWM Expansion Project, through approval of the Amended WPA and the Company-related facilities, would be just,

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ RT 38:19 - 39:2.

reasonable, and in the public interest. As discussed below, we find that support for the PWM Expansion Project satisfies those principles.

Support for the PWM Expansion Project is consistent with the SWRCB's policy of promoting recycled water projects to diversify community water supplies and mitigate the impacts of climate change. The PWM Expansion Project also has numerous environmental benefits, such as the "reduction of pumping from the Salinas Groundwater Basin, reduction of runoff into the Monterey Bay, reduction of pollutant loads to the lower Salinas watershed, and help combat seawater intrusion into local groundwater aquifers."¹²⁷

The PWM Expansion Project benefits Cal-Am customers because it provides an additional potable water supply to address near-term water supply issues on the Monterey Peninsula. By providing an additional water supply, the PWM Expansion Project helps relieve Cal-Am's reliance on the Carmel River, thereby helping Cal-Am comply with the SWRCB's cease and desist order. In the event the PWM Expansion Project fails to operate as expected, the Amended WPA contains sufficient performance guarantees to protect ratepayers. It also offers Cal-Am's customers treated water at a reasonable rate.

Without the PWM Expansion Project, Cal-Am's customers may face further water restrictions, such as rationing, in the near-term. On the basis of all these factors, we support the PWM Expansion Project, and authorize Cal-Am to enter into the Amended WPA and construct these three Company-related facilities, as just, reasonable, and in the public interest.

¹²⁷ City of Marina Phase 1 Opening Brief at 13; M1W Exhibit M1W-01 at 2.

7. Ratemaking Treatment for Company-Related Facilities

Cal-Am proposes the Commission adopt a cost-cap for each Company-related facility, which is based on a revenue requirement Cal-Am developed for each facility based on the following: (1) construction work in progress (CWIP) balances, (2) plant additions, (3) in-service dates, and (4) other revenue requirement components (depreciation rates, ad valorem, uncollectibles, income tax rates, rate of return, and allowance for funds used during construction (AFUDC)).¹²⁸ The total estimated cost for the four Company-related facilities is \$81.065 million, as summarized in Table 1, below.¹²⁹

Table 1. Summary of Company-Related Facilities Costs

Estimated Cost	Carmel Valley Pump Station	Parallel Pipeline	EW-1 and EW-2, Water Treatment	EW-3 and EW-4	Total Estimated Cost
Actuals to Date	\$5,053,540	\$6,912,779	\$6,231,231	\$13,780,522	\$31,978,072
Estimated Remaining Costs	\$1,421,703	\$4,017,000	\$16,410,500	\$27,237,750	\$49,086,953
Total Cost Estimate	\$6,475,243	\$10,929,779	\$22,641,731	\$41,018,272	\$81,065,025

As detailed in Attachment F, the budgets for each Company-related facility are segregated into three categories: (1) a percentage allocation of common actuals for the Regional Desalination Project and the MPWSP from January 2011 to October 2021; (2) direct project actuals from January 2011 through October 2021; and (3) estimated remaining costs to complete the facility from November 2021 through the operation date.

¹²⁸ Cal-Am Exhibit CAW-02 at 20.

¹²⁹ Cal-Am Exhibit CAW-01 at 26.

Cal-Am asks that costs up to the cost cap for each project be deemed reasonable. Cal-Am proposes to use a subaccount of the MPWSP Phase 1 Project Costs Memorandum Account to track the costs of: (1) the four Company-related facilities discussed in Section 6.9.1 to 6.9.4, including the AFUDC; (2) a pro-rated portion of the engineering and environmental costs; and (3) any portion of costs for Company-related facilities placed in service prior to the Commission approval herein.¹³⁰

Cal-Am proposes to provide written notice to the Commission's Water Division within 30 days of the operation of each of the four Company-related facilities.¹³¹ Cal-Am also requests approval to file Tier 2 Advice Letters, within 60 days of the written notice, to place the Company-related facilities projects into rates once they are used and useful, with one Tier 2 Advice Letter filed for each project. Each Tier 2 Advice Letter would address the following: (1) facilities that are used and useful; (2) whether the costs are reasonable; and (3) whether the facilities are appropriately sized.¹³² Cal-Am proposes the Commission authorize recovery up to the cost cap approved in this application as reasonable.¹³³ Cal-Am further proposes to recover all costs exceeding the authorized cost caps of the four Company-related facilities through a single Tier 3 Advice Letter filed with the Commission's Water Division upon the conclusion of the Company-related facilities' construction.¹³⁴

¹³⁰ *Id.* at 15-16.

¹³¹ *Id.* at 17.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ *Id.* at 18.

By placing the cost recovery for the four Company-related facilities into rates upon the project's operation, Cal-Am estimates the total impact on ratepayer costs from Company-related facilities and the cost for purchased water could be amortized incrementally, as summarized in Table 2, below.¹³⁵

Table 2. Proposed Revenue Increase Related to the PWM Project expansion

Monterey-Proposed Revenue Increase									
	Jan 2023¹³⁶		July 2024¹³⁷		Jan 2025¹³⁸		Sept 2025¹³⁹		
Customer Class	\$ Increase	% Increase	\$ Increase	% Increase	\$ Increase	% Increase	\$ Increase	% Increase	Total \$ Increase
Residential	1,740,870	4.55%	4,590,103	11.48%	2,577,151	5.78%	4,991,359	10.58%	13,899,484
Multi-Residential	282,690	4.65%	1,106,026	17.38%	418,625	5.60%	810,527	10.27%	2,617,869
Commercial	840,560	4.29%	2,356,875	11.54%	1,244,144	5.46%	2,409,754	10.03%	6,851,334
Industrial	4,204	4.35%	11,634	11.53%	6,222	5.53%	12,051	10.15%	34,111
Public Authority	165,333	4.43%	406,400	10.42%	244,721	5.68%	473,994	10.41%	1,290,448
Sale for Resale	972	9.17%	2,592	22.39%	1,439	10.16%	2,787	17.86%	7,791
Construction	13,218	5.57%	11,736	4.68%	19,543	7.45%	37,928	13.46%	82,425
	3,047,848		8,485,367		4,511,846		8,738,401		24,783,461

Cal-Am states that the Tier 2 advice letter and cost cap framework helps smooth out customer rate impacts and moderates the impact of the AFUDC.¹⁴⁰

Cal-Am proposes to track incremental O&M costs incurred between GRCs in the

¹³⁵ Application, Attach. B at 45.

¹³⁶ Includes revenue requirement increases for the Parallel Pipeline and Carmel Valley Pump Station (Approximately January 2023).

¹³⁷ Includes increase in purchased water surcharge (Approximately July 2024).

¹³⁸ Includes revenue requirement increases for Extraction Well 1&2 and Chemical Treatment Facility (Approximately January 2025).

¹³⁹ Includes revenue requirement increases for Extraction Wells 3&4 (Approximately September 2025).

¹⁴⁰ Cal-Am Exhibit CAW-02 at 20.

MPWSP O&M Memorandum Account and seek recovery as part of a subsequent GRC.¹⁴¹

Parties either agree or do not object to the proposed recording of costs in a subaccount of the MPWSP Phase 1 Costs Memorandum Account, the use of cost caps for Company-related facilities, and the use of a Tier 2 Advice Letter process for rate recovery up to the cost cap.

Upon review, we also find reasonable Cal-Am's proposal to use a subaccount of the MPWSP to record Company-related facilities costs, to adopt a cost cap mechanism, and to use a Tier 2 Advice Letter for cost recovery of costs up to the cost cap. Cal-Am must submit a Tier 1 advice letter to the Commission's Water Division within 30 days of the date of issuance of this decision requesting to establish the PWM Expansion Project Costs Memorandum Account as a subaccount of the MPWSP Phase 1 Costs Memorandum Account for the purpose of tracking PWM Expansion Project costs. Cal-Am will make a one-time transfer of its allocated common actuals and direct common actuals to the PWM Expansion Project Costs Memorandum Account, consistent with the amount found reasonable for cost recovery of Company-related facilities in Section 7.2.2.

Parties, however, dispute Cal-Am's proposed revenue requirement for the Company-related facilities and the mechanism to recover costs above the approved cost cap.

This decision finds that: (1) the Company-related facilities will be deemed used and useful upon operation unless the facilities do not operate as intended, as discussed in Section 7.1; (2) cost caps for Company-related facilities should be

¹⁴¹ *Id.* at 19.

adjusted to include only those costs attributable to the PWM Project expansion, as discussed in Section 7.2; (3) the AFUDC should be set at the weighted-average-cost-of-debt, as discussed in Section 7.3; (4) the AFUDC should not be applied to labor overhead costs, as discussed in Section 7.4; and (5) costs above the cost cap can be proposed for recovery through Cal-Am's next general rate case, as discussed in Section 7.5.

7.1. Used and Useful Determination and Rate Base Adjustment Issues for the Parallel Pipeline, 1,100-foot section of the Transfer Pipeline, and the Carmel Valley Pump Station

Cal Advocates and Cal-Am dispute when and what portion of the Carmel Valley Pump Station, the Transfer Pipeline, and the 1,100-foot Transfer Pipeline will be deemed used and useful for the purpose of placing these facilities into rate base. This decision anticipates the Carmel Valley Pump Station, the Parallel Pipeline, and the 1,100-foot section of the Transfer Pipeline will be used and useful upon operation. The parties' positions related to a determination of when the Company-related facilities should be deemed used and useful and as well as the need for rate base adjustments are summarized in Section 7.1.1 and discussed in Section 7.1.2.

7.1.1. Parties' Positions

Cal Advocates urges the Commission to reduce recovery of Cal-Am's revenue requirement for the Carmel Valley Pump Station and the Parallel Pipeline by 30% until such time as the 6.4 mgd desalination plant is completed. Cal Advocates reasons that these facilities were designed to carry approximately 30% of their water capacity from the desalination plant. As such, Cal Advocates argues that 30% of these facilities will not be used and useful until the 6.4 mgd desalination plant is completed. Cal Advocates, therefore, proposes

the Commission reduce Cal-Am's revenue requirement recovery for the Carmel Valley Pump Station by 30%, which is a \$1,942,573 reduction.¹⁴² Similarly, it recommends a 30% revenue requirement reduction for the Parallel Pipeline, which is a \$2,899,104 reduction, based on the same argument.

In addition, Cal Advocates recommends the Commission remove the revenue requirement associated with a 1,100-foot portion of the 36-inch Transfer Pipeline from the revenue requirement requested for the Parallel Pipeline, arguing that the Transfer Pipeline will not be used and useful until the desalination plant is completed. Cal Advocates argues the Commission should reduce the cost recovery for the Transfer Pipeline by using the average cost of \$1,151 per foot of pipeline, for a total revenue requirement reduction of \$1,266,100.

Cal-Am opposes Cal Advocates' proposed 30% revenue requirement reduction because: (1) it misapplies the "used and useful" principle; (2) it would greatly increase the AFUDC cost for customers; and (3) the Commission has previously rejected this approach to ratemaking.¹⁴³ First, Cal-Am argues that the "used and useful" principle "requires that utility property be actually in use and providing service in order to be included in rate base."¹⁴⁴ Cal-Am sees Cal Advocates' request to deny a portion of the costs of its Company-related facilities as diverging from the used and useful principle, arguing that it would set a "very unfortunate precedent and would likely produce great uncertainty

¹⁴² Cal Advocates Phase 1 Opening Brief at 9.

¹⁴³ Cal-Am Phase 1 Opening Brief at 26.

¹⁴⁴ *Id.* at 26, citing D.84-09-089 at 71-72.

and controversy in the review of future projects.”¹⁴⁵ Cal-Am also argues that the Carmel Valley Pump Station’s usefulness is independent of the desalination plant because the pump station is needed “to reverse the flow of water in the summer months and draw water from the Forest Lake Tanks in Pebble Beach to deliver native Seaside Basin groundwater, and water from the PWM [P]roject, the PWM [Expansion] Project [], and ASR stored in the Seaside Groundwater Basin to customers in Upper Carmel Valley.”¹⁴⁶

Second, Cal-Am argues that the AFUDC would be greatly increased if Cal-Am were to continue to accrue AFUDC on 30% of the Carmel Valley Pump Station and the Parallel Pipeline until such time as the desalination plant was in service, rather than recovering its revenue requirement upon operation of both projects.¹⁴⁷ Finally, Cal-Am points out that Cal Advocates made a similar argument to reduce recovery of the Monterey Pipeline and Monterey Pump Station in Resolution W-5200, to argue that there is precedent for rejecting Cal Advocates’ 30% revenue requirement reduction request.¹⁴⁸

Cal-Am also opposes Cal Advocates’ proposal to defer rate recovery for the 1,100-foot section of the Transfer Pipeline, arguing Cal Advocates cannot rely on the settlement terms adopted in D.10-12-016, which excludes the Transfer Pipeline from rate recovery until the desalination plant is built, because the settlement terms adopted in D.10-12-016 are not precedential or binding in this

¹⁴⁵ Cal-Am Phase 1 Opening Brief at 27.

¹⁴⁶ *Id.* at 20.

¹⁴⁷ *Id.* at 27.

¹⁴⁸ *Id.* at 27-28.

proceeding.¹⁴⁹ Also, Cal-Am argues that the Transfer Pipeline facilities have evolved since the Commission approved the Regional Desalination Project in 2010, and this portion of the Transfer Pipeline is “now necessary to deliver water supplies from the PWM Project, PWM Project expansion, ASR and native Seaside Basin water rights from the Seaside Groundwater Basin via the extraction wells” independent of the construction of the MPWSP desalination facilities.¹⁵⁰

7.1.2. Discussion

When reviewing Cal Advocates’ 30% rate reduction request, we first consider the question of when the Carmel Valley Pump Station, the Parallel Pipeline, and the Transfer Pipeline will be considered used and useful, and then determine whether a rate base adjustment is warranted.

Facilities can be added into rate base once they are used and useful, which occurs when the facility is actually in use and providing service.¹⁵¹ The entirety of a facility is typically considered used and useful. However, a rate base offset may be considered when facilities are overbuilt for their intended purpose.^{152, 153}

¹⁴⁹ *Id.* at 28-29.

¹⁵⁰ *Id.* at 29-30.

¹⁵¹ D.84-09-089.

¹⁵² Commission, Division of Water and Audits, Standard Practice for Processing Rate Offsets and Establishing and Amortizing Memorandum Accounts (Standard Practice U-27-W) (April 16, 2014).

¹⁵³ For example, a saturation adjustment is a type of rate base offset whereby the excess portions of an overbuilt utility plant or facility, financed or installed with equity capital, is excluded from rate base in determining the rates a utility can charge for service. (Commission, Water Branch, Standard Practice for Preparing Results of Operation Results for General Rate Increase Requests of Water Utilities Other than Major Companies (Standard Practice U-3-SM) (April 2006)).

As an initial matter, we first consider when the Carmel Valley Pump Station, the 1,100-foot section of the Transfer Pipeline, and the Parallel Pipeline will be used and useful, and find that they will be useful upon operation. The first iteration of the Carmel Valley Pump Station (previously called the Valley Greens Pump Station) and the Transfer Pipeline were within a set of infrastructure called “Cal-Am facilities” which were first approved for the Regional Desalination Project in D.10-12-016.

In considering which aspects of the Regional Desalination Project should be considered used and useful, D.10-12-016 recognized a distinction between infrastructure designed to resolve the

two operational limitations of Cal-Am’s existing distribution system: 1) the facilities that will allow Cal-Am to maintain adequate water levels in the Forest Lake tanks during maximum day demand and 2) the facilities that will allow Cal-Am to move water from the Seaside area to the rest of the Monterey Peninsula.

from infrastructure designed solely to convey desalinated water from the delivery point to Cal-Am’s distribution system. For the former, including “conveyance, pumping, and reservoir facilities,” D.10-12-016 designated these facilities as used and useful for ratemaking purposes, even if the Regional Desalination Project (*i.e.* the desalination plant) was delayed for some reason.¹⁵⁴ For the latter, specifically the Transfer Pipeline, D.10-12-016 stated that this infrastructure would not be deemed used and useful until the Regional Desalination Project (*i.e.* the desalination plant) was completed.¹⁵⁵

¹⁵⁴ D.10-12-016 at 61.

¹⁵⁵ *Ibid.*

While we are not bound by the settlement terms in D.10-12-016, we find the reasoning instructive in reviewing the Company-related facilities at issue here. We agree with Cal-Am that the Carmel Valley Pump Station's intended purpose of pumping water into the Upper Carmel Valley during the summer months makes it useful independent of the operation of the desalination plant. Consistent with D.10-12-016's logic, we find the Carmel Valley Pump Station used and useful when it is in service because we recognize it as infrastructure designed to resolve the operational limitations of Cal-Am's distribution system, allowing Cal-Am to move water from the Seaside Area to the rest of the Monterey Peninsula.

We similarly find the Parallel Pipeline and the 1,100-foot section of the Transfer Pipeline to be used and useful when it is in service as part of the "conveyance facilities" that allow Cal-Am to convey water pumped from the Seaside Basin to the rest of the Monterey Peninsula. In approving recovery of a revenue requirement for the 1,100-foot section of the Transfer Pipeline with recovery for the Parallel Pipeline, we find that this section of Transfer Pipeline will no longer be eligible for recovery upon completion of the 6.4 mgd desalination plant as part of the Transfer Pipeline.

Since the projected operation date of these facilities is July 2022, we expect that these facilities will be built prior to issuance of this decision. We also expect that the budgets proposed for these facilities are close to the actual recorded costs

Cal-Am will request in a Tier 2 Advice Letter filing for revenue recovery. Cal-Am's Tier 2 Advice Letter filing will provide the following: (1) description of the facilities that are used and useful, (2) whether the costs are reasonable, and

(3) whether the facilities are appropriately sized.¹⁵⁶ In its approval, the Water Division staff is authorized to approve the requested cost recovery, or reduce the allowed cost recovery to only that amount that satisfies the three costs factors.

7.2. Addressing the Reasonableness of Company-Related Facilities

The parties dispute the reasonableness of Cal-Am's proposed revenue requirement under the cost cap for each Company-related facility. This decision finds that Cal-Am's cost cap should be reduced to exclude costs not clearly attributable to the PWM Expansion Project. The parties' positions are summarized in Section 7.2.1 and discussed in Section 7.2.2.

7.2.1. Parties' Positions

According to Cal Advocates, Cal-Am's "actuals to date," "Indirect Overhead," "M1W," "Estimated Remaining Costs" cost categories for the extraction well facilities do not support a reasonableness and prudence finding, and should be excluded from the proposed budget.¹⁵⁷ Cal Advocates recommends the Commission reduce the cost cap for the EW-1, EW-2, and the water treatment facility from \$22,641,731 to \$11,336,000 and reduce the cost cap for the EW-3, EW-4, and the associated piping facility from \$41,018,272 to \$18,842,00.¹⁵⁸ Cal Advocates states that its proposed cost caps are reasonable because they are based on Cal-Am's previously proposed costs for ASR-5 and

¹⁵⁶ If the Carmel Valley Pump Station, the Parallel Pipeline, and the 1,100-foot section of Transfer Pipeline are not put into use as expected, Cal-Am must provide the cost of a suitable, smaller facility as well as the difference in cost between the actual facility and the suitable smaller facility such that the Commission may consider the reasonableness of requested cost recovery, as appropriate.

¹⁵⁷ Cal Advocates Phase 1 Opening Brief at 11.

¹⁵⁸ *Id.* at 9-10.

ASR-6.¹⁵⁹ Cal Advocates also urges the Commission to consider the Commission's recent authorization of \$1.9 million for Cal-Am's Lower Carmel Valley well project -- which included engineering, permitting, design, and construction -- to suggest that Cal-Am's proposed costs for the Company-related facilities here are excessive.¹⁶⁰ Cal Advocates reasons that the Commission can approve the lower rate cap, and allow Cal-Am to seek recovery of any additional costs through an applicable GRC proceeding, where the reasonableness of cost recovery above the cost caps can be reviewed.¹⁶¹

MPWMD supports Cal Advocates' proposed revenue reductions.¹⁶² MPWMD is concerned that allocation of the common costs for the Company-related facilities include MPWSP sunk costs as opposed to costs entirely related to the PWM Expansion Project.¹⁶³ MPWMD points out that the Parallel Pipeline and extraction wells EW-1 and EW-2 were not part of the MPWSP but have been allocated costs beginning as early as January 2011.¹⁶⁴ MPWMD also speculates that the cost of extraction wells EW-3 and EW-4 may be twice as much as wells EW-1/EW-2 because this well site was the former site of wells ASR-5/ASR-6, which was part of the MPWSP.¹⁶⁵ Finally, MPWMD points out that Cal-Am allocated significant costs to all four facilities on several dates

¹⁵⁹ *Id.* at 10.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

¹⁶² MPWMD Phase 1 Opening Brief at 17.

¹⁶³ MPWMD Exhibit MPWMD-01 at 17.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

(September 2015, January 2018, August 2020, etc.) without sufficient information to identify whether the allocations were appropriate.¹⁶⁶

PWN supports Cal Advocates' proposed cost caps, arguing Cal-Am's \$81,065,025 infrastructure cost estimate is excessive.¹⁶⁷ PWN suggests that the Parallel Pipeline could have been built any time after 1995, which would have made the cost cheaper for ratepayers.¹⁶⁸ M1W and MCWD take no position on Cal-Am's proposed budget and request for a cost cap.¹⁶⁹

7.2.2. Discussion

In considering the reasonableness of the Company-related facilities costs, we return to the used and useful principle, which requires ratepayers to bear only the reasonable costs of those projects which provide direct and ongoing benefits or are used and useful in providing adequate and reasonable service to the ratepayers.¹⁷⁰ Projects which never reach fruition, by definition, fail to be used and useful to ratepayers.¹⁷¹

The cost cap for all four Company-related facilities includes costs starting as early as 2011.¹⁷² Early 2011 through summer of 2014 corresponds to the period when Cal-Am initially planned to complete Phase 1 of its Regional Desalination Project, though Cal-Am later withdrew its petition for clarification of D.10-12-016 and filed a new application, A.12-04-019, seeking approval of the MPWSP, which

¹⁶⁶ *Ibid.*

¹⁶⁷ PWN Phase 1 Reply Brief at 1-2.

¹⁶⁸ *Ibid.*

¹⁶⁹ M1W Phase 1 Opening Brief at 15; MCWD Phase 1 Opening Brief at 5.

¹⁷⁰ D.84-09-089.

¹⁷¹ *Ibid.*

¹⁷² Cal-Am Exhibit CAW-02, Attach. 3.

included a desalination plant among other components. From 2012 to the present day, Cal-Am pursued the MPWSP, some elements of which are still ongoing.

As MPWMD correctly points out and Cal-Am acknowledges, the Parallel Pipeline was not contemplated as part of either the Regional Desalination Project or the MPWSP. Therefore, we see no basis for allocating 12% of common actuals through October 2021 to the Parallel Pipeline and reduce the cost cap by \$2,665,124, from \$10,930,000 to \$8,264,655.

Turning to the two extraction well facilities, we first note that the PWM Expansion Project, including all four extraction wells, was rejected by the Commission in D.18-09-017, and excluded from the MPWSP prior to this application.¹⁷³ As discussed in Section 6.5, the environmental review for the PWM Expansion Project was conducted and resulted in a SEIR; this was after the EIR was adopted for the MPWSP, distinguishing environmental review costs from MPWSP common actuals.

Therefore, we agree with MPWMD and Cal Advocates that budgeting for the extraction well facilities should be separated from MPWSP common costs. As the EW-1/EW-2 facility was not part of the MPWSP, we see no basis for allocating 28% of common actuals through October 2021 to the EW-1/EW-2 facility and adopt a cost cap of \$16,723,704.

Turning to the EW-3/EW-4 facility, we note that wells EW-3 and EW-4 are sited in the same location as wells ASR-5 and ASR-6, which were approved for the ASR project as part of the MPWSP. Cal-Am argues that ASR-5 and ASR-6 are

¹⁷³ D.18-09-017.

the same wells as extraction wells EW-3 and EW-4.¹⁷⁴ However, since wells ASR-5 and ASR-6 were considered and approved as part of the ASR project while wells EW-3 and EW-4 were rejected by the Commission as part of the PWM Expansion Project in D.18-09-017, we reject Cal-Am's argument because it could not reasonably have assumed to be simultaneously incurring the same costs for both an approved and a rejected project at the same time on the same two wells. Since ASR-5 and ASR-6 were never built, ratepayers never received the benefit of their use as part of the ASR program and should not bear costs related to their design, planning, and environmental review. Also, the EW-3/EW-4 facility is still in the permitting and design phase, and the adopted budget should reflect this early stage of project development. Accordingly, we find it appropriate to exclude the 51% of common actuals for the MPWSP through 2021 allocated to the EW-3/EW-4 facility, reducing the cost cap by \$10,797,064, from \$41,018,000 to \$30,220,960, as reasonable.

Finally, we approve the proposed cost cap for the Carmel Valley Pump Station as proposed by Cal-Am. The Carmel Valley Pump Station was first approved as the Valley Greens Pump Station as part of the Regional Desalination Project and later as part of the Remaining Cal-Am Only Facilities in the MPWSP. While the name and location of the Valley Greens Pump Station have changed, the purpose of this pump station remains the same (*i.e.*, to pump water to part of the Monterey System affected by the SWRCB cease and desist order). Accordingly, we approve the cost cap of \$6,475,243 for the Carmel Valley Pump Station as reasonable.

¹⁷⁴ Cal-Am Opening Comments on the Proposed Decision at 8.

7.3. Setting the AFUDC Rate at the Actual Weighted-Average-Cost-of-Debt

Cal-Am calculates a total AFUDC of approximately \$7,741,935 based on its estimated revenue requirement for the four Company-related facilities.¹⁷⁵

Cal-Am proposes to accrue AFUDC at the rate of its actual cost to fund construction, applying the actual cost to the net average monthly investment carried in the MPWSP Phase 1 Project Costs Memorandum Account.¹⁷⁶ This includes \$7.4 million¹⁷⁷ of short-term debt used to fund Cal-Am's MPWSP costs prior to October 2021.¹⁷⁸ Cal-Am's actual cost of debt prior to October 2021 is reflected in its 7.61% rate of return, which consists of short-term and long-term debt and equity. Cal-Am's rate of return in 2022 and later years will be based on the rate of return adopted in the 2021 cost of capital proceeding (A.21-05-001).

This decision adopts the actual weighted-average-cost-of-debt incurred by Cal-Am as the AFUDC rate. The parties' dispute regarding the appropriate AFUDC rate is summarized in Section 7.3.1 and discussed in Section 7.3.2.

7.3.1. Parties' Positions

Cal Advocates argues that the Commission should authorize an AFUDC interest rate of 1.16%, rather than Cal-Am's full rate of rate of return.¹⁷⁹

¹⁷⁵ Cal Advocates Exhibit Cal Adv-01 at 10, fn. 43.

¹⁷⁶ Cal-Am Exhibit CAW-02 at 19.

¹⁷⁷ Under the terms of the comprehensive settlement term adopted in D.18-09-017, American Water Works Capital Corp (AWWCC), a subsidiary of American Water Works Company, Inc. (which is the parent company of Cal-Am), would finance \$20 million in MPWSP funds using short-term debt, with \$12.6 million allocated to desalination costs and \$7.4 million allocated to other project costs. Cal-Am used the short-term financing prior to October 2021. (D.18-09-017 at 143 fn. 388, 195 (COL #19).)

¹⁷⁸ Cal-Am Exhibit CAW-02 at 23.

¹⁷⁹ Cal Advocates Phase 1 Opening Brief at 13-14.

Cal Advocates contends the short-term borrowing rate is appropriate because AWWCC is financing the CWIP at an average short-term borrowing rate of 1.16%.¹⁸⁰ Cal Advocates contends that ratepayers should not have to pay over six times the actual cost of Cal-Am's short-term borrowing costs, noting that this interest rate increase is profit that will compound when the interest is included as rate base upon the operation of the Company-related facilities.¹⁸¹

Cal Advocates urges the Commission to adopt the short-term borrowing rate of 1.16%, acting as a substitute for competition and preventing Cal-Am from collecting a rate of return which would "would not be tolerated in a competitive environment."¹⁸² MPWMD supports Cal Advocates' proposed AFUDC interest rate reduction.¹⁸³

Cal-Am opposes Cal Advocates' AFUDC interest rate reduction proposal, arguing that it has been funding construction with short-term debt, long-term debt, and equity.¹⁸⁴ Cal-Am states that it would have to restate its AFUDC from the beginning of 2011 if the Commission were to adopt Cal Advocates' recommendation.¹⁸⁵

7.3.2. Discussion

AFUDC is typically determined on a project-by-project basis. The Commission considers three risk factors when determining the AFUDC of a project: (1) the capital-intensive nature of the project, (2) the length of time for

¹⁸⁰ Cal Advocates Exhibit PAO-01 at 8-9.

¹⁸¹ *Id.* at 9.

¹⁸² Cal Advocates Phase 1 Opening Brief at 14.

¹⁸³ MPWMD Phase 1 Opening Brief at 17.

¹⁸⁴ Cal-Am Phase 1 Opening Brief at 34.

¹⁸⁵ Cal-Am Phase 1 Reply Brief at 22.

construction, and (3) permitting needs.¹⁸⁶ The Commission historically viewed short-term projects (usually completed in less than a year) or projects with a high certainty of completion as low-risk, often allowing for AFUDC at less than the utility's authorized rate of return. The Commission also considered the completion of permitting, such as the environmental review process, as lowering project risk.¹⁸⁷

The Commission views long-term, capital-intensive, or projects needing environmental review as higher risk, and has historically authorized an AFUDC rate at the utility's rate of return to reflect the risks or actual projected costs of the project. If it can be shown that actual carrying costs are less than the authorized rate of return, (i.e., closer to the cost of debt), the Commission has, at times, adjusted the AFUDC to the cost of debt.^{188,189} For example, in D.03-09-022, the Commission authorized an AFUDC of a project, determining that:

[it] remains unclear at this time when (or whether) any plant construction will commence. Therefore, allowing these preliminary costs to earn the utility's authorized rate of return now carries with it a significant risk that the ratepayers may never receive the benefits of these expenditures.¹⁹⁰

We have reviewed the PWM Expansion Project and find that length of the project, the capital-intensive nature of the project, and the multitude of pending environmental permits warrant use of an AFUDC rate at the weighted average cost-of-debt Cal-Am incurred. The PWM Expansion Project is expected to take

¹⁸⁶ D.08-05-036.

¹⁸⁷ *Id.* at 17.

¹⁸⁸ *See* D.08-05-036 at 13.

¹⁸⁹ *Id.* at 16.

¹⁹⁰ D.03-09-022 at 22.

an additional two to three years to complete, exceeding the one-year average for short-term projects. The PWM Expansion Project is also capital intensive, necessitating an estimated \$49,086,577 million in additional funding to construct or complete four extraction wells, a chemical treatment facility, a pump station, a 36-inch pipeline, and associated piping. Finally, water quality permits have proven to be a significant risk to the success of the PWM Project and may continue to pose risks to the operation of the PWM Expansion Project. However, we do not include the equity component of Cal-Am's request in order to further incentivize timely completion of the PWM Expansion Project. Granting recovery at the weighted-average-cost-of-debt strikes a balance between Cal-Am's assumed risk for the project and ratepayer protections in the event that construction is unduly delayed. Accordingly, we authorize an AFUDC at the weighted average cost of-debt Cal-Am incurred over the course of the PWM Expansion Project for the EW-1/EW-2 facility, the EW-3/EW-4 facility, and the Parallel Pipeline.

Since we allow recovery for the Carmel Valley Pump Station since 2011, for costs incurred under its previous iteration as the Valley Green Pump Station, in D.18-09-017 and D.10-12-016, we will also allow AFUDC recovery for the Carmel Valley Pump Station at the previously authorized AFUDC rate. From the effective date of D.10-12-016 to the effective date of D.18-09-017 for the Carmel Valley Pump Station is authorized an AFUDC rate of four percent which Cal-Am may true-up to reflect actual carrying costs.¹⁹¹ From the effective date of D.18-09-

¹⁹¹ D.10-12-016 at 145, 190-191 (FOFs 203,206, 207).

017 to the present, Cal-Am may recover the AFUDC rate at the actual cost of funds used to fund the project.¹⁹²

7.4. Removing Labor Overhead from the AFUDC

Cal-Am includes \$165,431 in labor overhead costs when calculating the AFUDC for the Company-related facilities.¹⁹³ Cal Advocates opposes including the labor overhead costs when calculating AFUDC, arguing that internal labor overhead is already allocated in Cal-Am's GRC.¹⁹⁴ According to Cal Advocates, allowing Cal-Am to recover financing costs for internal labor overhead would result in double recovery.¹⁹⁵

We have reviewed the record related to AFUDC calculations and agree with Cal Advocates' arguments. Labor overhead is already included in the rates approved through Cal-Am's GRC and should not accrue AFUDC. Cal-Am must remove labor overhead costs when calculating the AFUDC for Company-related facilities.

7.5. Recovery of Costs above the Cost Cap

Parties generally support or do not object to Cal-Am's tracking and cost recovery mechanism with the exception of Cal Advocates. Cal Advocates recommends that Cal-Am be allowed to seek cost recovery for amounts exceeding the cost caps for the Company-related facilities in Cal-Am's next GRC, rather than through a consolidated Tier 3 advice letter. Cal-Am opposes

¹⁹² D.18-09-017 at 144-145, 186 (FOF 150).

¹⁹³ Labor Overhead costs include \$81,236 in labor overhead for "Allocated Common Actuals through October 2021" and \$84,195 in labor overhead for "Direct Project Actuals through October 2021." (Cal-Am Exhibit CAW-2 at 23-24 ("Attachment 3-6 AFUDC").)

¹⁹⁴ Cal Advocates Phase 1 Opening Brief at 15.

¹⁹⁵ *Id.* at 15.

Cal Advocates' proposal, arguing that review in the next GRC would delay recovery of costs by years.¹⁹⁶

After considering the matter, we find it prudent to allow Cal-Am to recover costs above the cost cap through its next applicable GRC proceeding. The GRC will allow for adequate record development to review these additional costs. As discussed in Section 1.2.1, Cal-Am may also file an application or the Commission may issue an OII to determine the reasonableness of Cal-Am's expenditures for common actuals for the MPWSP in the event the desalination plant is not constructed in a timely manner or fails to operate appropriately.

8. Public Comments

Pursuant to Rule 1.18(a) of the Commission's Rules of Practice and Procedure,¹⁹⁷ all written public comments submitted in a proceeding that are received prior to the submission of the record will be entered into the administrative record of that proceeding. Pursuant to Rule 1.18(b), relevant written comments submitted in a proceeding will be summarized in the final decision issued in the proceeding.

Prior to the submission of the record in Phase 1 of this proceeding on July 27, 2022, 16 public comments were received and are available for review in the public comments tab of the docket card for this proceeding. The public comments all appear to be submitted by customers in Cal-Am's service area. The public comments uniformly oppose further rate increases proposed in this

¹⁹⁶ Cal-Am Phase 1 Opening Brief at 18.

¹⁹⁷ All references to "Rule" or "Rules" shall refer to the Commission's Rules of Practice and Procedure.

application, and many customers mention that they already pay the highest water rates in the nation.

No parties to this proceeding responded to, or cited, any public comment in their filings in this proceeding, as allowed by Rule 1.18(b). As the public comments were general and consistent with public comments routinely submitted in utility applications requesting rate increases, no further party comment was requested in the course of Phase 1 of this proceeding pursuant to Rule 1.18(d).

9. Comments on Proposed Decision

The proposed decision of ALJ Zita Kline in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by Cal-Am, MPWMD, M1W, MCWD, City of Marina, and Cal Advocates on October 25, 2022. Reply comments were filed by Cal-Am, M1W, MPWMD, MCWD, City of Marina, Cal Advocates, and PWN on October 25, 2022.

Revisions to the proposed decision made in response to party comments are discussed below and incorporated throughout the decision. Party positions which merely restate arguments made during the course of the proceeding are not addressed further.

9.1. Authorization to Construct the EW-1/EW-2 Facility

The proposed decision initially deferred authorization to construct or approval of a budget cap for the EW-1/EW-2 facility to Phase 2 of this proceeding.

In comments, MPWMD states its view that the treatment of mercury above MCLs is a “normal occurrence” and considers the Commission’s review in Phase 2 of this proceeding as an “unfortunate delay.”¹⁹⁸ MPWMD recommends the Commission approve the EW-1/EW-2 facility in this decision and “order Cal-Am to respond within 30 days with any abatement actions taken since September 2021 to address mercury treatment at the Seaside Middle School locations should they be needed.”¹⁹⁹ MPWMD views the “Response to Inquiry” ordered in the proposed decision as outside the scope of the proceeding identified in Phase 1 and outside the scope of Phase 2 issues.²⁰⁰

City of Marina views the Commission’s further review of water quality issues in Phase 2 as “undermining the Proposed Decision’s approval of the Amended WPA” and recommends the Commission review water quality issues, authorize construction of the EW-1/EW-2 facility, and adjust the cost cap for the EW-1/EW-2 facility through a Tier 2 advice letter filed within 60-days of a final Phase 1 decision.²⁰¹

MCWD recommends the Commission review any water quality concerns using an advice letter process, which MCWD believes would be more expeditious than including review in Phase 2 of this proceeding.²⁰² MCWD believes that, since the Commission’s Water Division “monitors water quality

¹⁹⁸ MPWMD Opening Comments on the Proposed Decision at 3.

¹⁹⁹ *Ibid.*

²⁰⁰ *Id.* at 2.

²⁰¹ City of Marina Opening Comments on the Proposed Decision at 9-12.

²⁰² MCWD Opening Comments on the Proposed Decision at 4-5.

and operations matters,” that the Water Division should address water quality concerns through either a Tier 2 or a Tier 3 advice letter process.²⁰³

M1W supports the City of Marina’s proposal to review mercury concerns through the advice letter process.²⁰⁴ PWN agrees that mercury issues can be dealt with through an advice letter process.²⁰⁵

Cal-Am states that, while a deferral on the EW-1/EW-2 facility is not necessary, it is prepared to file the “Response to Inquiry” ordered in the proposed decision.²⁰⁶ However, review of the EW-1/EW-2 facility water quality issues through an advice letter process is amenable to Cal-Am because it would allow Cal-Am to move forward with construction of the facilities sooner.²⁰⁷

Cal Advocates does not oppose further consideration of water quality issues in Phase 2 of this proceeding, but requests the Commission provide parties with at least 15 days to provide comments on the “Response to Inquiry.”²⁰⁸

We have reviewed the parties’ comments and agree that water quality issues at the EW-1/EW-2 can be assessed through a Tier 3 advice letter, and amend the decision accordingly.

9.2. Claims of Retroactive Reduction of Cal-Am’s AFUDC

The proposed decision initially sets the AFUDC for all company-related facilities at the same rate, which is the weighted-average-cost of debt.

²⁰³ *Id.* at 5.

²⁰⁴ M1W Opening Comments on the Proposed Decision at 4.

²⁰⁵ PWN Reply Comments on the Proposed Decision at 1.

²⁰⁶ Cal-Am Reply Comments on the Proposed Decision at 3.

²⁰⁷ *Id.* at 3.

²⁰⁸ Cal Advocates Opening Comments on the Proposed Decision at 1-2.

Cal-Am argues that the proposed decision errs in adopting a retroactive reduction in the AFUDC for the Company-related facilities by limiting the AFUDC accrual to the weighted-average-cost of debt. Cal-Am asserts that it properly accrued AFUDC for the Company-related facilities with a mixture of short-term debt, long-term debt, and equity in compliance with D.16-09-021 and D.18-09-017.²⁰⁹ According to Cal-Am, neither the caselaw cited nor the record evidence support the proposed decision's adoption of the weighted-average-cost of debt over Cal-Am's proposed AFUDC rate.²¹⁰ Cal-Am estimates the proposed decision's adopted AFUDC rate lowers Cal-Am's recovery by \$7 to \$9 million if the AFUDC rate is intended to apply to the desalination plant costs as well.²¹¹ Cal-Am argues that such a substantial capital structure adjustment needs to be recognized in the current cost-of-capital proceeding (A.21-05-001), particularly with respect to the impact on return on equity.²¹²

Cal-Advocates disagrees with Cal-Am's assertion, arguing that the proposed decision does not violate the prohibition on retroactive ratemaking because the AFUDC is typically determined on a project-by-project basis and the Commission did not establish an AFUDC for the PWM Expansion Project in any prior proceeding.²¹³ Cal Advocates argues that the proposed decision aligns well with the cost of capital proceeding, which sets the rate of return on rate base during the years 2022-2024.²¹⁴ All project costs, including AFUDC, will be

²⁰⁹ Cal-Am Opening Comments on the Proposed Decision at 3.

²¹⁰ *Id.* at 4-5.

²¹¹ *Id.* at 3.

²¹² Cal-Am Opening Comments on the Proposed Decision at 3.

²¹³ Cal Advocates Reply Comments on the Proposed Decision at 2.

²¹⁴ *Id.* at 2-3.

included in rate base once they become used and useful, earning Cal-Am's full rate of return.²¹⁵ This is also consistent with Pub. Util. Code Section 451, which requires rates to be just and reasonable.²¹⁶

We reviewed the parties' comments and considered the merit of Cal-Am's claims that the AFUDC for any of the Company-related facilities was determined in prior Commission decisions. D.16-09-021 adopted an AFUDC for the original PWM Project but did not contemplate the AFUDC for any of the Company-related facilities for the PWM Expansion Project herein. Therefore, D.16-09-021 is not controlling and does not implicate any retroactive ratemaking concerns. With regard to D.18-09-017, this decision considered and rejected authorization of the PWM Expansion project. Therefore, we agree with Cal-Advocates that the Commission did not approve or establish an AFUDC for the PWM Expansion project in any prior proceeding.

However, the proposed decision allows Cal-Am to include post-construction authorization of the Carmel Valley Pump Station as part of the Company-related facilities reviewed in this proceeding. The proposed decision recognizes the Carmel Valley Pump Station as serving a substantially similar purpose as the Valley Greens Pump Station, for which D.18-09-017 allowed an AFUDC rate recovery at the actual cost of funds used to fund the project.²¹⁷ Therefore, the proposed decision is amended to allow AFUDC recovery for the Carmel Valley Pump Station costs at the rate allowed for in D.18-09-017, from the effective date of that decision to the present. The proposed decision also

²¹⁵ *Ibid.*

²¹⁶ *Id.* at 3.

²¹⁷ D.18-09-017 at 144-145, 186 (FOF 150).

recognizes that the Valley Greens Pump Station was approved by the Commission in D.10-12-016 and authorizes an AFUDC recovery at the rate authorized in this decision, which is an initial rate of four percent that Cal-Am may true-up to reflect actual carrying costs, from the effective date of D.10-12-016 to the effective date of D.18-09-017.²¹⁸

9.3. Status of the MPWSP

The proposed decision details several permitting delays and community opposition to the 6.4 mgd desalination plant. However, City of Marina recommends the decision include all of the additional permitting and legal challenges that must be overcome for Cal-Am to build the 6.4 mgd desalination plant.²¹⁹ MPWMD supports City of Marina's characterization of the many additional hurdles to construction of the 6.4 mgd desalination identified by City of Marina.²²⁰

Cal-Am states that the CCC's CDP permit is the most significant permit required for construction of the desalination plant before construction can commence on the slant intake wells.²²¹ Cal-Am notes the changed circumstances of the 6.4 mgd desalination plant, with CCC finding that Cal-Am's application is complete and scheduling a hearing in November 2022 as well as what Cal-Am alleges is a recent agreement between CAW and M1W on the design of the slip liner, which will need to be approved by the CCC.²²² Cal-Am argues that the 6.4 mgd desalination plant continues to move forward with the project, recently

²¹⁸ D.10-12-016 at 145, 190-191 (FOFs 203, 206-207).

²¹⁹ City of Marina Opening Comments on the Proposed Decision at 5-7.

²²⁰ MPWMD Reply Comments on the Proposed Decision at 2.

²²¹ Cal-Am Reply Comments on the Proposed Decision at 3-4.

²²² *Ibid.*

stating an intent to pursue a smaller 4.8 mgd.²²³ Cal-Am urges the Commission to reject City of Marina's recommendations to make findings regarding the MPWSP that are already, or will soon be, outdated.²²⁴

Upon review, we agree with City of Marina that the proposed decision does not include an exhaustive list of all permitting issues and potential litigation which could delay the construction of the MPWSP. We also agree with Cal-Am that making specific findings to the status of all pending permits, litigation, and other obstacles to the construction of the MPWSP will result in an update that may soon be outdated. We add additional but non-exhaustive issues brought by City of Marina and MPWMD to better reflect a more accurate portrayal of the current challenges to construction of the 6.4 mgd desalination plant while recognizing that Cal-Am may remedy some or all of them in the near or long-term.

9.4. Parties' Request to Adopt Water Demand Estimate

The proposed decision does not adopt water supply and demand estimates but finds the Phase 1 record sufficient to support a near-term need for PWM Expansion Project. In comments, MCWD recommends the Commission adopt Cal-Am's 5-year water demand estimate of 9,231 AFY as a finding of fact in this Phase 1 decision.²²⁵ Similarly, City of Marina, recommends the Commission adopt a decision which includes a water demand for Cal-Am's Monterey Peninsula customers of no more than 9,231 AFY.²²⁶ Relatedly,

²²³ *Id.* at 4.

²²⁴ *Ibid.*

²²⁵ MCWD Opening Comments on the Proposed Decision at 5.

²²⁶ City of Marina Opening Comments on the Proposed Decision at 9.

MPWMD objects to Cal-Am's references to a water demand of 14,000 AFY in opening comments.²²⁷ Cal-Am opposes MCWD, City of Marina, and MPWMD's proposal to adopt a water demand estimate in Phase 1 of this decision as premature.²²⁸

After review of the parties' comments and reply comments, we agree with Cal-Am any estimates of water supply and demand are properly adopted in Phase 2 of this proceeding.

9.5. Parties' Characterization of the PWM Expansion Project as an Alternative to the Desalination Plant

In opening comments, City of Marina characterizes the proposed decision's approval of the Amended WPA as for "an alternative water supply to the much-delayed and still not permitted [MPSWP]." ²²⁹ Cal-Am opposes City of Marina's characterization of the PWM Expansion Project as an "alternative water supply" to the MPWSP, considering the PWM Expansion Project as a source of supplemental water to Cal-Am while not alleviating the need for the MPWSP.²³⁰

We have reviewed the parties' comments and make no substantive changes to the decision. The term "alternative source of water," as used in this decision, considers all new sources of water as alternatives to Cal-Am's diversion of water from the Carmel River. As stated in the factual background of the proposed decision:

California American Water Company (Cal-Am or Company) has been looking to provide alternatives to Carmel River water sources

²²⁷ MPWMD Reply Comments on the Proposed Decision at 2.

²²⁸ Cal-Am Reply Comments on the Proposed Decision at 4-5.

²²⁹ City of Marina Opening Comments on the Proposed Decision at 2,4.

²³⁰ Cal-Am Reply Comments on the Proposed Decision at 3-4.

to its customers on the Monterey Peninsula since 1995, when the State Water Resources Control Board (SWRCB) issued a cease and desist order requiring Cal-Am to stop the unlawful diversion of 10,730 acre-feet per year (AFY) of water from the Carmel River.²³¹ There is no discussion of the PWM Expansion Project as an alternative to the MPWSP and none should be inferred from this decision, which is limited to Phase 1 issues.

9.6. The Purpose of the Carmel Valley Pump Station

In comments, MPWMD states that the proposed decision's characterization of the purpose of the Carmel Valley Pump Station as unchanged from the purpose of the Valley Greens Pump Station is in error. According to MPWMD, the purpose of the Carmel Valley Pump Station differs from the Valley Greens Pump Station because the Carmel Valley Pump Station no longer functions to move excess winter flows from the Carmel River out of the valley for injection into the Seaside Basin as part of the ASR.²³²

Cal-Am opposes MPWMD's characterization of the Valley Greens Pump Station as having a different purpose of than the Carmel Valley Pump Station and supports the proposed decision's description.²³³ Cal-Am indicates that the only description of the Valley Greens Pump Station in either D.10-12-016 or D.18-09-017 is D.10-12-016's reference to the settlement agreement adopted in the proceeding, which state:

This booster station will pump water to the Segunda Tanks (Numbers 1 and 2), to help provide operational flexibility in maintaining storage levels in the Forest Lake Tanks, while also

²³¹ SWRCB Order WR 95-10 (Jul. 5, 1995).

²³² MPWMD Opening Comments on the Proposed Decision at 3-4.

²³³ Cal-Am Reply Comments on the Proposed Decision at 5.

allowing the transfer of treated water from Begonia Iron Removal Plant to Seaside for ASR injection and for meeting system demands.²³⁴

We have reviewed these comments and determined that no change is necessary to the proposed decision.

9.7. Use of a Saturation Adjustment

Cal-Am objects to the proposed decision's contemplation of the use of a saturation adjustment as contrary to the Commission's practice of applying such adjustments only to circumstances involving new developments and facilities that are not used and useful, asserting those circumstances are not applicable here.²³⁵ Cal-Am objects to the proposed decision's language proposing to apply a saturation adjustment in the event Company-related facilities "are not put into use as expected" as inappropriate, misleading, and a confusing addition to the Tier 2 advice letter review process.²³⁶

We have considered Cal-Am's comments and find that the potential for application of a saturation adjustment is consistent with Commission past practice here, where Cal-Am has requested recovery based on facilities approved with different names for different projects, sometime multiple different projects, which were never built. The Commission has taken great care to conduct a review of Cal-Am's projects related to water supply issues on the Monterey Peninsula since 2010 in an attempt to match past projects with the purposes of Cal-Am's proposed facilities for the PWM Expansion Project, finding connections where those were reasonable. The proposed decision defines the purpose of the

²³⁴ *Id.* at 5.

²³⁵ Cal-Am Opening Comments on the Proposed Decision at 12.

²³⁶ *Id.* at 13.

proposed Company-related facilities for the PWM Expansion clearly and cost recovery should present no confusion if Cal-Am builds the four approved facilities and requests recovery on its proposed timeline for the PWM Expansion Project. To the extent the facilities are used and useful there will not be a need for application of a saturation adjustment.

9.8. Other Technical and Factual Errors

This section addresses parties' comments regarding various perceived technical and factual errors in the proposed decision. First, Cal Advocates, M1W, MPWMD, City of Marina, and MCWD join in pointing out a list of minor factual and technical errors in opening comments.²³⁷ Cal-Am and PWN do not take a position on these proposed corrections.²³⁸ We find these recommendations reasonable and incorporate them in the final decision.

Second, M1W, MPWMD, and MCWD request that statements related to MCWD's separate agreement with M1W and MCWD for water provided from the PWM Expansion Project be removed from Section 6.2 of the proposed decision. According to these parties, the proposed decision implies that MCWD is a party to the Amended WPA. Upon review, it appears that MCWD, M1W, and MPWMD equate the Amended WPA with the PWM Expansion Project. Therefore, the decision is amended to clarify that MCWD receives an entitlement from M1W's AWTF through a separate agreement and not from the Amended WPA or the PWM Expansion Project. This correction explains M1W's

²³⁷ Cal Advocates Opening Comments on the Proposed Decision at 3-6; M1W Opening Comments on the Proposed Decision at 7; City of Marina at 12-13; MCWD Opening Comments on the Proposed Decision at 8-11; MPWMD Opening Comments at 2.

²³⁸ Cal-Am Reply Comments on the Proposed Decision; PWN Reply Comments on the Proposed Decision.

development costs more accurately and is relevant to the ultimate cost recovery M1W will seek from Cal-Am's ratepayers through its cost of water sold through the Amended WPA.

Third, Cal Advocates advises the Commission to modify the proposed decision's characterization of Cal-Am's actual rate of return to remove the equity component.²³⁹ Cal-Am states that both the proposed decision's and Cal Advocates' characterizations are in error and suggests two alternative ways to characterize Cal-Am's rate of return.²⁴⁰ We adopt Cal-Am's suggestions for FOF 66 to remove the reference to short-term debt.

Fourth, Cal-Am proposes to change FOF 12 to clarify that Phase 2 of this proceeding will consider the sufficiency of source water for long-term water supply planning purposes to prevent prejudging of Phase 2 issues.²⁴¹ M1W opposes Cal-Am's proposal to modify FOF as an attempt to relitigate Phase 1 issues, which include a review of source waters.²⁴² Upon review, the Commission finds Cal-Am's arguments persuasive and modifies FOF 12 to clarify that the Commission's review of source waters for the purpose of reviewing the Amended WPA is separate from its consideration of source waters for long-term planning purposes.

Fifth, Cal-Am proposes to modify the language of FOF 4, to state that Cal-Am and M1W have agreed to the design of the slip liner and the design is 95%

²³⁹ Cal Advocates Opening Comments on the Proposed Decision at 2-3, App. A.

²⁴⁰ Cal-Am Reply Comments on the Proposed Decision at 1-2.

²⁴¹ Cal-Am Opening Comments on the Proposed Decision at 15.

²⁴² M1W Reply Comments on the Proposed Decision at 2-3.

complete.²⁴³ M1W opposes Cal-Am's proposed language, arguing that the current language of FOF 4 in the proposed decision is correct.²⁴⁴ Upon review, we find the rationale behind M1W's opposition to the Cal-Am's proposed language persuasive and keep the language of FOF 4 unchanged.

Sixth, Cal-Am proposes to eliminate FOF 5, which finds that City of Marina has not approved a CDP for a needed liner for discharge of effluent.²⁴⁵ City of Marina opposes Cal-Am's suggested deletion as wrong as a matter of fact and law.²⁴⁶ Upon review, we do not change FOF 5.

Seventh, Cal-Am objects to the proposed decision's statement that Cal-Am "abandoned its efforts at a desalination plant in 2012" as inaccurate.²⁴⁷ Cal-Am goes on to more fully describe the circumstances of the withdrawal of its petition for clarification of the Regional Desalination Project and its filing of Application 12-04-019, seeking approval of the MPWSP.²⁴⁸ We find Cal-Am's request to modify the language related to this phrasing reasonable and modify the decision accordingly.

Eighth, the City of Marina request the proposed decision's language linking the updated supply and demand estimates for the MPWSP to the Amended WPA is confusing and may undermine the decision's approval of the

²⁴³ Cal-Am Opening Comments on the Proposed Decision at 14-16.

²⁴⁴ M1W Reply Comments on the Proposed Decision at 3-4.

²⁴⁵ Cal-Am Opening Comments on the Proposed Decision at 15-16.

²⁴⁶ City of Marina Reply Comments on the Proposed Decision at 5.

²⁴⁷ Cal-Am Opening Comments on the Proposed Decision at 14; Proposed Decision at 53,68 (FOF 56).

²⁴⁸ Cal-Am Opening Comments on the Proposed Decision at 14.

Amended WPA.²⁴⁹ We agree with City of Marina's recommendation and revise the decision accordingly.

10. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Zita Kline is the assigned ALJ and Presiding Officer in this proceeding.

Findings of Fact

1. The previously authorized 6.4 mgd desalination plant, for which the Commission issued a CPCN in D.18-09-017, was not built by December 31, 2021.

2. A CDP is needed from the CCC as well as the City of Marina prior to construction of the 6.4 mgd desalination plant.

3. By letter dated February 8, 2022, the CCC continues to find the CDP for the 6.4 mgd desalination plant incomplete because it requires additional information on the outfall for discharge of effluent from the 6.4 mgd desalination plan, which is owned and operated by M1W.

4. M1W does not agree to a design for the outfall of the 6.4 mgd desalination plant and declines to conduct the necessary environmental review for the outfall or apply for the necessary permits needed for the outfall until the Commission approves the Amended WPA.

5. The City of Marina has not approved a CDP needed for liner work on the outfall for discharge of effluent needed for construction of the 6.4 mgd desalination plant.

6. The currently projected average five-year production supply is inadequate to meet the five-year average customer demand of the Cal Am customers on the Monterey Peninsula without an additional source of water.

²⁴⁹ City of Marina Opening Comments on the Proposed Decision at 9.

7. In D.18-09-017, the Commission indicated that in the event that the 6.4 mgd desalination plant was not expected to be completed by December 31, 2021, the Commission allowed Cal-Am to submit an application for approval of a WPA for the PWM Expansion Project, for up to 2,250 AFY, through an application which included the following: (1) sources of supply water; (2) development costs; (3) prices for sales of the developed water; (4) contractual details; (5) environmental effects; (6) potential to obtain necessary permits; (7) water quality; (8) sources of funding; (9) possible related facilities; and (10) other information necessary and relevant for the Commission to make an informed, just and reasonable decision, including details as to supply and production, including not only during average rainfall years but also during a multi-year drought and the timing of expanded production.

8. Under the Original WPA, M1W was contracted to provide 3,500 AFY of water.

9. The PWM Expansion Project requires 3,081 AFY of water to provide an additional 2,250 AFY of purified recycled water.

10. M1W requires a total of 7,874 AFY to generate the 5,750 AFY of purified recycled water contracted under the Amended WPA.

11. M1W's total available source water for production of purified recycled water under the Amended WPA is 11,104 AFY.

12. The sources of supply water identified by M1W and the MPWMD will be sufficient to meet the 5,750 AFY of purified recycled water contracted under the Amended WPA. The Commission will make a separate determination regarding the sufficiency of these sources for long-term water supply planning purposes for the MPWSP in Phase 2 of this proceeding.

13. The PWM Expansion Project requires M1W and MPWMD to construct new and expanded facilities, including improvements at the existing Advanced Water Purification Facility to increase peak capacity; additional product water conveyance facilities; additional injection well facilities; additional monitoring wells, including the relocation of a previously approved monitoring well; and new potable water extraction and delivery facilities consisting of four new extraction wells, conveyance pipelines, and treatment facilities.

14. The PWM Expansion Project includes construction of the following Cal-Am Company-related facilities: (a) EW-1, EW-2, and water treatment facilities; (b) EW-3, EW-4, and associated piping; (c) the Carmel Valley Pump Station; and (d) the General Jim Moore Parallel Pipeline.

15. M1W's and MPWMD's total combined estimated development costs for facilities necessary to increase production of purified recycled water under the Amended WPA is \$49.2 million.

16. M1W's and MPWMD's estimated cost of purchased water is \$3,429/AF for the 2024/2025 fiscal year.

17. The annual cost of water under the Amended WPA is expected to escalate by 6% or more each year in the near-term.

18. The Amended WPA increases Cal-Am's treated water allotment from 3,500 to 5,750 AFY over a 30-year term, upon operation of the PWM Expansion Project.

19. Under the Amended WPA, Cal-Am has an option to extend the agreement for up to 10 years.

20. The Amended WPA provides for performance guarantees in the event that the PWM Expansion Project fails to deliver 5,750 AFY of water, allowing

MPWMD to owe Cal-Am a shortfall of water, which it can use to offset the cost of drawing replacement water from the Seaside Basin.

21. The terms of the Amended WPA give Cal-Am a right to terminate the Amended WPA in the event M1W and MPWMD fail to deliver the additional 5,750 AFY of water by February 1, 2026, or if the MPWMD fails to meet performance guarantees.

22. Operative Provision Number No. 16 is extended under the Amended WPA to allow Cal-Am to pay only: (1) the cost of water it receives and can use, (2) to pay for water based on the actual cost of water and (3) to pay only its proportionate costs.

23. The Amended WPA also extends budgeting provisions approved in Operative Provision No. 15 and ratemaking provisions in General Provision No. 18 of the Original WPA.

24. The PWM Expansion Project, which includes proposed construction of Cal Am's facilities, including water extraction wells, treatment facilities, and conveyance piping, constitutes a "project" for purposes of environmental review under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resources Code Section 21000, *et seq.*

25. M1W is the lead agency under CEQA for the PWM Expansion Project because the project is located in the M1W service area and M1W is undertaking the construction of the project, in partnership and with funding from MPWMD and Cal-Am.

26. The Commission is a responsible agency under CEQA.

27. The Commission reviewed and considered the environmental compliance documents filed by the parties, including the SEIR.

28. M1W issued an SEIR for the PWM Expansion Project in 2021 which identified a number of environmental effects of the project and identified mitigation measures for most effects.

29. The mitigation measures associated with the construction of Cal-Am's facilities are detailed in the following sections of the attached Appendix C, SEIR's mitigation and monitoring plan: AE-2, AE-3, AE-4, AQ-1, BT-1a to BT-1d, BT-1f, BT-1h to BT-1k, BT-1m, BT-4, CR-2b, CR-2c, EN-1, NV-1a, NV-1c, NV-1e, NV-1f, NV-2, PS-3, TR-2, TR-3, and TR-4.

30. The SEIR identified that the impact of construction noise and the secondary effects of growth inducement either would or could remain significant following mitigation measures described in the SEIR.

31. The SEIR evaluated alternatives, including a no project alternative, and adopted a statement of overriding consideration finding that the benefits of the PWM Expansion Project outweighed the significant adverse environmental effects that are not mitigated to less than significant levels.

32. M1W and Cal-Am must obtain a number of state and local permits to construct and operate facilities necessary to provide 2,250 AFY of additional purified treated water under the Amended WPA, as enumerated in Section 6.6 of this decision and the attached Appendix D.

33. To be deemed potable, wastewater requires treatment for virus and microbe reduction pursuant to CCR title 22 Section 60320.208.

34. The underground retention time between the M1W injection wells and ASR-1 is insufficient to meet the requirements of CCR Title 22, Article 5.2, Section 60320.208(a).

35. Water samples collected from well ASR-4 on June 16, 2021, and July 6, 2021, contained concentrations of mercury above the maximum contamination level set by SWRCB.

36. M1W and MPWMD require the Amended WPA to secure financing for the PWM Expansion Project.

37. MW1 and MPWMD expect the annual debt of \$2.1 million to service the loan would be paid by the sale of treated water to Cal-Am.

38. EW-1 and EW-2 are proposed extraction wells, located in an easement on a portion of the Monterey Peninsula Unified School District property at Seaside Middle School.

39. Cal-Am plans to use wells EW-1 and EW-2 as the new, primary extraction point for PWM Expansion Project treated water.

40. EW-1 and EW-2 are both in the permitting and design phase, with construction expected to start in the second quarter of 2023, and operation expected by the end of the third quarter of 2024.

41. EW-3 and EW-4 are located on U.S. Army land, in the same location as ASR wells ASR-5 and ASR-6.

42. With the loss of ASR-1 for groundwater extraction in September 2021, wells EW-3 and EW-4 could be used to replace ASR-1 as a groundwater extraction point for the PWM Project, increase reliability of groundwater extraction, and free up existing ASR wells (ASR-1 to ASR-4) for simultaneous injection of Carmel River water during the wet season.

43. EW-3 and EW-4 are both in the permitting and design phase, with construction expected to start in the fourth quarter of 2022 and operation expected by the end of the first quarter of 2025.

44. The purpose of the Carmel Valley Pump Station is to pump water from the Forest Lake reservoirs to the Upper Carmel Valley.

45. The Carmel Valley Pump Station was first proposed by Cal-Am as the Valley Greens Pump Station for a public-private partnership called the Regional Desalination Project.

46. The Parallel Pipeline is a 7,000-foot pipeline measuring 36-inches in diameter.

47. The Parallel Pipeline was designed to carry water from the ASR-1/ASR-2 facility to the Hilby Pump Station.

48. A 1,100-foot section of the Transfer Pipeline is included in Cal-Am's recovery request for the Parallel Pipeline.

49. The 1,100-foot section of the Transfer Pipeline connects the ASR-1/ASR-2 facility with the ASR-3/ASR-4 facility.

50. Cal-Am records the costs of the MPWSP in the MPWSP Phase 1 Project Costs Memorandum Account.

51. The PWM Expansion Project will help reduce pumping from the Salinas Groundwater Basin, reduce runoff into the Monterey Bay, reduce pollutant loads to the lower Salinas watershed, and help combat seawater intrusion into local groundwater aquifers.

52. The PWM Expansion Project helps relieve Cal-Am's reliance on the Carmel River, thereby helping Cal-Am comply with the SWRCB's cease and desist order.

53. The Company-related facilities will be used and useful when they are in use and providing service (*i.e.* operational).

54. The cost cap for all four Company-related facilities includes costs starting as early as 2011.

55. Early 2011 through summer of 2014 corresponds to the period when Cal-Am initially planned to complete Phase 1 of its Regional Desalination Project.

56. From 2012 to the present day, Cal-Am pursued the MPWSP, some elements of which are still ongoing.

57. The Parallel Pipeline was not contemplated as part of either the Regional Desalination Project or the MPWSP.

58. There is no basis for allocating 12% of common actuals through October 2021 to the Parallel Pipeline.

59. The PWM Expansion Project, including all four extraction wells, was rejected by the Commission in D.18-09-017, and excluded from the MPWSP prior to this application.

60. The environmental review for the PWM Expansion Project SEIR and the rest of the MPWSP were conducted separately.

61. There is no basis for allocating 28% of common actuals through October 2021 to the EW-1/EW-2 facility.

62. Wells EW-3 and EW-4 are sited in the same location as wells ASR-5 and ASR-6, which were approved for the ASR project as part of the MPWSP but never built.

63. Common actuals for the MPWSP through 2021 allocated to wells ASR-5 and ASR-6 did not provide a benefit for ratepayers because they were never built.

64. The current purpose of the Carmel Valley Pump Station remains the same as its original purpose, as approved in the Regional Desalination Project and the

MPWSP, *i.e.*, to pump water to parts of the Monterey System affected by the SWRCB cease and desist order.

65. Cal-Am's actual financing costs consist of long-term debt and equity.

66. The PWM Expansion Project is expected to take an additional two to three years to complete.

67. The PWM Expansion Project is capital intensive.

68. Water quality permits have proven to be a significant risk to the success of the PWM Project and may continue to pose risks to the operation of the PWM Expansion Project.

69. The Commission authorized AFUDC rates for the Valley Greens Pump Station in D.10-12-016 and D.18-09-017.

70. Cal-Am included \$165,431 in labor overhead costs when calculating the AFUDC for the Company-related facilities.

71. Labor overhead is already included in the rates approved through Cal-Am's GRC.

72. Labor overhead approved in general rate cases does not accrue AFUDC.

73. Review of costs in Cal-Am's next applicable general rate case will allow for adequate record development for the Commission to evaluate costs for the Company-related facilities which are above the adopted cost cap.

Conclusions of Law

1. Because the 6.4 mgd desalination plant was not built by December 31, 2021, and sufficient water capacity is unlikely to be available to meet the near-term need for water for Cal-Am's customers on the Monterey Peninsula, it is necessary for the Commission to consider the PWM Expansion Project and the Amended WPA for the PWM Expansion Project as an alternative source of water for Cal-Am's customers on the Monterey Peninsula.

2. The PWM Expansion Project, including the Cal-Am Company-related facilities, and the Amended WPA are reasonable, prudent, and in the public interest and should be approved.

3. The ratemaking proposals for the Amended WPA, and related facilities, are reasonable.

4. Cal-Am's water supply and demand estimates support approval of the Amended WPA.

5. Cal-Am should be authorized to construct and operate the following Company-related facilities, as part of the PWM Expansion Project: (1) extraction wells EW-3 and EW-4, and related piping, (2) the General Jim Moore Parallel Pipeline and the 1,100-foot section of the Transfer Pipeline; and (3) the Carmel Valley Pump Station.

6. M1W's and MPWMD's estimated costs for the development of facilities necessary to increase production of purified recycled water under the Amended WPA are reasonable.

7. M1W's and MPWMD's estimated costs for purified recycled water under the Amended WPA are reasonable.

8. The SEIR for the PWM Expansion Project prepared by the lead agency, as required by CEQA, is adequate for our decision-making purposes.

9. The Commission should approve and adopt the mitigation measures associated with the construction of Cal-Am's facilities which are detailed in the following sections of the attached Appendix C, SEIR's mitigation and monitoring plan: AE-2, AE-3, AE-4, AQ-1, BT-1a to BT-1d, BT-1f, BT-1h to BT-1k, BT-1m, BT-4, CR-2b, CR-2c, EN-1, NV-1a, NV-1c, NV-1e, NV-1f, NV-2, PS-3, TR-2, TR-3, and TR-4.

10. There is compelling public health and safety need to meet the projected regional water supply demand; therefore, the Commission should adopt the statement of overriding considerations for the PWM Expansion Project, including the Company-related facilities.

11. The necessary water supply resulting from construction of the PWM Expansion Project merits approval of the Amended WPA as well as the PWM Expansion Project, including the Company-related facilities, notwithstanding the significant and unavoidable adverse impact of construction noise and the secondary effects of growth inducement.

12. Water quality requirements necessary to provide purified treated water under the Amended WPA should be monitored closely by M1W, MPWMD, and Cal-Am.

13. The sources of funding for the construction of M1W's and MPWMD's facilities are reasonable.

14. The purchase of treated water under the Amended WPA is just, reasonable, and in the public interest.

15. The Company-related facilities will be used and useful when they start to provide service.

16. A cost cap of \$16,723,704 for the EW-1/EW-2 facility is reasonable.

17. A cost cap of \$30,220,960 for the EW-3/EW-4 facility is reasonable.

18. A cost cap of \$8,264,655 for the Parallel Pipeline facility is reasonable.

19. A cost cap of \$6,475,000 for the Carmel Valley Pump Station facility is reasonable.

20. The labor overhead should be removed from AFUDC calculations.

21. The weighted-average-cost-of-debt should be used to calculate the AFUDC for the EW-1/EW-2 facility, the EW-3/EW-3 facility, and the Parallel Pipeline.

22. The AFUDC rate for the Carmel Valley Pump Station should be authorized at the rate approved in D.10-012-016, from the effective date of this decision to the effective date of D.18-09-017.

23. The weighted average cost for the Carmel Valley Pump Station should be authorized at the AFUDC rate authorized in D.18-09-017 from the effective date of this decision to the present.

24. Cal-Am should record costs for the PWM Expansion Project in a subaccount of the MPWSP Phase 1 Project Costs Memorandum Account called the "PWM Expansion Project Costs Memorandum Account."

25. Cal-Am should seek recovery of costs above the cost caps for the Company-related facilities through the next applicable GRC.

26. The reasonableness of costs for common actuals for the MPWSP not approved in this application should be considered in an application filed by Cal-Am or reviewed through a Commission Order Instituting Investigation in the event the desalination plant is not implemented in a timely manner or fails to operate appropriately.

27. All rulings and orders issued to date by the assigned Commissioner and the assigned ALJ should be affirmed.

28. All pending motions relating to issues in Phase 1 of this proceeding, not expressly addressed by the assigned ALJ or assigned Commissioner should be deemed denied.

29. This proceeding should remain open to consider Phase 2 issues.

O R D E R

IT IS ORDERED that:

1. California-American Water Company is authorized to enter into the Amended and Restated Water Purchase Agreement, attached to this decision as Appendix A.
2. California-American Water Company (Cal-Am) shall actively participate in each Monterey One Water (M1W) and Monterey Peninsula Water Management District (MPWMD), or their successor entities, rate proceedings involving the Amended and Restated Water Purchase Agreement (Amended WPA), attached to this decision as Appendix A. Cal-Am shall serve and file its written comments to the M1W or MPWMD proposal in the applicable rate proceeding(s). Cal-Am's written comments shall identify any and all concerns of Cal-Am with M1W's and MPWMD's proposals and provide alternative recommendations, if appropriate. If Cal-Am has no concerns, Cal-Am, in its written comments, shall state that it has no concerns. At the time Cal-Am serves and files its comments on the service list of the rate proceeding at issue, including M1W or MPWMD, Cal-Am shall simultaneously serve an electronic copy of the comments on the Commission's Director of Water Division and the service list of this proceeding.
3. California-American Water Company is authorized to construct and operate the following Company-related facilities: (1) extraction wells EW-1 and EW-2, and the chemical treatment facility; (2) extraction wells EW-3 and EW-4, and related piping; (3) the General Jim Moore Parallel Pipeline and the 1,100-foot section of the Transfer Pipeline; and (4) the Carmel Valley Pump Station.
4. California-American Water Company must file a "Response to Inquiry" within 30 days of the issuance date of this decision, providing additional

information discussing the extent of mercury above maximum contamination levels in the vicinity of ASR-4, the potential for mercury to impact extracted water from the EW-1/EW-2 site, any proposal to treat the mercury, and the potential cost impacts from mercury treatment as a Tier 3 advice letter to the California Public Utilities Commission's Water Division within 30 days of the issuance date of this decision. Water Division is directed to increase the cost cap herein authorized for the EW-1/EW-2 facility, as reasonable, to address additional remediation measures.

5. The Mitigation Monitoring and Reporting Plan, attached to this decision as Appendix C, is adopted.

6. California-American Water Company (Cal-Am) shall carry out the following identified mitigation measures associated with the construction of Cal-Am's facilities which are detailed in the attached Appendix C: AE-2, AE-3, AE-4, AQ-1, BT-1a to BT-1d, BT-1f, BT-1h to BT-1k, BT-1m, BT-4, CR-2b, CR-2c, EN-1, NV-1a, NV-1c, NV-1e, NV-1f, NV-2, PS-3, TR-2, TR-3, and TR-4.

7. California-American Water Company (Cal-Am) is authorized to construct wells EW-3, EW-4, and the associated pipelines, on condition that Cal-Am complies with the following identified mitigation measures associated with the construction of Cal-Am's facilities which are detailed in the attached Appendix C: AE-2, AE-3, AE-4, AQ-1, BT-1a to BT-1d, BT-1f, BT-1h to BT-1k, BT-1m, BT-4, CR-2b, CR-2c, EN-1, NV-1a, NV-1c, NV-1e, NV-1f, NV-2, PS-3, TR-2, TR-3, and TR-4.

8. California-American Water Company is authorized to track direct costs for the four Company-related facilities, including the allowance for funds used during construction, in a subaccount of the Monterey Peninsula Water Supply

Project Phase 1 Costs Memorandum Account called the “PWM Expansion Project Costs Memorandum Account.”

9. California-American Water Company shall submit a Tier 1 Advice Letter to the Commission’s Water Division within 30 days of the date of issuance of this decision requesting to establish the PWM Expansion Project Costs Memorandum Account for the purpose of tracking PWM Expansion Project costs.

10. Within 60 days after operation commences at any of the Company-related facilities approved in this decision, California-American Water Company shall notify the Director of the Commission’s Water Division by electronic letter indicating that the facility is completed and fully in service.

11. Within 60 days of notifying the Commission’s Water Division of facility operation, California-American Water Company (Cal-Am) shall seek recovery of the costs of Company-related facilities up to the following cost caps using a Tier 2 Advice Letter: (1) \$16,723,704 for extraction wells EW-1 and EW-2, and the chemical treatment facility; (2) \$30,220,960 for extraction wells EW-3 and EW-4 and related piping; (3) \$8,264,655 for the General Jim Moore Parallel Pipeline and the 1,100-foot section of the Transfer Pipeline; and (4) \$6,475,000 for the Carmel Valley Pump Station. Cal-Am’s Tier 2 AL filing shall provide the following: (1) a description of the facilities that are used and useful; (2) whether the costs are reasonable; and (3) whether the facilities are appropriately sized.

12. California-American Water Company is authorized to seek recovery for the additional costs incurred subsequent to October 2021, when the costs exceed the rate caps adopted for the Company-related facilities, through the next applicable general rate case.

13. All rulings issued to date by the assigned Commissioner and the assigned Administrative Law Judge in this proceeding are affirmed.

14. All pending motions relating to issues in Phase 1 of this proceeding, not expressly addressed by the assigned Administrative Law Judge or assigned Commissioner are denied.

15. Application 21-11-024 remains open to resolve Phase 2 issues.

This order is effective today.

Dated December 1, 2022, at San Francisco, California.

ALICE REYNOLDS

President

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE L. HOUCK

JOHN REYNOLDS

Commissioners