

Decision **PROPOSED DECISION OF ALJ HAGA and CHANG** (Mailed 4/10/2025)

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 APPROVING REVISED COST CAP FOR EXTRACTION
WELLS THREE AND FOUR FOR CALIFORNIA-AMERICAN
WATER COMPANY'S PURE WATER MONTEREY
GROUNDWATER REPLENISHMENT
EXPANSION PROJECT**

Summary

This decision approves a revised cost cap amount of \$41,018,272, as proposed by California American Water Company for extraction wells EW-3 and EW-4. The proceeding remains open.

1. Background

Water supply constraints have existed for decades on the Monterey Peninsula.¹ California American Water Company (Cal-Am or Applicant) has

¹ See, e.g., D.18-09-017 (footnotes omitted).

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.²

1.1. Procedural Background

Decision (D.) 22-12-001 authorized Cal-Am to enter into the Amended and Restated Water Purchase Agreement (Amended WPA) with the Monterey Peninsula Water Management District (MPWMD) and Monterey One Water (M1W) for the Pure Water Monterey (PWM) Groundwater Replenishment Expansion Project (PWM Expansion Project). It also authorized the construction of company-related facilities and the associated ratemaking treatment. It allowed cost recovery for those facilities up to certain cost caps by process of a Tier 2 Advice Letter, with costs incurred above the cost caps recoverable through the next applicable general rate case filing.

D.23-03-048 denied rehearing of D.22-12-001 and modified D.22-12-001 to correct factual errors and provided clarifications. As relevant to this phase of the proceeding it modified D.22-12-001 to state:

We have not seen sufficient evidence demonstrating that ASR-5 [aquifer storage and recovery-5] and ASR-6 are the same as EW-3 [Extraction Well-3] and EW-4. ASR-5 and ASR-6 were never built and therefore, ratepayers never

² State Water Resources Control Board (SWRCB) Order WR 95-10 (Jul. 5, 1995). *See also*, SWRCB Order WR 2009-0060 (second cease and desist order with December 31, 2016, deadline for compliance), and SWRCB Order WR 2016-0016 (extending the deadline for compliance to December 31, 2021).

received the benefit of their use as part of the ASR program. 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, at this time, we find it appropriate to exclude the 51% of common actuals for the MPWSP [Monterey Peninsula Water Supply Project] 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. However, we will give Cal-Am the opportunity to serve supplemental testimony in this proceeding, attaching any documentation, to demonstrate that (a) ASR-5 and ASR-6 are the same wells as EW-3 and EW-4 and/or (b) the design, planning, permitting, or construction originally performed by ASR-5 and ASR-6 can and will be used for EW-3 and EW-4 in order to justify Cal-Am's requested \$41,018,272 cost cap. We will also give intervenors 14 days to file rebuttal testimony.³

The Applicant served supplemental testimony on April 20, 2023, and served a corrected version on April 21, 2023.⁴ MPWMD served reply testimony on May 5, 2023.⁵ The Applicant served supplemental rebuttal testimony on May 11, 2023.⁶

A status conference was held on October 23, 2023, to hear from parties on an acceptable date for evidentiary hearing and a proposed briefing schedule. No party requested an evidentiary hearing. On November 9, 2023, the assigned Administrative Law Judge issued a ruling identifying, as exhibits, the supplemental testimony, supplemental reply testimony, and supplemental

³ D.23-03-048 at Ordering Paragraph 9 at 23-24.

⁴ Supplemental Testimony of Ian C. Crooks, Corrected, dated April 21, 2023 (CAW-14).

⁵ Reply Testimony of David J. Stoldt, Dated May 5, 2023 (MPWMD-03).

⁶ Supplemental Rebuttal Testimony of Ian C. Crooks, dated May 11, 2023 (CAW-15).

rebuttal testimony of Cal-Am and MPWMD. No opposition to the exhibits were filed and each exhibit was received as evidence on November 15, 2023.

Opening Briefs were filed by both Cal-Am and MPWMD on December 18, 2023. Reply Briefs were filed by both Cal-Am and MPWMD on January 18, 2024.

1.2. Submission Date

This issue identified in D.23-03-048 was submitted on January 18, 2024, upon the filing of reply briefs.

2. Issues Before the Commission

Cal-Am 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.⁷ Wells EW-3 and EW-4 are located in the same location as two wells previously approved for aquifer storage and recovery (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 claims that EW-3 and EW-4 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 injection of Carmel River water during the wet season.⁸ Along with wells EW-1 and EW-2, EW-3 and EW-4 wells are intended to increase Cal-Am's peak pumping capacity of the PWM Project in order to meet expected peak customer demand.⁹

⁷ CAW-01 at 22, CAW-14 at 3-4, 6-7.

⁸ CAW—1 at 19-20, CAW-14 at 5.

⁹ CAW-01 at 4.

MPWMD challenges the cost of extraction wells EW-3 and EW-4. MPWMD argues the costs for EW-3 and EW-4 should be capped as they are twice as much as wells EW-1 and EW-2, and because the EW-3 and EW-4 well sites are the former site of wells ASR-5 and ASR-6, which was part of the MPWSP.¹⁰

In D.22-12-001, as modified by D.23-03-048, we found that Cal-Am had not met its burden in demonstrating that ASR-5 and ASR-6 are the same wells as EW-3 and EW-4.¹¹ We further found that Cal-Am had not shown that costs it incurred in the design, planning, permitting, and/or construction of ASR-5 and ASR 6 can and will be used for the design, planning, permitting, and/or construction of EW-3 and EW-4.¹²

3. Increasing EW-3 and EW-4 Cost Cap

We review of the supplemental testimony served by Cal-Am to determine if it demonstrates that ASR-5 and ASR-6 are the same wells as EW-3 and EW-4 and/or that work completed on the design, planning, permitting, and/or construction of ASR-5 and ASR-6 can and will be used for the design, planning, permitting, and/or construction of EW-3 and EW-4 in order to justify Cal-Am's requested \$41,018,272 cost cap.¹³ As discussed below, we conclude that Cal-Am has met its burden of justifying its requested increase of cost cap to \$41,018,272.

¹⁰ See, MPWMD-01 at 17, MPWMD-03 at 3-4.

¹¹ See, D.23-03-048 at 8-10.

¹² *Id.* at 13-14.

¹³ *Id.* at 14. See also, *id.* at Ordering Paragraphs 9, 23.

3.1.1. Comparison of ASR-5 and ASR-6 to EW-3 and EW-4

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.¹⁴ The Monterey ASR project involves the injection of excess Carmel River water into the Seaside Groundwater Basis for later extraction and use.¹⁵ The Monterey ASR project is a joint program between MPWMD and Cal-Am,¹⁶ and originally conceived of “up to six dedicated injection/extraction wells ... capable of producing on average 1300 acre-feet per year (AFY).”¹⁷

The Monterey ASR wells were designed as injection and extraction facilities, and there are four ASR wells already constructed and operational at the time of this application.¹⁸ However, only ASR-3 operates as an injection and extraction facility.¹⁹

Wells ASR-5 and ASR-6 were never built as the Cal-Am did not complete their final configuration while the MPWSP was under consideration. While D.18-09-017 approved the MPWSP, it also directed evaluation of PWM expansion,

¹⁴ D.22-12-001 at Finding of Fact 62.

¹⁵ D.16-09-021 at 3, fn.1.

¹⁶ MPWMD Opening Brief at 4.

¹⁷ MPWMD-03 at 2. *See also*, D.10-12-016.

¹⁸ MPWMD-03 at 3-4, *citing*, CAW-14 at 4 (“...ASR-1 and ASR-2 wells, and a water treatment facility [were] completed in 2008, and ASR-3 and ASR-4 wells [were] completed in 2011 and 2013, respectively.”)

¹⁹ CAW-15 at 8, *citing*, SWRCB 2021 determination to discontinue use of ASR-1 and ASR-2 as drinking water sources until minimum underground retention time regulations are met, and recently installed mercury treatment on ASR-4 that may make it available for extraction purposes later in 2023.

which Cal-Am argues required further evaluation of whether ASR-5 and ASR-6 would be either injection and extraction or just extraction. Therefore, Cal-Am determined it should not move forward with construction of ASR-5 and ASR-6 while the PWM Expansion Project was under consideration.²⁰

MPWMD criticizes Cal-Am for not moving forward with construction of ASR-5 and ASR-6 and argues that the ASR and the PWM Project are not the same and Cal-Am's delay has seen water "lost to the ocean" in years with significant excess flows.²¹ MPWMD disagrees with Cal-Am that ASR system operations would be simplified if ASR-1, ASR-2, ASR-3, and ASR-4 were used primarily for injection.²² Further, MPWMD argues that Cal-Am should not recover any costs associated with ASR-5 and ASR-6 as they were never built in accordance with the Commission's authorization. "Siting and drilling wells do not take 15 years," therefore MPWMD argues that while the sites may be the same, the work done for ASR-5 and ASR-6 should not be included in any authorization in this application.

To determine how much of the overall costs for the wells "sited in the same location" should be approved in this decision we do not need to agree with Cal-Am that EW-3 and EW-4 are the same as ASR-5 and ASR-6. We also do not need to agree with MPWMD that EW-3 and EW-4 are not the same as ASR-5 and ASR-6 to make a cost determination. We continue to find persuasive the

²⁰ CAW-15 at 7.

²¹ MPWMD-03 at 2-3.

²² *Id.* at 4.

Supplemental Environmental Impact Report (SEIR) finding that the wells serve different purposes,²³ however, we are further persuaded that because the wells are in the same location there is significant overlap in the design, planning, permitting, and construction that should be considered in our overall cost determination regarding EW-3 and EW-4.

**3.1.2. Applicability of ASR-5 and
ASR-6 Work to EW-3 and EW-4**

While MPWMD does not oppose additional extraction capacity, they do not want it to come at the expense of ASR.²⁴ Therefore, MPWMD posits that since the ASR wells were never constructed, the Commission should agree that ratepayers should not bear any costs related to their design, planning, and environmental review. MPWMD is also concerned that the plan to operate the wells in extraction mode only bolsters Cal-Am's argument that ASR will not provide 1,300 AFY on average.²⁵

Cal-Am argues that the evolution of ASR-5 and ASR-6 to EW-3 and EW-4 reflects its ongoing efforts to develop a long-term water supply solution. Cal-Am states that not only will EW-3 and EW-4 be in the same locations originally proposed for ASR-5 and ASR-6, but they will be drilled to the same depth, screened in the same Santa Margarita sandstone aquifer, and use the same pump, SCADA controls, associated appurtenances, electrical works, pipeline tie-ins, drainage improvements, access driveways, and other site improvements as

²³ D.23-03-048 at 9, *citing*, SEIR, Appendix K at 6.

²⁴ MPWMD Opening Brief at 6.

²⁵ *Id.*

originally proposed for ASR-5 and ASR-6.²⁶ Further, the environmental review of EW-3 and EW-4 relied on the environmental review of ASR-5 and ASR-6.²⁷

Therefore, because we agree with MPWMD that extraction only wells would not cause additional environmental impacts, we do not find persuasive their arguments that the SEIR was just “needed to evaluate what *additional* impacts might occur from the expansion.”²⁸

D.18-09-017 included direction to Cal-Am to negotiate PWM expansion.²⁹ In 2018, Cal-Am conducted the procurement process for construction services for the civil and well drilling components for ASR-5 and ASR-6.³⁰ In early 2019, Cal-Am and MPWMD were both involved in the planning process which ultimately resulted in a decision approving an expanded PWM project.³¹ Further, the only identifiable change to design drawings between November 2020 and July 2022 is renaming them to EW-3 and EW-4.³² As ASR-5 and ASR-6 had not been built, but had completed plans, designs, and environmental review, we are

²⁶ CAW-14 at 7.

²⁷ CAW-14, Attachment 1, Notice of Preparation of Supplemental Environmental Impact Report and Public Scoping Meeting Notice, May 15, 2019, at page 17.

²⁸ MPWMD Opening Brief at 6-7 (emphasis in original).

²⁹ *E.g.*, D.18-09-017 at 39-44, OP 37.

³⁰ *Id.* at 8.

³¹ *Id.* at 5. *See also, id.* at 6, *citing*, Monterey One Water May 15, 2019, Notice of Preparation of a Supplemental Environmental Impact Report and Public Scoping Meeting Notice at 17 (excerpted at CAW-14 Attachment 1).

³² CAW-14 at Attachment 3.

persuaded it was reasonable for Cal-Am to propose repurposing ASR-5 and ASR-6 to EW-3 and EW-4 as part of the PWM expansion negotiations.³³

We understand MPWMD's criticism regarding the delay in constructing ASR-5 and ASR-6, but do not find anything in their testimony that persuades us that Cal-Am was not reasonable in its actions and decision to repurpose the site, plans, design, and other activities toward EW-3 and EW-4. We are not persuaded by MPWMD's testimony that altering the overall injection/extraction plan from six injection/extraction wells for ASR to four injection and four extraction wells for ASR and PWM expansion was unreasonable.³⁴ While MPWMD "strongly disagree[s]" with Cal-Am that ASR operations would be simplified by dedicating ASR-1 to ASR-4 to injection-only,³⁵ we are not persuaded by anything in MPWMD's testimony that would have us find that dedicating ASR-1 to ASR-4 to injection-only would be more complex, costly, or in any way unreasonable. Therefore, in evaluating and designing the PWM Expansion Project, we are persuaded Cal-Am made a reasonable decision to make the EW-3 and EW-4 wells extraction only.³⁶

3.1.3. Conclusion

In D.23-03-048, we provided an opportunity for Cal-Am to show through supplemental testimony that "the design, planning, permitting, or construction

³³ CAW-14 at 7 ("ASR-5 and ASR-6 included a level of uncertainty regarding purpose and were appropriately delayed until the purpose of these facilities was fully determined and approved in D.22-12-001.").

³⁴ *See*, MPWMD-03 at 3-4.

³⁵ *Id.* at 4.

³⁶ CAW-14 at 5-7, CAW-15 at 8-10.

originally performed for ASR-5 and ASR-6 can and will be used for EW-3 and EW-4 in order to justify Cal-Am's requested \$41,018,272 cost cap."³⁷ Based on our review of the supplemental testimony of Cal-Am and the supplemental rebuttal testimony of MPWMD, we are persuaded that Cal-Am has met its burden and justified the requested \$41,018,272 cost cap.³⁸

Here, we agree that Cal-Am made reasonable decisions in light of the facts known, or which should have been known, with respect to ASR-5 and ASR-6 and EW-3 and EW-4 at the time those decisions were made. We believe the acts and decisions made by Cal-Am with respect to EW-3 and EW-4 were made to accomplish the desired result at the lowest reasonable cost consistent with good utility practices.

While MPWMD may be correct to note that Cal-Am had "multiple opportunities since 2004 to construct additional wells," that does not mean that we must disallow costs for work that Cal-Am is repurposing to construct wells EW-3 and EW-4.³⁹ MPWMD has not shown that any of the costs incurred related to ASR-5 and ASR-6 are not just or reasonable, nor made in a manner inconsistent with good utility practices. To be clear, MPWMD does not bear the burden of proving the unreasonableness of Cal-Am's arguments. However, in this case, we do not find its presentation of additional rationale and alternative

³⁷ D.23-03-048 at 13-14 and OP 9 at 24.

³⁸ See, e.g., CAW-14 at 5-11, CAW-15 at 5-6, 10-11.

³⁹ See, e.g., MPWMD-03 at 5-7.

conclusions to be persuasive. After weighing the arguments presented, we can determine the \$41,018,272 cost cap for EW-3 and EW-4 is reasonable.

4. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

There have been no relevant public comments on the Docket Card related to this phase of the proceeding.

5. Procedural Matters

This decision affirms all rulings issued to date, in Phase 1 of this proceeding, by the Administrative Law Judges and assigned Commissioner. All pending motions relating to Phase 1 issues in this proceeding, not expressly ruled to date, are denied.

6. Comments on Proposed Decision

The proposed decision of ALJ Robert Haga and Jack Chang 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. No comments were filed in response to the proposed decision.

7. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Robert Haga and Jack Chang are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. Water supply constraints have existed for decades on the Monterey Peninsula.
2. D.22-12-001 authorizes Cal-Am to enter into the Amended WPA with the MPWMD and M1W for the PWM Expansion Project.
3. D.23-03-048 modified D.22-12-001 to correct factual errors and provide clarifications.
4. D.23-03-048 provided Cal-Am the opportunity to serve supplemental testimony in this proceeding, attaching any documentation, to demonstrate that (a) ASR-5 [aquifer storage and recovery-5] and ASR-6 are the same wells as [Extraction Well-3] EW-3 and EW-4 and/or (b) the design, planning, permitting, or construction originally performed by ASR-5 and ASR-6 can and will be used for EW-3 and EW-4 in order to justify Cal-Am's requested \$41,018,272 cost cap.
5. To determine how much of the overall costs for the wells sited in the same location should be approved in this decision we do not need to agree with Cal-Am that EW-3 and EW-4 are the same as ASR-5 and ASR-6. We also do not need to agree with MPWMD that EW-3 and EW-4 are not the same as ASR-5 and ASR-6 to make a cost determination.
6. EW-3 and EW-4 are located in the same location 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.
7. EW-3 and EW-4 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 injection of Carmel River water during the wet season.

8. The ASR wells were designed as injection and extraction facilities and there are four ASR wells already constructed and operational at the time of this application.

9. D.18-09-017 directed evaluation of PWM expansion.

10. Cal-Am determined it should not move forward with construction of ASR-5 and ASR-6 while the PWM Expansion Project was under consideration.

11. Though MPWMD criticizes Cal-Am for not moving forward with construction of ASR-5 and ASR-6 and argues that the ASR and PWM are not the same, because the wells are in the same location there is significant overlap in the design, planning, permitting, and construction that should be considered in our overall cost determination regarding EW-3 and EW-4.

12. EW-3 and EW-4 are in the same locations originally proposed for ASR-5 and ASR-6, and they will be drilled to the same depth, screened in the same Santa Margarita sandstone aquifer, and use the same pump, SCADA controls, associated appurtenances, electrical works, pipeline tie-ins, drainage improvements, access driveways, and other site improvements as originally proposed for ASR-5 and ASR-6.

13. The environmental review of EW-3 and EW-4 relied on the environmental review of ASR-5 and ASR-6.

14. In early 2019 Cal-Am and MPWMD were both involved in the planning process which ultimately resulted in a decision approving an expanded PWM project.

15. The only identifiable change to design drawings between November 2020 and July 2022 is renaming them to EW-3 and EW-4.

16. Cal-Am made a reasonable decision to make the EW-3 and EW-4 wells extraction only.

17. Cal-Am has met its burden and justified the requested \$41,018,272 cost cap.

18. The acts and decisions made by Cal-Am with respect to EW-3 and EW-4 were made to accomplish the desired result at the lowest reasonable cost consistent with good utility practices.

19. The presentation by MPWMD of additional rationale and alternative conclusions is not persuasive.

Conclusions of Law

1. A \$41,018,272 cost cap for EW-3 and EW-4 is reasonable.
2. It was reasonable for Cal-Am to propose repurposing ASR-5 and ASR-6 to EW-3 and EW-4 as part of the PWM expansion negotiations.
3. Cal-Am made reasonable decisions in light of the facts known, or which should have been known, with respect to ASR-5 and ASR-6 and EW-3 and EW-4 at the time those decisions were made.
4. All rulings in Phase 1 of this proceeding, issued to date, by the Administrative Law Judges and assigned Commissioner should be affirmed.
5. All pending motions on Phase 1 issues in this proceeding, not expressly ruled on, should be denied.
6. The proceeding should remain open.

O R D E R**IT IS ORDERED** that:

1. A revised cost cap amount of \$41,018,272, as proposed by California American Water Company for extraction wells EW-3 and EW-4 is approved.
2. Within 60 days of notifying the Commission's Water Division of facility operation, California-American Water Company (Cal-Am) may seek recovery of the costs of Company-related facilities up to the following cost caps using a Tier 2 Advice Letter (AL): \$41,018,272 for extraction wells EW-3 and EW-4 and related piping. Cal-Am's Tier 2 AL filing shall provide a description of the facilities that are used and useful.
3. California-American Water Company is authorized to seek recovery for the additional costs incurred after October 2021, if the costs exceed the rate caps adopted for the Company-related facilities, through the next applicable general rate case.
4. All rulings relating to issues in Phase 1 of this proceeding, issued to date, by the assigned Commissioner and the assigned Administrative Law Judge are affirmed.
5. 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.
6. Application 21-11-024 remains open to resolve Phase 2 issues.

This order is effective today.

Dated _____, at North Tahoe Events Center, 8318 North Lake Boulevard, Kings Beach, CA 96143.

