



September 23, 2011

Draft Resolution W-4889  
Agenda ID #10721

TO: All Interested Persons

Enclosed is draft Resolution W-4889 of the Division of Water and Audits approving a request by California-American Water Company to implement a surcharge to recover \$1,146,053.61 of the balance in the water contamination litigation memorandum account for its Los Angeles District. Draft Resolution W-4889 will be on the Commission's November 10, 2011 agenda. The Commission may act then on this resolution or it may postpone action until later.

When the Commission acts on a draft resolution, the Commission may adopt all or part of the draft resolution, as written, or amend or modify the draft resolution; or the Commission may set the draft resolution aside and prepare a different resolution. Only when the Commission acts does the resolution become binding.

Interested persons may submit comments on draft Resolution W-4889. An original of the comments, with a certificate of service, should be submitted to:

Division of Water and Audits, Third Floor  
Attention: Robert Weissman  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Division of Water and Audits, Third Floor  
Attention: Rami Kahlon  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Interested persons must serve a written or electronic copy of their comments on the utility on the same date that the comments are submitted to the Division of Water and Audits. Interested persons may submit comments on or before October 13, 2011.

Comments should focus on factual, legal, or technical errors or policy issues in the draft resolution.

Persons interested in receiving comments submitted to the Division of Water and Audits may write to Robert Weissman, email him at [srw@cpuc.ca.gov](mailto:srw@cpuc.ca.gov), or telephone him at (415) 703-2741

/s/ RAMI S. KAHLON  
Rami S. Kahlon, Director  
Division of Water and Audits

Enclosures: Draft Resolution W-4889  
Certificate of Service  
Service List

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA****DIVISION OF WATER AND AUDITS****Water and Sewer Advisory Branch****RESOLUTION NO. W-4889****November 10, 2011****R E S O L U T I O N**

**(RES. W-4889) CALIFORNIA AMERICAN WATER COMPANY (CAL AM). ORDER APPROVING REQUEST TO IMPLEMENT A SURCHARGE TO RECOVER \$1,146,053.61 OF THE BALANCE IN THE WATER CONTAMINATION LITIGATION MEMORANDUM ACCOUNT FOR ITS LOS ANGELES DISTRICT.**

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**SUMMARY**

This resolution grants Cal Am the authority to implement a surcharge of \$0.1156 per hundred cubic feet (Ccf) for 12 months to recover the balance of \$1,146,053.61 as of February 28, 2011, in the Water Contamination Litigation Memorandum Account (WCLMA) for its Los Angeles district.

Cal Am filed Advice Letter (AL) 905-W on May 27, 2011, with a Tier 2 designation to recover the balance in the WCLMA. The Division of Water and Audits (DWA) informed Cal Am that this advice letter should be designated Tier 3 in accordance with General Order 96-B (G.O. 96-B), Water Industry Rule 7.3.3 (7).

**BACKGROUND**

Cal Am submitted AL 905-W with a Tier 2 designation to recover the balance in the WCLMA. General Order 96-B, Water Industry Rule 7 - Disposition of Advice Letter - Rule 7.3.3 states that the following advice letters may not be deemed approved and generally will be disposed of by Commission resolution pursuant to General Rule 7.6.2. Specifically, Rule 7.3.3 (7) refers to Memorandum Account amortization as a Tier 3 advice letter. DWA determined that AL 905-W should be designated Tier 3 based on G.O. 96-B, Water Industry Rule 7.3.3(7). DWA suspended this advice letter, informed Cal Am of the suspension to AL 905-W and prepared this resolution for Commission consideration.

Water contamination litigation expense memorandum accounts were authorized by the Commission in Res. W-4094, dated March 26, 1998. Cal Am established the WCLMA

via AL No. 523 filed on May 7, 1998. The WCLMA was established to track litigation costs associated with water contamination cases across all of Cal Am's districts. In Res. W-4094, the Commission authorized all water utilities to establish memorandum accounts to track water contamination litigation expenses and to file for recovery of reasonable expenses in a subsequent general rate case application. Cal Am filed for recovery of the expenses tracked in the WCLMA in Application (A.) 10-07-007, its current general rate case proceeding, and the Division of Ratepayer Advocates (DRA) audited the WCLMA as part of its review of Cal Am's A.10-07-007. Based on the results of the DRA audit (see the discussion below), AL 905-W requests Commission authorization to begin amortization of the audited balance sooner than would be provided for were Cal Am required to wait for a Commission decision in A.10-07-007.

### **NOTICE, SERVICE, PROTESTS AND RESPONSES**

Pursuant to General Rule 4.3 of General Order 96-B, Cal Am served AL 905-W on May 27, 2011, to the service list attached to Advice Letter 905-W. This service list includes the persons set forth in Water Industry Rule 4.1 of General Order 96-B. Advice Letter 905-W was served in accordance with General Rule 7.2 of General Order 96-B. Pursuant to Water Industry Rule 3.1 of General Order 96-B, Cal Am provided notice of AL 905-W to its customers through a text message on customer's monthly bill. No protests were received to AL 905-W.

### **DISCUSSION**

Cal Am has a balance in the WCLMA of \$1,146,053.61 as of February 28, 2011. The balance represents 4.28% of the most current authorized operating revenues of \$26,773,302 approved in AL 865-W. Standard Practice U-27-W, Rule 56.b., states that reserve and memorandum account amortization surcharges shall be spread over one year for under collections of less than 5% of gross revenues. Cal Am requests implementation of a \$0.1156 per Ccf surcharge for all customers in the Los Angeles District for 12 months to amortize the balance in the WCLMA.

Cal Am previously filed AL 580 on March 21, 2003, to increase rates by \$944,289 over a two year period to recover the under-collection in the WCLMA. Commission Resolution W-4528 dated April 21, 2005, authorized Cal Am to implement a surcharge of \$0.0492 per Ccf over a period of two years to recover the \$944,289. Cal Am states that \$64,481.73 of the \$944,289 contamination litigation expenses previously approved by Res. No. W-4528 are unrecovered.

In the settlement agreement between the DRA and Cal Am in the 2009 general rate case approved by Commission in Decision 10-06-038, the parties agreed that the \$1,000,600 balance in the Los Angeles district water contamination account should be audited before recovery. DRA audited the recorded balance of \$1,143,326 in the WCLMA as of May 31, 2010, as part of its review in the Cal Am general rate case, A.10-07-007. DRA 's audit included the \$1,000,600 Cal Am requested in the 2009 general rate case and the difference between the \$1,000,600 and the current outstanding balance of \$1,143,326 as of May 31, 2010.

The results of DRA's audit are set forth in Exhibit 14 (dated January 21, 2011) in A.10-07-007. DRA found that the outstanding balance is related to the legal and consulting fees in the Adler water contamination lawsuit. DRA requested Cal Am to provide all documents which support the \$1,143,326 balance requested for recovery. DRA requested Cal Am to provide invoices and supporting documents to support selected accounting records. DRA reviewed the invoices Cal Am provided and traced these amounts to Cal Am's supporting worksheets. DRA also traced trial balances to Cal Am's supporting work papers and documents.

DRA's audit recommends that the Commission approve the recovery of the \$1,143,326 balance consistent with Standard Practice U-27-W. DRA's audit finds that the costs booked to the WCLMA are associated with legal and consulting fees in the Adler water contamination lawsuit. DRA finds that Cal Am's action in incurring these costs is prudent. Further, DRA's audit finds that the legal and consulting fees that Cal Am incurred in defending itself were reasonable and, thus, that the costs booked in the WCLMA are reasonable. DRA finds that no outstanding matters came to the attention of DRA during its examination. Also, Cal Am provided documentation that the only costs it booked in the WCLMA are costs associated with water contamination lawsuits against the utility. Cal Am agrees with the conclusions in DRA's audit.<sup>1</sup> We find in this instance that DRA's uncontested audit results of the WCLMA in Cal Am's current general rate case is sufficient to authorize the start of amortization of the WCLMA balance now rather than waiting for this issue to be considered as part of the broader set of issues in A.10-07-007.

DRA's audit concludes that for any future costs booked into the WCLMA, when Cal Am files for recovery of the balance, Cal Am should provide evidence of insurance against lawsuits including contamination lawsuits, documentation from its insurance company of the amount of all proceeds to offset these litigation costs, documentation of where Cal Am booked the proceeds from the insurance company, and documentation

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<sup>1</sup> Additionally, DRA's audit was served on the parties to A.10-07-007, and no party in A.10-07-007 has filled comments or testimony disputing the results of DRA's audit or arguing that recovery of the WCLAMA should not be allowed.

that Cal Am only booked costs in the account associated with water contamination lawsuits against the utility. In this instance, Cal Am provided the DWA evidence that Cal Am has insurance against lawsuits including contamination lawsuits. Cal Am provided the DWA documentation from its insurance company that Cal Am has not received any insurance proceeds related to contamination lawsuits.

Based on the results of the Division of Ratepayer Advocates' audit we find that when Cal Am files for recovery of future balances in the Water Contamination Litigation Memorandum Account, Cal Am should provide evidence of insurance against lawsuits including contamination lawsuits, documentation from its insurance company of the amount of all proceeds to offset these litigation costs, documentation of where Cal Am booked the proceeds from the insurance company, and documentation that Cal Am only booked costs in the account associated with water contamination lawsuits against the utility.

In order to recover from ratepayers costs recorded in a memorandum account, a utility must show that (1) it acted prudently when it incurred these costs; (2) the level of booked costs is reasonable; (3) the costs incurred are not covered by other authorized rates; and (4) it is appropriate for ratepayers, as a matter of policy, to pay for these categories of costs in addition to otherwise authorized rates. (See Res. W-4824, Ordering Paragraph 5.) As discussed below, Cal Am has made a showing on all these points.

We have reviewed the information Cal Am has provided in AL 905-W and DRA's audit. We agree with the analysis and conclusions in DRA's audit. We find that Cal Am acted prudently when it incurred the costs in the WCLMA, as these costs relate to water contamination litigation initiated against Cal Am, and the utility needed to act to defend itself with respect to these allegations. As discussed above, DRA audited Cal Am's expenditures and concluded that Cal Am spent reasonable amounts in legal and consulting fees in addressing the Alder water contamination litigation. We agree with DRA's conclusions and find that the level of the costs Cal Am booked in the WCLMA is reasonable. We have determined that a portion of the recovery the Commission authorized in Res. No. W-4528 was never recovered and that the Commission has not authorized recovery of the costs in the WCLMA in any other past proceedings. Accordingly, the costs Cal Am has requested to recover here are not covered by other authorized rates. Finally, we determined in Res. W-4094 that water utilities should be authorized to file for recovery of reasonable expenses recorded in water contamination litigation memorandum accounts. (Res. W-4094, Finding and Conclusion #4.) As such, we determine as a matter of policy that ratepayers should pay for reasonable water contamination litigation expenses in addition to otherwise authorized rates.

Cal Am has stated that \$2,727.61 of accrued interest from May 31, 2010, through February 28, 2011, has been added to the \$1,143,326 recorded balance as of May 31, 2010, for the WCLMA. DWA recommends that the \$1,143,326 recorded balance as of May 31, 2010, plus the accrued interest of \$2,727.61 from May 31, 2010, through February 28, 2011, for a total of \$1,146,053.61 in the WCLMA should be recovered pursuant to Standard Practice U-27-W. DWA recommends that a surcharge of \$0.1156 per Ccf for water usage during a 12-month period in Cal Am's Los Angeles District should be approved.

## **COMMENTS**

Public Utilities Code § 311(g)(1) generally requires that resolutions must be served on all parties and be subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, on September 13, 2011, the draft Resolution was mailed for 30-day public review and comment to the utility. (There were no protestants to this advice letter.) This Resolution is also being served for 30-day public review and comment on the service list to A.10-07-007 because Cal Am initially filed for recovery of the WCLMA as part of A.10-07-007, which is its current general rate case.

## **FINDINGS AND CONCLUSIONS**

1. California American Water Company requests approval to recover the balance of \$1,146,053.61 as of February 28, 2011, in its Water Contamination Litigation Memorandum Account for its Los Angeles District pursuant to Standard Practice U-27-W.
2. California American Water Company filed Advice Letter 905-W with a Tier 2 designation.
3. Pursuant to General Rule 4.3 of General Order 96-B, California American Water Company served Advice Letter 905-W on May 27, 2011, to the service list attached to Advice Letter 905-W. This service list included the persons set forth in Water Industry Rule 4.1 of General Order 96-B. Advice Letter 905-W was served in accordance with General Rule 7.2 of General Order 96-B.
4. The Division of Water and Audits determined that Advice Letter 905-W should be designated Tier 3 based on General Order 96-B, Water Industry Rule 7.3.3 (7).
5. The Division of Water and Audits informed California American Water Company that Advice Letter 905-W was designated Tier 3 and was suspended.

6. California American Water Company has a balance in the Los Angeles District's Water Contamination Litigation Memorandum Account of \$1,146,053.61 as of February 28, 2011.
7. California American Water Company states that \$64,481.73 of the \$944,289 in the Water Contamination Litigation Memorandum Account for its Los Angeles District previously approved by Resolution No. W-4528 is unrecovered.
8. The California American Water Company balance of \$1,146,053.61 represents 4.28% of the most currently authorized operating revenues of \$26,773,302 approved in Advice Letter 865-W.
9. Standard Practice U-27-W, Rule 56.b., states that reserve and memorandum account amortization surcharges shall be spread over one year for under collections of less than 5% of gross revenues.
10. California American Water Company meets the requirements of Standard Practice U-27-W for a surcharge to amortize the balance in the Water Contamination Litigation Memorandum Account for its Los Angeles District over one year.
11. California American Water Company has requested a surcharge of \$0.1156 per hundred cubic feet for 12 months to amortize the balance in the Water Contamination Litigation Memorandum Account for its Los Angeles District.
12. California American Water Company has provided the Division of Water and Audits evidence that California American Water Company has insurance against lawsuits including contamination lawsuits.
13. California American Water Company has provided the Division of Water and Audits documentation from its insurance company that California American Water Company has not received any insurance proceeds related to contamination lawsuits.
14. Cal Am provided documentation that the only costs it booked in the Water Contamination Litigation Memorandum Account are costs associated with water contamination lawsuits against the utility.
15. The Division of Ratepayer Advocates audited the recorded balance of \$1,143,326 in the Water Contamination Litigation Balancing Account for Cal Am's Los Angeles District as of May 31, 2010.

16. In Exhibit 14 (dated January 21, 2011) in Application 10-07-007, which sets forth the results of the Division of Ratepayer Advocates' audit, the Division of Ratepayer Advocates recommended that the Commission approve the recovery of the \$1,143,236 balance as of May 31, 2010, consistent with Standard Practice U-27-W.
17. The Division of Ratepayer Advocates' audit finds that the costs booked to the Water Contamination Litigation Memorandum Account are associated with legal and consulting fees in the Adler water contamination lawsuit. The Division of Ratepayer Advocates' audit finds that Cal Am acted prudently when it incurred costs booked to the Water Contamination Litigation Memorandum Account.
18. The Division of Ratepayer Advocates' audit finds that the costs booked in the Water Contamination Litigation Memorandum Account are reasonable and no outstanding matters came to the attention of the Division of Ratepayer Advocates during its examination.
19. Based on the results of the Division of Ratepayer Advocates' audit we find that Cal Am acted prudently when it incurred these costs and the level of the costs booked in the Water Contamination Litigation Memorandum Account are reasonable.
20. Based on the results of the Division of Ratepayer Advocates' audit we find that when Cal Am files for recovery of future balances in the Water Contamination Litigation Memorandum Account, Cal Am should provide evidence of insurance against lawsuits including contamination lawsuits, documentation from its insurance company of the amount of all proceeds to offset these litigation costs, documentation of where Cal Am booked the proceeds from the insurance company, and documentation that Cal Am only booked costs in the account associated with water contamination lawsuits against the utility.
21. The costs requested in the Water Contamination Litigation Memorandum Account are not covered by other authorized rates.
22. Commission Resolution W-4094 found that water utilities should be authorized to file for recovery of reasonable expenses recorded in water contamination litigation memorandum account.
23. As a matter of policy it is appropriate for ratepayers to pay for water contamination litigation expenses in addition to otherwise authorized rates.



24. California American Water Company has shown that \$2,727.61 of interest has accrued from May 31, 2010, through February 28, 2011, in the Water Contamination Litigation Memorandum Account for the Los Angeles District.
25. The Division of Water and Audits recommends that the Division of Ratepayer Advocates audited balance of \$1,143,326 plus the accrued interest of \$2,727.61 in the Water Contamination Litigation Memorandum Account for Cal Am's Los Angeles District should be approved for recovery.
26. The Division of Water and Audits determined that a surcharge of \$0.1156 per hundred cubic feet for a 12-month period should amortize \$1,146,053.61 and should be approved.
27. On September 13, 2011, the draft Resolution was mailed for 30-day public review and comment to the utility. (There were no protestants to this advice letter.) This Resolution is also being served for 30-day public review and comment on the service list to A.10-07-007 because Cal Am initially filed for recovery of the WCLMA as part of A.10-07-007, which is its current general rate case.

**THEREFORE, IT IS ORDERED THAT:**

1. California American Water Company's tariff sheets filed with Advice Letter 905-W and attached to this Resolution that amortize \$1,146,053.61 in the Water Contamination Litigation Memorandum Account for its Los Angeles District through a 12-month surcharge of \$0.1156 per hundred cubic feet are approved. The effective date of the revised rate schedules shall be five days after the effective date of this Resolution.
2. California American Water Company is authorized to transfer \$1,146,053.61 from its Water Contamination Litigation Memorandum Account to a balancing account for recovery over a period of twelve months. California American Water Company is authorized to earn interest on the balance in this balancing account, at the 90-day commercial paper rate, from the effective date of this Resolution.
3. California American Water Company is ordered to provide evidence of insurance against lawsuits including contamination lawsuits, documentation from its insurance company of the amount of all proceeds to offset these litigation costs, documentation of where California American Water Company booked the proceeds from the insurance company, and documentation that California American Water Company only booked costs in the account associated with water contamination

lawsuits against the utility when it files for recovery of future balances in the Water Contamination Litigation Memorandum Account.

4. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 10, 2011; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director

## CERTIFICATE OF SERVICE

I certify that I have by electronic mail and mail this day served a true copy of draft Resolution W-4889 on all parties in these filings or their attorneys as shown on the attached list.

Dated September 23, 2011, at San Francisco, California.

\_\_\_\_\_/s/ JOSIE L. JONES

Josie L. Jones

Parties should the Division of Water and Audits, Public Utilities Commission, 505 Van Ness Avenue, Room 3106, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number of the service list on which your name appears.

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