

Decision 10-09-026 September 23, 2010

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of CALIFORNIA WATER  
SERVICE COMPANY, (U60W), a California  
corporation, for an order to issue and sell  
additional debt and equity securities not  
exceeding the aggregate amount of  
\$350,000,000 and other related requests.

Application 10-01-013  
(Filed January 7, 2010)

**DECISION AUTHORIZING CALIFORNIA WATER SERVICE COMPANY TO  
ISSUE DEBT AND EQUITY SECURITIES**

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## **DECISION AUTHORIZING CALIFORNIA WATER SERVICE COMPANY TO ISSUE DEBT AND EQUITY SECURITIES**

### **1. Summary**

This decision grants the application of California Water Service Company (CalWater), pursuant to Sections 816 through 830, and 851 of the California Public Utilities Code,<sup>1</sup> to:

1. Issue additional debt and equity securities of up to \$350 million in aggregate for purposes described in Sections 817(a) through (h) (inclusive). These purposes primarily include property acquisition, construction, completion, extension or improvement of facilities. Other purposes described in Section 817 include refunding obligations, retiring other securities, reimbursement of the treasury or reorganization of its capitalization or indebtedness.
2. Be exempted from the Commission's Competitive Bidding Rule in relation to the sale of debt.
3. Amortize any discount, expense, or premium associated with the issuance or redemption of its long-term obligations before the date of maturity of the first issue ratably over the remaining life of the replacement obligation.

This decision also finds that CalWater's existing unsecured line of credit results in only short-term obligations and so does not require Commission authorization as long-term debt.

CalWater's request to modify the provisions of its unsecured line of credit in its Credit Agreement to allow the use of the credit facility for terms up to 24 months is denied without prejudice.

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<sup>1</sup> All statutory references are to the Pub. Util. Code unless otherwise noted.

The authority granted is subject to the conditions specified below.

Application 10-01-013 is closed.

## **2. Background**

California Water Service Company (CalWater) is a Class A water utility subject to the jurisdiction of this Commission and distributes water for domestic and industrial purposes in many localities in California.

CalWater filed Application (A.) 10-01-013 (Application) on January 7, 2010, requesting authorization to issue additional debt and equity (New Securities) in the aggregate principal amount of \$350,000,000. CalWater states it will use the proceeds of equity securities to fund the retirement of all or a portion of CalWater's then outstanding short-term bank loans, and the balance, if any, for any or all purposes as may be allowed under Section 817. These purposes include: a) water utility plant construction, completion, replacement, extension or improvements of its existing facilities, b) acquisition of property and/or water systems, c) retirement of maturing long-term debt, d) satisfying First Mortgage Bond sinking fund requirements, and e) reimbursement of moneys previously expended from income for which CalWater's treasury has not been reimbursed.

No responses to the Application were received.

In support of its request for authority to issue the debt and equity securities, CalWater's Application includes exhibits and statements<sup>2</sup> as required by the following rules:<sup>3</sup>

- a. As required by Rule 2.3 - A balance sheet as of September 30, 2008 and 2009, a pro-forma income statement and return of

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<sup>2</sup> See Application at 4-9.

<sup>3</sup> All references to Rules are to the Commission's Rules of Practice and Procedure.

equity calculation, schedule of capital stock and long-term debt, projected funding for utility plant, estimated cash flow, a summary of issuance of debt and equity authorized in Decision (D.) 04-09-002, a statement of actual and pro-forma capitalization, and a computation of fee statement.<sup>4</sup>

- b. As required by Rule 3.5(a) - A description and the costs of CalWater's property.
- c. As required by Rule 3.5(b) - A statement of the amount of stocks and bonds which CalWater desires to issue.
- d. As required by Rule 3.5(c) - The purposes for which stocks and bonds will be issued.
- e. As required by Rule 3.5 (d) - A description of the obligation or liability assumed by CalWater.
- f. As required by Rule 3.5 (e) - A Proxy Statement.
- g. As required by Rule 3.5(f) - References and descriptions of the financial instruments defining the terms of the proposed securities.
- h. As required by Rule 3.5(g) - A statement that CalWater has no specific plans to retire or exchange securities at this time.

CalWater anticipates issuing equity in the form of common stock and debt securities, including First Mortgage Bonds, Secured Notes, Unsecured Senior Notes, or Tax-Free Bonds to the extent available under the state volume cap. CalWater requests the maximum degree of flexibility for its decisions as to the timing, size and terms of the debt offerings(s).

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<sup>4</sup> The fee computation is discussed below in Section 10.

CalWater requests exemption from the Commission's Competitive Bidding Rule with respect to debt securities similar to the exemption provided in D.09-03-038.<sup>5</sup>

No responses to the Application were received.

On May 14, 2010, an assigned Administrative Law Judge's (ALJ) ruling requested information from CalWater. CalWater responded on May 28, 2010.

On June 11, 2010 and June 22, 2010, ALJ rulings requested additional information from CalWater. CalWater responded to the rulings on June 18, 2010 (June 18 Response), and July 2, 2010 (July 2 Response), respectively.<sup>6</sup>

This proceeding was submitted on July 2, 2010.

### **3. Discussion**

CalWater has previously issued debt and equity securities authorized by this Commission. In D.04-09-002, September 2, 2004, the Commission authorized \$250,000,000 of stock or debt securities, and in D.09-03-038, March 26, 2009, the Commission authorized issuance of \$100,000,000 of First Mortgage Bonds.

#### **A. Issuance of Equity Securities**

CalWater proposes to issue equity in the form of shares of its common stock, which will be issued solely to its parent company, CalWater Service Group (Group). Group is CalWater's only shareholder and owns all of CalWater's outstanding common and preferred shares.

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<sup>5</sup> D.09-03-038 (Ordering Paragraph 1) provided that CalWater was exempt from the competitive bidding rule to the extent that no one series of debt issuance exceeds \$20 million and/or no one purchaser is permitted to acquire from CalWater more than \$20 million in debt in a calendar year.

<sup>6</sup> All ALJ Rulings and CalWater's responses are included in the correspondence file.

CalWater proposes to use the proceeds from the sale of equity securities in order to fund the retirement of all or a portion of CalWater's then outstanding short-term bank loans, and the balance, if any, for any or all purposes as may be allowed under Section 817. These purposes include:

- (1) Water utility plant construction, completion, replacement, extension or improvements of its existing facilities,
- (2) Acquisition of property and/or water systems,
- (3) Retirement of maturing long-term debt,
- (4) Satisfying First Mortgage Bond sinking fund requirements, and
- (5) Reimbursement of moneys previously expended from income for which CalWater's treasury has not been reimbursed.

#### **B. Issuance of Debt Securities**

If CalWater issues debt securities, it shall not exceed in the aggregate \$350,000,000 when combined with its proposed equity financing. Because of the possibility of changing market conditions over the period covered by this application,<sup>7</sup> CalWater desires to retain the maximum degree of flexibility for its decision as to the timing, size, and terms of the debt offering(s). Therefore, debt issues may include one of more types of financial obligations: First Mortgage Bonds, Secured Notes, Unsecured Senior Notes, or Tax-Free Bonds to the extent available under the state volume cap. CalWater seeks authority at this time to issue debt securities rather than waiting until all terms and conditions are known so as to have authority in a fluctuating money market to secure longer-term indebtedness expeditiously, at the lowest possible cost, and with the most favorable terms.

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<sup>7</sup> CalWater proposes to issue the requested \$350,000,000 of New Securities through 2014.

We make no finding regarding the reasonableness of the rates, terms, and conditions of debt issued by CalWater pursuant to the exemptions and modifications granted herein. CalWater's capital structure, interest rates, and associated fees will be reviewed for reasonableness in its next general rate case (GRC) or cost of capital proceeding.

#### **4. Competitive Bidding Rule**

The Competitive Bidding Rule set forth in Resolution (Res.) F-616 dated October 1, 1986 exempts bond issues of \$20,000,000 or less from the competitive bidding requirement. CalWater states that it will continue, as ordered in D.09-03-038, to limit direct purchases of its bonds to issuances of \$20 million of debt per purchaser in a calendar year.

CalWater requests that it be exempted from the Competitive Bidding Rule with respect to its debt securities, and states that its situation is similar to that described by Golden State Water Company (GSWC) in A.06-10-029. In that proceeding, the Commission, by D.07-02-014, granted a full exemption from the Competitive Bidding Rule. Like GSWC, CalWater is a relatively small and infrequent participant in the capital and debt markets, having last issued equity in 2006 and having last issued debt in 2009 and 2006, and like GSWC, CalWater states that its debt offerings require substantial marketing efforts to potential investors. Consequently, in a competitive bidding process, bidding underwriters would be unable to obtain adequate market intelligence on CalWater and the resulting bids would be less cost-effective than bond purchases through negotiated offerings.



The Commission has granted Competitive Bidding Rule exemptions to CalWater and similar water utilities in the past for issues of debt and equity.<sup>8</sup> In addition, due to its size and the fact that CalWater is a relatively small infrequent participant in the capital and debt markets, use of competitive bidding for bonds is not viable. Therefore, CalWater should be granted the requested exemption from the Competitive Bidding Rule. Nevertheless, in the event that CalWater finds it necessary to go beyond the \$20,000,000 Competitive Bidding Rule threshold for purchases by any one purchaser in a calendar year, such public offerings of fixed interest rate debentures and First Mortgage Bonds in the principal amount of over \$20,000,000 to \$350,000,000 must comply with Res. F-616.

#### **5. Authorization for Refinancing Accounting**

CalWater requests that the Commission authorize it to amortize any of the discount, expense, or premium associated with the issuance or redemption of its long-term obligations before the date of maturity of the first issue ratably over the remaining life of the replacement obligation.

The Commission's Uniform System of Accounts for Class A Water Utilities, Instructions for Balance Sheet Accounts, paragraph 6.E provides:

When the redemption of one issue or Series of bonds or other long term obligations is financed by another issue or series before the date of maturity of the first issue, any unamortized discount expense or premium on the first issue and any premium paid or discount earned on reacquirement shall be debited or credited, as appropriate, to Account 414, Miscellaneous Debits to Surplus, or Account 401, Miscellaneous Credits to Surplus, provided, however, that the utility desires to amortize any of the discount, expense, or

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<sup>8</sup> See, for example, D.09-03-038 (A.09-01-012) and D.06-07-035 (A.06-05-005).

premium associated with the issuance or redemption of the first issue over a period subsequent to the date of redemption, the permission of the Commission must be obtained.

CalWater explains that whenever it makes an early redemption of obligations, the purpose is to lower the debt costs for the benefit of ratepayers. Therefore, the transaction costs and any remaining unamortized discount expense, or premium from the first issue should be recoverable in rates. Furthermore, as customers benefit from the lower financing costs over the life of the replacement obligation, CalWater requests that the transactional costs be amortized ratably over the life of the new obligation. We agree, as this matches the benefits of an obligation with the costs.

**6. The Existing Unsecured Line of Credit Does Not Require Commission Authorization**

CalWater states that it has entered into an unsecured Credit Agreement<sup>9</sup> having a three-year term and providing a revolving line of credit for short-term financing to meet operational cash requirements and to facilitate issuance of long-term debt and equity at orderly intervals.

The Credit Agreement established through a syndicate of banks is not secured by the plant, property or equipment of CalWater. Furthermore, the Credit Agreement limits borrowings, loans, credit extensions, and letters of credit under the agreement to terms of 12 months or less and contains a provision requiring that the line of credit must be paid off in full for at least 30 consecutive days out of each 12-month period. CalWater contends that under

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<sup>9</sup> The Credit Agreement is 150 pages in length and therefore exceeds the Commission's size limitations for filing and electronic transmission. A paper copy of the Credit Agreement is identified as Exhibit 1 and received into the record.

this provision any debt would qualify as a short-term obligation, not subject to Sections 816-830. CalWater seeks confirmation that its unsecured line of credit and the debt issued under its provisions does not require Commission authorization.

Section 823(b) provides that a utility may issue notes, for proper purposes and not in violation of any provision of law, payable at periods of not more than 12 months after the date of issuance of the notes without consent of the Commission. Our review indicates that the Credit Agreement meets the requirements of Section 823(b).

Although the Credit Agreement meets the requirements of Section 823(b), we remind CalWater that Section 823(d) prohibits refunding short term debt through the issuance of stocks or stock certificates, bonds, notes of any term on character without the consent of the Commission. Therefore, although we find that the Credit Agreement is not subject to Sections 816-830 of the Code, that finding is based on our understanding that none of the debt incurred in the Credit Agreement will be refunded through the issuance of equity or debt securities not authorized by the Commission. On that basis we find that the credit agreement is not subject to Sections 816-830, and CalWater may use the Credit Agreement for operational cash requirements.

#### **7. CalWater's Request to Extend Short-Term Financings to Terms up to 24 Months**

Independent of CalWater's request that its unsecured line of credit be exempt from Commission authorization, CalWater requests that the Commission authorize it to amend the terms of the Credit Agreement to extend the period for which borrowings, loans, credit extensions, and letters of credit under the Credit Agreement may be outstanding to 24 months from the present maximum period

of 12 months. CalWater argues that this provision would provide greater flexibility to defer the issuance of long-term debt and equity in the face of potential market disruptions such as those which occurred in 2008 and 2009.

The purpose of CalWater's Credit Agreement is to finance capital projects approved by the Commission and other working capital needs such as financing the Water Revenue Adjustment Mechanism (WRAM) and the Modified Cost Balancing Account (MCBA).<sup>10</sup> When the line of credit in the Credit Agreement has reached a certain size, CalWater pays down the line of credit by issuing long-term debt and equity. CalWater contends that it must refinance the credit agreement balance with long-term debt or equity regardless of the market conditions as a result of the provision requiring pay-down of the credit agreement balance within 12 months. Over the past 18 months CalWater contends there have been significant credit spreads which places both ratepayers and the company at risk.<sup>11</sup>

#### **8. Short Term Debt Limited to 12-Month Term Except for Commission Authorization**

The Commission has long held that the period for short term debt is a maximum of 12 months. Sections 817, 818, 821(d), and 830 clearly restrict the issuing of short-term debt to a 12-month period. In particular, Section 818 states:

“No public utility may issue stocks, and stock certificates, or other evidence of interest or ownership, or bonds, note, or other evidences of indebtedness payable at periods of more than 12 months after the date thereof unless, in addition to the other requirements of law it

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<sup>10</sup> The WRAM tracks revenue shortfalls from adopted sales levels as compared to actual sales levels. The MCBA tracks differences in variable costs for purchased water and purchased power associated with reduced water sales.

<sup>11</sup> June 18, 2010 Response.

shall first have secured from the commission an order authorizing the issue, stating the amount thereof and the purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by the issue is reasonably required for the purposes specified in the order, and that, except as otherwise permitted in the order in the case of bond, notes, or other evidences of indebtedness, such purposes are, in whole or in part, reasonably chargeable to operating expenses or to income.”

Deviations from the 12-month maximum period identified in the Code require a significant showing or evidence that such deviations are necessary and justified. Although the Code does not provide guidance explaining the use of a 12-month period for short term debt, an obvious reason is that current expenses, including debt, should be matched with current revenues. This matching occurs in annual reports which by definition are based on 12-month periods. Therefore, to maintain the distinction between short term debt and long term debt the maximum short term debt period would be 12 months.

In the instant proceeding, CalWater states that it will use Credit Agreement financing for cash flows for the WRAM and MCBA balancing accounts, as well as capital project costs. CalWater explains that current internally generated cash flows are insufficient to cover operations, maintenance and Commission-approved capital programs.<sup>12</sup> As the WRAM and MCBA represent operating expense accounts the use of Credit Agreement financing for these operating expense purposes is one indication that the period for Credit Agreement financing should be a maximum of 12 months.

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<sup>12</sup> CalWater indicates that capital costs are over \$100 million annually. (June 18, 2010 Response.)

CalWater also argues that authorization to extend the Credit Agreement terms up to 24 months from 12 months is necessary to reduce the risk of credit costs due to interest rate changes. As one means of evaluating the volatility of interest rates, CalWater's July 2, 2010 Response included a graph showing the interest spread between investment bond yields and 10-year U.S. Treasury bonds.<sup>13</sup> Although this graph indicates that significant interest rate spreads occurred beginning in September, 2008, it also demonstrates that current interest spreads are less than or equal to interest rate spreads before September, 2008.<sup>14</sup> Thus, while CalWater may be correct that there have been volatile interest rates between September 2008 and September 2009, the most recent interest rate spreads appear to have returned to spreads existing prior to September 2008. Despite the recent economic crisis, there is little indication that anticipated interest costs will significantly fluctuate in the near future.

Finally, CalWater states that it has not had difficulty obtaining short-term debt, and no bank or other sources of financing have stated that they will not provide CalWater with short-term unsecured debt.<sup>15</sup>

Although CalWater requests it be authorized to extend the 12-month period in the Credit Agreement to 24 months, there is little indication that this change is supported by the information provided or is necessary at this time, and therefore that request is denied, without prejudice to reconsideration in a future proceeding.

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<sup>13</sup> July 2, 2010 Response.

<sup>14</sup> The graph indicates that in June 2008, the interest rate spread was approximately 200 basis points, and in June 2010, the spread is approximately 172 basis points.

<sup>15</sup> June 18, 2010 Response.

## 9. Financial Information

For the 12-month period ending September 30, 2009, CalWater reported total regulated operating revenues of \$408,312,385 and net income of \$441,864,465, as shown on its Pro Forma Income Statement and Return on Equity, attached as Exhibit B to the Application.

CalWater's Balance Sheet at September 30, 2009, Exhibit A to the Application is summarized as follows:

<b>Assets</b>	<b>Amount</b>
Net Utility Plant	\$1,093,963,982
Current Assets	\$142,488,798
Other Assets	\$226,977,331
<b>Total Assets</b>	<b>\$1,463,430,111</b>

## Capitalization and Liabilities

	<b>Amount</b>
Common Stockholder's Equity (Total Equity)	\$389,579,359
<b>Liabilities</b>	<b>Amount</b>
Long Term Debt	\$369,949,109
Current Liabilities	\$109,719,102
Unamortized Investment Tax Credit	\$2,392,472
Deferred Income Taxes	\$81,990,380
Regulatory Liabilities	\$20,729,047
Advances for Construction	\$181,229,798
Contributions in Aid of Construction (CIAC)	\$100,632,202
Other Long-Term Liabilities	\$207,208,642
<b>Total Liabilities</b>	<b>\$1,073,850,752</b>
<b>Total Capitalization and Liabilities</b>	<b>\$1,463,430,111</b>

**Construction Budget**

CalWater's Projected Company Funded Expenditures for Utility Plant for 2010 through 2014, as shown in Exhibit D to the Application,<sup>16</sup> are as follows:

(Dollars in Thousands)						
Components	2010	2011	2012	2013	2014	Total (5-year)
Land and Land Rights	\$3,383	3,654	3,946	4,262	4,603	\$19,848
Structures and Improvements	\$15,874	8,217	8,957	9,763	10,641	\$53,452
Wells	\$1,683	4,818	5,059	5,312	5,577	\$22,449
Storage	\$21,821	10,341	10,651	11,064	11,396	\$65,274
Pumping & Wtr. Trmt. Equip.	\$36,760	38,230	36,319	37,772	39,283	\$188,361
Trans. & Distrib. Mains	\$25,037	20,950	20,322	21,338	21,444	\$109,090
Services	\$5,812	6,050	6,180	6,489	6,521	\$31,052
Meters	\$7,694	8,310	8,974	9,692	10,468	\$45,138
Hydrants	\$1,906	1,060	1,080	1,134	1,140	\$6,320
General Equipment	\$12,014	10,380	10,600	11,130	11,186	\$55,310
<b>Construction Totals</b>	<b>\$131,984</b>	<b>112,010</b>	<b>112,088</b>	<b>117,956</b>	<b>122,259</b>	<b>\$596,297</b>

We will not make a finding in this decision on the reasonableness of CalWater's projected construction program. Construction expenditures and the resulting plant balances in rate base are issues that are normally addressed in GRC.

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<sup>16</sup> Corrected for minor addition errors.



### Estimated Cash Flow and External Financing

CalWater's estimate of cash requirements for 2010 through 2014, as shown in Exhibit D to the Application, is summarized as follows:

(Dollars in Thousands)						
Components	2010	2011	2012	2013	2014	Total (5-year)
Construction Budget	\$131,984	112,009	112,087	117,955	122,258	\$596,292
Tax on CIAC	\$1,500	1,900	2,300	2,700	3,100	\$11,500
Extension Refunds <sup>17</sup>	\$5,494	5,714	5,943	6,180	6,428	\$29,759
Maturity of Bonds	\$11,700	1,700	5,400	45,637	1,700	\$66,137
Short-Term Debt (net)	\$2,907	2,471	0	2,112	0	\$7,490
Dividend Payments	\$23,401	25,845	26,060	26,272	26,491	\$128,074
<b>Total Cash Requirements</b>	<b>\$176,986</b>	<b>149,639</b>	<b>151,790</b>	<b>200,859</b>	<b>159,977</b>	<b>\$839,252</b>

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<sup>17</sup> Pertains to CIAC Main Extension Contracts.

**Projected Cash Received**

(Dollars in Thousands)						
	2010	2011	2012	2013	2014	Total (5-year)
<i><b>Total Cash Requirements</b></i>	<i><b>\$176,987</b></i>	<i><b>149,639</b></i>	<i><b>151,790</b></i>	<i><b>200,859</b></i>	<i><b>159,977</b></i>	<i><b>\$839,252</b></i>
Cash Received from Internal Sources	\$78,538	87,356	94,052	99,228	104,701	\$463,874
External Financing Requirements	\$98,449	62,283	57,738	101,632	55,276	\$375,378
Beginning Cash Balance	\$38,827	18,377	56,095	-1,643	-3,275	0
Issue New Long-Term Debt	\$80,000	0	0	0	70,000	\$150,000
Issue of New Equity	0	100,000	0	100,000	0	\$200,000
Sub-Total (Cash Balance)	\$18,377	56,095	-1,643	-3,275	11,449	\$350,000

CalWater's projected cash requirements indicates that internally generated funds will provide approximately \$463,874,000 or 55% of its total cash requirements of \$839,252,000 for years 2010 through 2014. The requested \$350,000,000 is necessary to help CalWater meet its \$375,378,000 external financing requirements for these years.

## Capital Ratios

CalWater's capital ratios as of September 30, 2009, as shown in Exhibit G to the Application, are presented below as recorded and adjusted to give pro forma effect to the projected issuance of \$200,000,000 of Common Stock and \$150,000,000 of debt securities requested in the Application:

	Recorded	Adjustments	Proforma
Common Stock Equity	\$389,579,359 (51.3%)	\$200,000,000	\$589,579,359 (53.1%)
First Mortgage Bonds	\$367,172,727 (48.3%)	150,000,000	\$517,172,727 (46.6%)
Other Long Term Debt	\$2,776,382 (0.40%)		\$2,776,382 (0.3%)
Sub-Total (Debt)	\$369,949,109 (48.7%)	350,000,000	\$519,949,109 (46.9%)
Total Capitalization	\$759,528,468 (100.0%)	350,000,000	\$1,109,528,468 (100%)

Capital structures are normally subject to review in cost of capital or GRC proceedings. We will not therefore, make a finding in this decision of the reasonableness of the projected capital ratios for ratemaking purposes.

## 10. Fees

Whenever the Commission authorizes a utility to issue debt and equity, the Commission is required by Sections 1904(b) and 1904.1 to collect fees for certificates of indebtedness and issues of stock.

The following table shows the calculation of the fee that CalWater is required to pay pursuant to Sections 1904(b) and 1904.1 for the equity and debt authorized by today's decision:

Fee on the First \$1 Million (\$2/\$1,000 × 1,000)	\$2,000
Fee on \$1 Million-\$10 Million (\$1/1,000 × 9,000)	\$9,000
Fee on \$10 Million-\$350 Million (\$0.50/1,000 × 340,000)	\$170,000
Total Fee on \$350 Million	\$181,000

CalWater shall remit the required fee of \$181,000 to the Commission's Fiscal Office. The authority granted by today's decision shall not become effective until CalWater has paid the required fee.

#### **11. Reporting Requirement**

General Order (GO) 24-B requires utilities to submit a monthly report to the Commission that contains, among other things: (1) the amount of debt issued by the utility during the previous month; (2) the total amount of debt outstanding at the end of the prior month; (3) the purposes of which the utility expended the proceeds realized from the issuance of debt during the prior month; and (4) a monthly statement of the separate bank account that the utility is required to maintain for all receipts and disbursements of money obtained from the issuance of debt.

The Commission has granted utilities authority to report quarterly the information required by GO 24-B to reduce their administrative cost of complying with the GO and to conform to past practice.<sup>18</sup> We find no reason not to continue CalWater's quarterly reporting requirements. CalWater may report quarterly to the Commission the information required by GO 24-B.

#### **12. California Environmental of Quality Act (CEQA)**

The California Environmental Quality Act (CEQA) applies to projects that require discretionary approval from a governmental agency, unless exempted by statute or regulation. It is long established that the act of ratemaking by the Commission is exempt from CEQA review. As stated in the California Public Resources Code, the "establishment, modification,

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<sup>18</sup> See, for example, D.09-03-038 (2009) at 12.

structuring, restructuring or approval of rates, tolls, fares, or other charges by public agencies” is exempt from CEQA.<sup>19</sup> Likewise, the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment are not “projects” subject to CEQA.<sup>20</sup>

### **13. Comments on Proposed Decision**

The proposed decision of the ALJ 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 on September 13, 2010, by CalWater, recommending minor revisions to the proposed decision. These revisions have been incorporated into today’s decision, as well as a discussion finding that CEQA does not apply to this Application.

### **14. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner, and Bruce DeBerry is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. CalWater, a California corporation, is a water utility subject to the jurisdiction of this Commission.
2. CalWater needs external funds for the purposes set forth in the Application.

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<sup>19</sup> Public Resources Code Section 21080(b)(8)

<sup>20</sup> CEQA Guidelines Section 15378(b)(4).

3. The money, property, or labor to be procured or paid for by the proposed issue of debt and equity is reasonably required for the purposes specified in the Application.

4. CalWater requests authorization to issue debt and equity securities of up to \$350 million.

5. CalWater's Application includes all of the necessary financing information required by the Rules.

6. CalWater has entered into an unsecured Credit Agreement having a three-year term and providing a revolving line of credit for short-term financing to meet cash requirements and facilitate issuance of long-term debt and equity.

7. CalWater's Credit Agreement contains a provision requiring the line of credit to be fully paid off at least 30 consecutive days of every 12-month period.

8. This decision does not address the reasonableness of CalWater's capital structure, cost of money, or fees resulting from the issuance of securities or indebtedness. These issues are normally subject to review in cost of capital or GRC proceedings.

9. The decision does not address the reasonableness of CalWater's construction budget or cash requirements. These issues are normally subject to review in cost of capital or GRC proceedings.

10. No responses to the Application were received.

11. Due to its size and the fact that CalWater is a relatively small infrequent participant in the capital and debt markets, use of competitive bidding for bonds is not viable.

12. CalWater may find it necessary to exceed the \$20 million threshold for exemption from competitive bidding.

13. Whenever the Commission authorizes a utility to issue debt, the Commission is required to charge and collect a fee in accordance with Section 1904(b).

14. In Resolution ALJ 176-3247, dated January 21, 2010, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary.

15. Short-term debt is limited to a 12-month term except for Commission authorization.

16. One purpose of CalWater's Credit Agreement is for cash flows for the WRAM and MCBA, which are operating expense accounts.

17. Annual reports reflect annual revenues and annual expenses, which by definition are for a 12-month period.

18. Although the interest spread between investment bond yields and 10-year U. S. Treasury Bonds was significant between September 2008 and September 2009, the current interest spread is more reflective of the spread before September 2008.

19. CalWater has not had difficulty in obtaining short-term financing.

### **Conclusions of Law**

1. Section 817 provides that a public utility may issue evidences of indebtedness payable at periods of more than 12 months only for specific purposes. Among the authorized purposes are for the construction, completion, extension, or improvement of its facilities (Section 817(b)), and for the discharge or lawful refunding of its obligations (Section 817(d)).

2. Section 818 provides that no public utility may issue indebtedness payable at periods of more than 12 months without first having obtained an order from the Commission authorizing the issue.

3. Section 823 governs the regulation of the use of short-term debt.

4. Section 823(b) provides that a utility may issue notes, for proper purposes and not in violation of any provision of law, payable at periods of not more than 12 months after the date of issuance of the notes without consent of the Commission.

5. Section 823(d) provides that no note payable at a period of not more than 12 months after the date of issuance of such note shall in whole or in part, be refunded by any issue of stock or stock certificates or other evidence of interest or ownership of bonds, notes of any term or character, or any other evidence of indebtedness, without the consent of the Commission.

6. The Credit Agreement meets the requirements of Sections 823(b) and (d).

7. Although the Credit Agreement is not subject to Sections 816-830 of the Code, that finding is based on our understanding that none of the debt incurred in the Credit Agreement will be refunded through the issuance of equity or debt securities not authorized by the Commission.

8. Sections 817, 818, 821(d), and 830 clearly restrict the issuing of short-term debt to a 12-month period without authorization of the Commission.

9. A public hearing is not necessary.

10. The Application should be granted to the extent set forth in the order that follows.

11. Res. F-616 specifically exempts debt issues of \$20,000,000 or less from the Competitive Bidding Rule.

12. CalWater should be exempt from the Competitive Bidding Rule because it will not issue any one series of debt securities in excess of \$20,000,000 and/or will not sell more than \$20,000,000 in total during any calendar year to any one purchaser.



13. Domestic underwritten public offerings of fixed interest rate debentures and First Mortgage Bonds over \$20 million to \$350 million should comply with Res. F-616.

14. CalWater should pay the fee for the authority granted in this order as determined in accordance with Pub. Util. Code §§ 1904(b) and 1904.1.

15. Approval of this debt and equity issuance does not involve any commitment to any specific project which may result in a potentially significant impact on the environment; thus it is not a project subject to CEQA. (CEQA Guidelines Section 15378(b)(4).)

16. The following order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED** that:

1. California Water Service Company, on or after the effective date of this order, upon terms and conditions substantially consistent with those set forth or contemplated in Application 10-01-013, is authorized to:

- (a) Issue, sell and deliver New Securities not exceeding \$350,000,000 in aggregate principal offering amount, said securities consisting of debt and equity securities;
- (b) Execute and deliver any and all related documents required for the completion of the proposed financing, including, without limitation, an indenture or supplemental indenture;
- (c) Encumber its assets in connection with the debt issue; and
- (d) Amortize any discount, expense, or premium associated with the issuance or redemption of its long-term obligations before the date of maturity of the first issue ratably over the remaining life of the replacement obligation.

2. California Water Service Company shall apply the proceeds of the New Securities authorized for the purposes specified in its Application and discussed in this decision.

3. California Water Service Company's proposed debt issues with principal amounts of \$20 million or less to any one purchaser in a calendar year, variable rate debt securities, negotiated financing transactions, and debt enhancements are exempt from the requirements of the Commission's Competitive Bidding Rule addressed in Resolution F-616, dated October 1, 1986.

4. California Water Service Company's request to modify the provisions of its existing unsecured line of credit to allow the use of the credit facility for terms of up to 24 months is denied without prejudice.

5. California Water Service Company shall file with the Utility Audit, Finance and Compliance Branch of the Division of Water and Audits, copies of the agreements and indenture within thirty days of the execution of these documents.

6. Pursuant to Public Utilities Code Section 824 and General Order 24-B, California Water Service Company shall maintain records to (i) identify the specific long-term debt issued pursuant to this order, and (ii) demonstrate that the proceeds from such debt and been used only for the purposes authorized herein.

7. On or before the 25<sup>th</sup> day of each month, California Water Service Company shall provide the Utility Audit, Finance and Compliance Branch of the Water Division of Water and Audits the reports required by General Order 24-B.

8. Pursuant to Public Utilities Code Section 1904(b) and 1904.1, California Water Service Company shall remit to the Commission's Fiscal Office a check for \$181,000. The decision number shall appear on the face of the check.

9. California Water Service Company may not exercise the authority granted by this decision until it remits \$181,000 to the Commission's Fiscal Office.

10. Application 10-01-013 is closed.

This order is effective today.

Dated September 23, 2010, at San Francisco, California

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

Commissioner John A. Bohn, being  
necessarily absent, did not participate.