Date of Issuance
April 15, 2011

Decision 11-04-035 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U210W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Rates.	Application 04-09-019 (Filed September 20, 2004; Amended July 14, 2005)

ORDER MODIFYING DECISION (D.) 10-12-016 AND DENYING REHEARING, AS MODIFIED

I. INTRODUCTION

In this Order we dispose of the application for rehearing of Decision (D.) 10-12-016 (or "Decision") filed by the Division of Ratepayer Advocates ("DRA").

The Decision approved a Settlement Agreement and Implementing Agreements filed by California-American Water Company ("Cal-Am"), Marina Coast Water District ("MCWD"), Monterey County Water Resources Agency ("MCWRA"), Monterey Water Regional Pollution Control Agency, Surfrider Foundation, Public Trust Alliance, and Citizens for Public Water ("Settling Parties").[1] The Settlement Agreement proposed a public-private partnership between Cal-Am, MCWD, and MCWRA to

[1] The Settlement Agreement includes two Implementing Agreements. One is a Water Purchase Agreement ("WPA") detailing the rights and responsibilities of Cal-Am, MCWD, and MCWRA with respect to ownership, construction, maintenance and operation of the Regional Project. (See Exhibit ("Exh.") 301.) It also specifies the financing and cost responsibilities of each entity. The other is an Outfall Agreement governing the terms and conditions for discharge of brine into the Monterey Bay. (See Settlement Agreement, Attachment 2.) (See also D.10-12-016, at pp. 59-62.)

develop a Regional Project to solve the long-standing water supply deficit on the Monterey Peninsula.[2]

The Regional Project is a water desalination facility and aquifer storage and recovery system designed to replace water from the Carmel River and Seaside Groundwater Basin. Water replacement is required in order to comply with two Cease and Desist Orders issued by the State Water Resources Control Board ("SWRCB").[3] Those orders directed Cal-Am to first reduce its diversions from the Carmel River, and ultimately terminate all diversions by December 31, 2016.[4] (See D.10-12-016, at pp. 1, 4, 9-10, 17-21 & 30-32 [Discussing the history of water constraints on the Monterey Peninsula, the Cease and Desist Orders, and the urgent need for a water supply solution].)

Under the Settlement Agreement, MCWD will construct, own, operate and maintain the desalination plant and product water conveyance facilities to the delivery point, which then becomes Cal-Am's intake point. MCWRA will construct, own, operate, and maintain the brackish source water wells that will provide the feedwater for the desalination facility, as well as the conveyance pipeline to the desalination facility.

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[2] We had previously directed Cal-Am to seek such public-private partnerships in order to develop a water supply solution in the Monterey Peninsula. (See e.g., *In the Matter of the Application of California-American Water Company for a Certificate that the Present and Future Public Convenience and Necessity Requires Applicant to Construct and Operate the 24,000 Acre Foot Carmel River Dam and Reservoir in its Monterey Division and to Recover All Present and Future Costs in Connection Therewith in Rates* [D.03-09-022] (2003) __ Cal.P.U.C.3d __ , at p. 12 (slip op.).)

[3] The Commission certified the Final Environmental Impact Report for the Regional Project in *In the Matter of the Application of California-American Water Company for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover all Present and Future Costs in Connection Therewith in Rates* ("*Decision Certifying Final Environmental Impact Report*") [D.09-12-017) (2009) __ Cal.P.U.C.3d __ .

[4] SWRCB issued Order WR 95-10 in 1995. Order 2009-0060 was issued in 2009. In 2006, the Monterey County Superior Court also issued a final decision regarding adjudication of water rights of various parties who use groundwater from the Seaside basin. (*California American Water Company v. City of Seaside et al.*, Case No. 66343, dated April 1, 2010.)

The Decision authorized up to $297.5 million for those facilities, which will be funded by Cal-Am ratepayers. (D.10-12-016, at pp. 84-86.)[5]

Cal-Am will construct, own, operate, and maintain three large diameter conveyance pipelines, two distribution storage reservoirs, and aquifer storage and recovery facilities to provide the desalinated water ("Product Water") to its customers. (D.10-12-016, at pp. 5, 58, 62-64.) The Decision authorized up to $106.875 million for the Cal-Am only facilities. (D.10-12-016, at p. 135.) On whole, Cal-Am's customers will receive over 90% of the Product Water from the Regional Project. (D.10-12-016, at p. 87.)

All parties, including DRA, supported development of a Regional Project and agreed that an immediate water supply solution is needed. (D.10-12-016, at pp. 27 & 149.) In addition, all parties agreed that MCWD and MCWRA (collectively, "Public Agencies") are essential participants in the Regional Project. (*Ibid.*)

DRA filed a timely application for rehearing alleging that the Decision was unlawful because: (1) the Commission unlawfully delegated its obligation to ensure that rates are just and reasonable pursuant to Public Utilities Code sections 451, 454, and 728;[6] (2) the Decision erred with respect to its treatment of the Financing Plan and advice letter procedures; and (3) the Decision contains miscellaneous factual errors. Responses were filed by Cal-Am, MCWD, and MCWRA (jointly), and the Public Trust Alliance.

We have carefully considered the arguments raised in the application for rehearing and are of the opinion that while the Decision is lawful, it is necessary to modify the Decision to correct certain factual and technical errors. In addition, we will modify the Decision to clarify the review procedure to be followed should Cal-Am seek recovery for any project costs in excess of the cost caps authorized in D.10-12-016. Good cause has not been established to grant rehearing. Accordingly, we deny the application for rehearing of D.10-12-016, as modified herein, because no legal error has been shown.

[5] See also Exh. 301, attached Exh. C.

[6] All subsequent section references are to the Public Utilities Code, unless otherwise stated.

II. DISCUSSION

A. Alleged Unlawful Delegation of Authority

DRA contends we impermissibly delegated to the Public Agencies our statutory duty to ensure just and reasonable rates pursuant to sections 451, 454, and 728. DRA bases its argument on: (1) relevant case law; and (2) the language approved in Sections 10.1 and 10.2 of the Settlement Agreement. (Rhg. App., at pp. 7-10.) As discussed below, DRA's arguments are without merit.

1. Case Law Regarding Police Power and Delegation of Authority

DRA asserts that Decision leaves it to the Public Agencies to make only reasonable and prudent project expenditures. DRA argues that as a result, we unlawfully delegated our police power to ensure that future costs and associated rates are just and reasonable. (Rhg. App., at pp. 9-11, relying on *Sale v. Railroad Commission* ("*Sale.*") (1940) 15 Cal.2d 612; *Camp Meeker Water System, Inc. v. Public Utilities Commission* ("*Camp Meeker*") (1990) 51 Cal.3d 850; *Arkansas Electric Cooperative Corp. v. Arkansas Public Service Commission* ("*Arkansas Electric*") (1983) 461 U.S. 375; *Motor Transit Company v. Railroad Commission of the State of California* ("*Motor Transit Co.*") (1922) 189 Cal. 573; *Avco Community Developers, Inc. v. South Coast Regional Commission* ("*Avco*") (1976) 17 Cal.3d 785; and *Mott v. Cline* (1927) 200 Cal. 434.)[7]

[7] DRA also relies on two other cases which are not on point. DRA cites to *United States Telecom Association v. Federal Communications Commission* ("*U.S. Telecom*") (2004) 359 F.3d 554 for the principle that agency delegation of power to an outside party is impermissible. (Rhg. App., at p. 15.) In *U.S. Telecom*, the Federal Communications Commission ("FCC") delegated certain decisionmaking authority to State Commission's. The Court considered State agencies to be outside parties in relation to the FCC. Since there was no delegation, reliance on this decision misplaced.

DRA also relies on *Pacific Gas and Electric Company v. Department of Water Resources* ("*PG&E V. DWR*") (2003) 12 Cal.App.4th 477.) In *PG&E v. DWR*, DWR maintained that it had no obligation under Section 80110 of the Water Code to determine whether the costs in its revenue requirement were just and reasonable. The Court disagreed and held that the statute did require DWR to determine whether its costs were just and reasonable. (*Id.* at p. 481.) This case is not analogous. Our Decision squarely acknowledged our duty to review the proposed project costs, and we did act to determine a reasonable cost cap for overall expenditures. (D.10-12-016, at p. 75-88.)

We find nothing in the Decision that delegated our authority to determine reasonable project costs and associated rates.[8] It is true the Public Agencies portion of the Regional Project *could* cost less than $297.5 million. However, based on the record evidence, the Decision found that up to $297.5 million is a realistic and reasonable expectation of total costs for the Regional Project. (D.10-12-016, at pp. 75-88.) Thus, we set the cost cap for the Public Agencies portion of the project at that level. (D.10-12-016, at pp. 78 & 84.)

What we did grant to the Public Agencies was authority to move forward with their portion of the project and incur prudent expenditures consistent with the Decision. We routinely grant similar authority to regulated utilities in order to proceed with an approved capital project. The only difference here, is that by law, significant portions of the Regional Project must be constructed and owned by non-utility and hence non-Commission regulated entities. (D.10-12-106, at p. 58 [Citing Monterey County Code, Ch. 10.72.30(B)].) At the same time, we noted that the Public Agencies have an independent legal duty to incur only reasonable and prudent costs, and it is possible some cost savings may be achievable during the course of project development. (D.10-12-106, at pp. 69-70 & 82-84.) Granting authority to move forward with the project, and recognizing that actual costs may be different than the authorized amount is not synonymous with an unlawful delegation of authority.

Nevertheless, we will address the case law referenced by DRA. We agree that the broad principles DRA states are correct. The Commission has a duty to ensure just and reasonable rates and allocation of costs.[9] The regulation of utilities is a function traditionally associated with the police power of the States.[10] And government entities may not delegate their governmental functions or right to exercise their police power.[11]

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[8] The Commission will set rates and determine cost allocation and rate design issues in a separate phase of the proceeding. (D.10-12-016, at p. 84.)

[9] See e.g., *Camp Meeker, supra,* 51 Cal.3d at pp. 861-862.

[10] See e.g., *Arkansas Electric, supra,* 461 U.S. at p. 378.

[11] See e.g. *Avco, supra,* 17 Cal.3d at pp. 800-801.

Generally, an improper delegation of authority will be found where a government entity has "surrendered" control and/or delegated its power to make fundamental policy or final discretionary decisions.[12] We did not delegate such power in this proceeding.[13]

The fundamental policy and final discretionary decisions to be made in this proceeding were whether to grant a Certificate of Public Convenience and Necessity for the Regional Project, and whether to adopt the proposed Settlement Agreement. We retained and exercised the authority to make both those determinations. In addition, we specifically retained and exercised in D.10-12-016 the authority to make related policy and discretionary decisions regarding associated issues including: the treatment of operations and maintenance ("O&M") costs (pp. 121-123.); requirements regarding salinity, slant wells, and vertical wells (pp. 118-121.); the use of second pass technology (pp. 124-126.); whether to require the proposed pilot test (pp. 126-127.); and the sale of excess water (pp. 128-129.).

Rather than delegating any authority, the Decision provided the broad policy to be followed in directing that project expenditures must be reasonably and prudently incurred. (See e.g., D.10-12-016, at pp. 75-88 [Section 11.2.1 Discussion: Cost Controls and Determination of Reasonable and Prudent Costs].) It provided implementation guidelines by providing direction regarding issues such as whether to use

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[12] See e.g., *In the Matter of the Application of the Exposition Metro Line Construction Authority for an order Authorizing the Construction of a Two-Track At-Grade Crossing for the Exposition Corridor Light Rail Transit Line Across Jefferson, Adams, and 23rd Street, All Three Crossings Located Along Flower Street in the City of Los Angeles, County of Los Angeles, and Related Matters* ("*Expo Line*") [D.09-12-015] (2009) 2009 Cal. PUC LEXIS 756, *29-*31, relying on *California School Employees Association v. Personnel Commission* (1970) 3 Cal.3d 139; and *Schecter v. County of Los Angeles* 91968) 258 Cal.App.2d 391.

[13] DRA also states that public statements made by Commissioner Bohn confirm an intent to surrender the Commission's police power. (Rhg. App., at p. 8, fn. 17.) We disagree. The comments, views or musings of any individual Commissioner do not represent the Commission's decision or intent. The Commission's intent is demonstrated only by its formal Orders and Decisions. Our Decision expressly stated that we did not delegate authority to ensure just and reasonable rates and allocation of costs. (See D.10-12-016, at pp. 82 & 96.)

slant wells or vertical wells, the sale of excess water, and miscellaneous ratemaking issues. By approving the Settlement Agreement, it incorporated additional implementation requirements that the Public Agencies must adhere to. And it established safeguards such as specific reporting requirements, meeting requirements, and advice letter submittal requirements. (D.10-12-016, at pp. 82-86, 97-98, 107-108, 122, 140, 146, & 203-204 [Ordering Paragraph Numbers 2-5].)

Finally, DRA fails to recognize that the authority given to the agencies was necessary and a proper exercise of the Commission's police powers to address the unique circumstances and conditions on the Monterey Peninsula. There is a critical need to achieve an immediate water supply solution in the Monterey Peninsula. And only non-utilities such as the Public Agencies may own and operate water desalination facilities. Evidence showed that absent a water supply solution, the SWRCB Cease and Desist Orders will take effect resulting in severe negative impacts on the Monterey Peninsula.[14] Given these circumstances, the action taken in D.10-12-016 was not only necessary, but the only viable means to protect and ensure the general welfare of Cal-Am's customers and the Monterey Community. (D.10-12-016, at pp. 81, 176 [Finding of Fact Number 117].

2. Sections 10.1 & 10.2 of the Settlement Agreement

DRA asserts the Decision erred because it deemed all project costs reasonable, even if they are imprudently incurred. (Rhg. App., at p. 7.)

DRA assertion is based on approval of Sections 10.1 & 10.2 of the Settlement Agreement. In relevant part, Section 10.1 states:

> The parties agree that, given the status of MCWD and MCWRA as governmental agencies and the *requirements under law that they incur only reasonable and prudent costs*

[14] See e.g., Exh. 100, at pp. 9-16; Exh. 103, at pp. 6-8; Exh. 305, at pp. 19-24; Exh. 326, at pp. 5-17, Exh. 501, at pp. 9-11.

> *and expenses* for purposes related to their governmental duties and the fact that such costs and expenses are subject to public review and scrutiny, all Regional Desalination Project costs incurred by MCWD and MCWRA *in compliance with the terms of the WPA* shall be deemed reasonable and prudent and *the Commission, by its approval of this Settlement Agreement, shall be deemed to have agreed that such costs are reasonable and prudent.*

(Settlement Agreement, § 10.1 (emphasis added).)

This provision recites the Public Agencies legal obligation to incur only reasonable and prudent expenses, and it indicates that expenditures in compliance with the Public Agencies legal obligation and requirements of the WPA can be considered reasonable. DRA offers no basis to establish why the adopted requirements are inadequate to control costs and/or ensure they will be reasonable. And nothing in this language mandates that expenditures which fail to comply with these requirements shall be deemed reasonable. We reiterate that our Decision clearly indicated that we would evaluate how to proceed should there appear to be any imprudent project expenditures. (D.10-12-016, at p. 97.)

B. Alleged Errors Concerning the Financing Plan and the Adopted Advice Letter Procedures

DRA contends the Decision erred in its approval of the Financing Plan and advice letter procedures. (Rhg. App., at pp. 15-25.) These issues are discussed below.

1. The Financing Plan

During the course of the proceeding there was not a final Financing Plan in place for the Regional Project. Accordingly, based on a Unified Financing Model developed by the parties, we evaluated a set of best case and worst case financing scenarios that could be expected. (D.10-12-016, at pp. 88-98 & Appendix D.)[15] DRA points out that the worst case scenario would substantially increase costs to customers.

[15] See also Exh. 113.

However, DRA argues we would be unable to do anything since the Decision approved the project under any financing scenario. (Rhg. App., at pp. 18-19.)

In particular, DRA takes issue with the following language to again allege that the Commission unlawfully delegated its authority to the Public Agencies:

> As we observed above, it is our understanding that the Public Agencies will be submitting their financing plans to their respective Boards for approval, which approval process provides for widespread public participation….To the extent that these agencies, in exercising their duties to be accountable to their constituencies, find that particular aspects of the Regional Project are not reasonable and cost effective, then Cal-Am must bring this issue to the Commission for its review and consideration….

(D.10-12-016, at p. 97.)

This language acknowledges that some actual project expenditures *could* be unreasonable and/or may not be cost effective. However, merely acknowledging that possibility is not synonymous with advance approval. As noted above, we stated our intent to review changing costs should they seem unreasonable or exceed the authorized cap. (D.10-12-016, at p. 86 [Review of costs over the authorized cap], p. 97 [Review of costs believed to be unreasonable or not cost effective], & p. 122 [Tier 2 advice letter review of O&M costs, subject to true up].)[16] DRA simply did not establish that the estimated costs, even under the worst case financing scenario, would be unjustified.

The crux of DRA's argument continues to be that it objects to the alleged substantial costs to ratepayers that are expected to occur under a worst case financing. We adequately addressed this argument, and reasoned:

> DRA's concerns are well-taken….but we are persuaded that even the revenue requirement implied by the worst case scenario is likely preferable to the severe water rationing and

[16] See also *ante*, fn. 27.

> restrictions that would be imposed by the Cease and Desist Order.

(D.10-12-016, at p. 96.)

Nothing in the Decision suggests that a worst case scenario would be the optimal result. However, DRA's objections did not, and do not, establish that we failed to adequately evaluate the possible financing options, the cost implications, and the resulting impacts to ratepayers.

DRA also expresses concern that the worst case financing scenario could double the per-acre foot cost of water to as much as $10,000 per-acre foot. DRA argues that the record shows nothing over $4,180 per-acre foot is reasonable. (Rhg. App., at p. 9, fn. 20.)

To support the $4,800 cost, DRA relies on testimony that a different project having similar water costs was deemed too costly, and certain cost of water estimates developed by the Department of Water Resources ("DWR"). DRA does nothing, however, to establish that the referenced project is comparable to the Regional Project in any meaningful way. Nor does DRA establish that a meaningful comparison can be made between DWR's estimates and the project characteristics in this proceeding.

Finally, DRA points out that the Ordering Paragraphs of the Decision did not require Cal-Am to file the Financing Plan as directed in the text of the Decision. We agree and it was an oversight, which will be corrected by a modification of the Decision as set forth in the Ordering Paragraphs below.

2. The Adopted Advice Letter Procedures

DRA contends the Decision erred by approving an inadequate review process for project O&M costs. (Rhg. App., at pp. 19-25.)

In particular, DRA asserts that by not modifying the Settlement Agreement, our Decision adopted a Tier 1 advice letter process for review of O&M costs. DRA argues that Tier 1 procedures fail to ensure there will be adequate review of those costs. (Rhg. App., at pp. 19-23.)

We are aware that the Settling Parties did propose a Tier 1 advice letter procedure in their Motion to Approve Settlement Agreement.[17] A Tier 1 procedure is also reflected in Section 10.3 of the Settlement Agreement.[18] However, we rejected the Tier 1 approach and explicitly adopted a Tier 2 procedure for review of incurred O&M costs. (D.10-12-016, at pp. 122, 140.) It was not necessary to modify the Settlement Agreement because our direction in the Decision supersedes any contrary provisions in the parties' proposals or the Settlement Agreement documents themselves. This is confirmed by the Settlement Agreement itself, which states:

> *In the absence of a Commission statement to the contrary,* approval of this Settlement Agreement shall be deemed to constitute approval of all the terms and conditions of the implementing agreements.

(Settlement Agreement, § 7.2 (emphasis added).)

Consequently, O&M cost recovery is subject to the adopted Tier 2 advice letter process, effective after staff review and approval, and subject to true-up as required by the Decision.

DRA also questions whether we may have surrendered the authority to review project costs due to the dispute resolution procedures approved under Section 6.6 of the WPA. (Rhg, App., at p. 22.)

Sections 6.4, and 6.5 of the WPA identify specific tasks to be carried out during the construction period, and operation period, respectively. Examples include: to review and evaluate contractor proposals; to monitor, coordinate, and determine design, construction and permitting for project elements; to determine any necessary project demolition, repair, replacement, etc. after damage; and to consider opportunities to see product water.

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[17] Settling Parties Motion to Approve Settlement Agreement, dated April 7, 2010, at p. 12.

[18] Settling Parties Motion to Approve Settlement Agreement, dated April 7, 2010, Attached Settlement Agreement § 10.3.

We did not and do not now read anything in these provisions to suggest that the independent third party would do more that resolve a dispute concerning the allocation and/or fulfillment of the specified tasks. Nothing in the language suggests that the independent third party would act to render a substantive determination with respect to any evaluation of costs and expenditures that are subject to our approval.[19]

Finally, DRA argues that an advice letter procedure is inadequate to review any future request for cost recovery of project expenditures over the authorized cost caps. DRA argues an advice letter procedure is inconsistent with the Decision's own statements, as well as the fact that such an approval would result in a rate base offset. The Commission's own rules require a formal application for such rate base offsets. (Rhg. App., at pp. 24-25, relying on GO 96-B Water Industry Rule 7.3.3.)

DRA is correct that GO 96-B generally requires at least a Tier 3 procedure for rate base offsets. The Rule does permit a Tier 2 procedure if the project scope is viewed as consistent with what the Commission approved. However, we are cognizant of the significant burden we placed on Cal-Am to justify any costs above the authorized cost caps. (D.10-12-016, at p. 86.) Because we traditionally require a more formal application process to evaluate such matters, we will modify the Decision to require a similar procedure, as set forth in the Ordering Paragraphs below.

C. Alleged Factual Errors

Finally, DRA contends the Decision contains four erroneous findings of fact ("FOF"), and two erroneous statements otherwise located in the Decision's text. (Rhg. App., at pp. 25-28.) These findings and statements are discussed below.

[19] DRA also raises the concern that because the Commission has no jurisdiction over the Public Agencies, it is unclear how the Commission can hold them accountable for compliance with the Settlement Agreement. (Rhg. App., at p. 23, referring to D.10-12-016, at p. 165 [Finding of Fact Number 51].) This argument ignores the Commission's authority to enforce its orders, decisions, rules, and requirements pursuant to section 2100 *et seq.*

1. Finding of Fact Number 124

FOF Number 124 states:

> The $297.5 million capital cost that we adopt today will yield a per-acre-foot cost of approximately $6,300 (excluding Cal-Am facilities), assuming that the Settling Parties can obtain the low-cost SRF [State Revolving Fund] financing that is planned.

(D.10-12-016, at p. 177.)

DRA contends there was no evidence regarding a "planned" SRF funding level, thus the Decision erred in arriving at a $6,300 per-acre foot cost of water. Accordingly, DRA argues FOF Number 124 must assume the highest estimated cost of water, namely $10,566 per-acre foot. (Rhg. App., at p. 26, citing D.10-12-016, Appendix D., p. 5.)

The $10,566 figure DRA cites corresponds to the Unified Financing Model worst case scenario. That scenario assumes no SRF funding. (D.10-12-016, Appendix D, at p. 5.) We do not agree that just because the parties developed a worst case scenario with no SRF funds, it means there was no "planned" SRF funding. The Settling Parties did plan to obtain funding, and they estimated specific levels of likely SRF funding.[20] DRA may question whether the Public Agencies will be successful in their attempt to obtain SRF funding, but that does not establish there is no evidence of estimated levels. Further, DRA offers no legal or factual reason why we were compelled to assume the worst case scenario for Product Water costs.

2. Finding of Fact Number 141

FOF Number 141 states:

> Providing the Monterey Peninsula Cities with a meaningful advisory role on the Advisory Committee provides adequate ratepayer protection.

[20] Exh. 113.

(D.10-12-016, at p. 180.)

DRA contends that since the Peninsula Cites are not voting members of the Advisory Council, FOF Number 141 erroneously concluded they will have a meaningful role and be adequately protected. (Rhg. App., at p. 27.)

Our Decision acknowledged DRA's preference for voting rights. However, we reasonably explained why the lack of voting rights was not detrimental to the Cities opportunity to participate and be heard on the relevant issues. (D.10-12-016, at pp. 98-108.) DRA may continue to disagree. However, that is not adequate grounds for reversal.

3. Finding of Fact Number 168

FOF Number 168 states:

> DRA and Monterey Peninsula Water Management District maintain that limiting the amount of groundwater that must remain in the basin subject[s] the Regional Project to potential failure and risk of litigation.

(D.10-12-016, at p. 184.)

DRA contends FOF Number 168 erred because it did not accurately state DRA's position on the issue. Its position was not that the project could be jeopardized if the remaining groundwater in the basin is limited, but it would be jeopardized as the amount of groundwater increases.[21] (Rhg. App., at p. 26)

To more precisely state DRA's position, we will modify the Decision as set forth in the Ordering Paragraphs of this Order.

4. Finding of Fact Number 213

Finding of Fact Number 213 states:

> It is reasonable to require Cal-Am to update DRA and DWA staff on the design and refined cost estimates of the Cal-Am only facilities, because this approach will help to ensure that

[21] See Comments of DRA on the Proposed Settlement Agreement, dated April 30, 2010, at p. 44.

> Cal-Am explains and justifies the project costs that are included in each Tier 3 advice letter. Cal-Am should meet with DRA and DWA on a quarterly basis.

(D.10-12-016, at p. 192.)

DRA prefers the Tier 3 requirement in FOF Number 213; however, it contends the Decision text and Settlement Agreement should be modified to mirror this requirement. (Rhg. App., at p. 28.)

The discussion in D.10-12-016 clearly shows that a Tier 2 advice letter process was intended for the costs in question. (D.10-12-016, at pp. 145-146.) The Tier 3 reference in FOF Number 213 appears to be a typographical error. Accordingly, we will modify the finding to correct that error as set forth in the Ordering Paragraphs of this Order.

5. Lot Size and Seasonal Adjustments

DRA contends the Decision text erred in stating that the lot size adjustment was removed from Cal-Am's rate design in D.09-07-021. DRA points out that the adjustment was removed from only the first two rate blocks under the adopted settlement in that proceeding. (Rhg. App., at p. 27.)

Based on our review of D.09-07-021, we agree that the lot size and seasonal adjustments were removed from only the first two rate blocks in Cal-Am's rate design.[22] Accordingly, we will modify the Decision to correct this error as set forth in the Ordering Paragraphs of this Order.

[22] See *Application of California-American Water Company (U210W) for Authorization to Increase its Revenues for Water Service in its Monterey District by $24,718,200 or 80.30% in the year 2009; $6,503,900 or 11.72% in the year 2010; and $7,598,300 or 12.25% in the year 2011 Under the Current Rate Design and to Increase its Revenues for Water Service in the Toro Service Area of its Monterey District by $354,324 or 114.97% in the year 2009; $25,000 or 3.77% in the year 2010; and $46,500 or 6.76% in the year 2011 Under the Current Rate Design, and Related Matters* [D.09-07-021] (2009) __ Cal.P.U.C.3d __, at p. 20, fn. 4 (slip op.).

6. The Use of Slant Wells

DRA contends the Decision erred because it authorized the higher cost of slant wells but failed to require their installation. Accordingly, DRA maintains the Decision should be modified to require slant well installation. (Rhg. App., at pp. 27-28.)

The authorized $297.5 cost cap does incorporate the cost estimates for installing slant wells rather than the less expensive vertical wells. (D.10-12-016, at pp. 77-78.) However, we were persuaded that factual and technical issues made it unclear slant wells would be necessary in all instances. (D.10-12-016, at pp. 115.) As a result it was premature to mandate their use.

At the same time, it was not unlawful to authorize costs that would accommodate the use of slant wells in they are in fact needed. Doing so was prudent for contingency planning purposes. Should slant wells not be used, we expect the downward cost adjustment should be reflected in the advice letter reporting process.

III. CONCLUSION

For the reasons stated above, D.10-12-016 is modified to reflect the clarifications and corrections specified below. Rehearing of D.10-12-016, as modified, is denied because no legal error has been shown.

Therefore **IT IS ORDERED** that:

1. D.10-12-016 is modified as follows:

   a. The following sentence is added to Ordering Paragraph Number 2 on pages 203-204:

      "In addition, Cal-Am shall file and serve the Public Agencies Financing Plan in this proceeding."

   b. The following new Ordering Paragraph is added is Ordering Paragraph Number 13:

      "Cal-Am shall file an application with the Commission to seek any ratepayer funding of costs in excess of the costs caps authorized in this Decision."

   c. Ordering Paragraph Number 13 is renumbered as Ordering Paragraph Number 14 on page 206.

d. FOF Number 168 on page 184 is modified to read as follows:

"DRA maintains that the Regional Project could be jeopardized as the amount of groundwater that must remain in the basin increases."

e. FOF Number 213 on page 192 is modified to state:

"It is reasonable to require Cal-Am to update DRA and DWA staff on the design and refined cost estimates of the Cal-Am only facilities, because this approach will help to ensure that Cal-Am explains and justifies the project costs that are included in each Tier 2 advice letter. Cal-Am should meet with DRA and DWA on a quarterly basis."

f. The first full sentence of the first full paragraph on page 30 is modified to read:

"D.09-07-021 also removed the lot size and seasonal discounts from the first two tiers of Cal-Am's rate design scheme, which had insulated customers from the high cost of outdoor irrigation."

2. Rehearing of D.10-12-016, as modified, is denied.

This order is effective today.

Dated April 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK FERRON
Commissioners