

Decision 12-08-012 August 2, 2012

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

In the Matter of the Application of  
California-American Water Company  
(U210W) for an Order Authorizing the  
Transfer of Costs Incurred in 2010 for Its  
Long-Term Water Supply Solution for the  
Monterey District to Its Special Request 1  
Surcharge Balancing Account.

Application 11-06-030  
(Filed June 30, 2011)

**DECISION APPROVING SETTLEMENT AGREEMENT**

**1. Summary**

By today's decision, we approve a Settlement Agreement entered into by the California-American Water Company (Cal-Am) and the Division of Ratepayer Advocates. We find that the Settlement Agreement is reasonable in light of the whole record, consistent with the law, and in the public interest. The Settlement Agreement therefore meets the requirements of Rule 12.1(d) of the Commission's Rules of Practice and Procedure.

Our approval of the Settlement Agreement authorizes Cal-Am to recover \$5,111,492.96 for Coastal Water Project costs incurred in Application 04-09-019 through December 31, 2010. This amount reflects adjustments totaling \$214,659.87. Cal-Am will recover these costs from ratepayers through the Special Request 1 Surcharge Balancing Account authorized in Decision 06-12-040.

**2. Background**

Decision (D.) 03-09-022 authorized California-American Water Company (Cal-Am) to establish a memorandum account to record costs associated with

preliminary engineering studies, environmental studies, analysis of necessary permitting requirements, and development of cost estimates for the Coastal Water Project. D.06-12-040 authorized the Special Request 1 Surcharge Balancing Account to allow recovery of prudently incurred preconstruction costs.

On June 30, 2011, Cal-Am filed Application (A.) 11-06-030 requesting authorization to transfer a total of \$5,354,229 in preconstruction costs incurred in A.04-09-019 that have been tracked in the authorized memorandum accounts to its Special Request 1 Surcharge Balancing Account for recovery from its ratepayers. The request for recovery includes costs incurred for environmental and engineering expenses, pilot plant maintenance and decommissioning expenses, legal services, labor and overhead charges, and miscellaneous charges. Cal-Am states that it has removed \$38,240.88 in labor and overhead charges that it may have recovered in prior General Rate Case proceedings, consistent with the settlement agreement approved in D.08-01-007.

On March 16, 2012, the Division of Ratepayer Advocates (DRA) served its Audit Report on the 2010 Preconstruction Costs, recommending that Cal-Am's request be reduced by \$801,600. In rebuttal testimony served on March 30, 2012, Cal-Am agreed with three adjustments: 1) reduction of \$1,839 in consultant RMC's bills to correct contract billing rates; 2) reduction of \$3,028 in American Water's bills to correct for contract billing rates; and 3) removal of withdrawn legal fees of \$13,136. DRA also recommended that \$63,157 be disallowed, contending that public outreach costs are not authorized preconstruction costs, that \$232,644 be disallowed in legal fees that DRA contends were not justified with sufficient evidence, and that \$487,928 be disallowed in outside legal counsel costs that DRA contends are excessive. Settlement negotiations ensued in April

and May. The parties filed a Joint Motion for approval of the Settlement Agreement on June 22, 2012, agreeing on total adjustments of \$214,659.87 and that \$5,111,492.96 should be recovered. The settlement agreement is unopposed. The Administrative Law Judge (ALJ) received the exhibits into the record by ruling issued on July 3, 2012.

### **3. Brief History**

As we summarized in D.11-03-008, the instant application is related to A.04-09-019, the Coastal Water Project. In A.04-09-019, Cal-Am applied for a certificate of public convenience and necessity (CPCN) to construct and operate a desalination plant and associated facilities proposed to address long-term water supply problems on the Monterey Peninsula. As the Commission discussed in D.10-12-016, the water supply deficit on the Monterey Peninsula is long-standing. Cal-Am has been subject to an order by the State Water Resources Control Board (SWRCB) since 1995 to cease diverting water from the Carmel River and to find an alternative supply of 10,730 acre-feet per year of water.<sup>1</sup> In 2006, the Monterey County Superior Court established physical limitations to various users' water allocations to reduce the drawdown of the Seaside Basin aquifer and to prevent additional seawater intrusion. Cal-Am's allocation from the Seaside Basin will be reduced over time. On October 20, 2009, the SWRCB issued Order WR 2009-0060, a Cease and Desist Order that requires Cal-Am to take additional measures to reduce its diversions from the Carmel River and to terminate all such diversions no later than December 31, 2016. The proposed project and the alternatives studied in the Final Environmental Impact Report (FEIR) are known as the Coastal Water Project.

The Commission certified the FEIR in D.09-12-017. By D.10-12-016, the Commission approved a Settlement Agreement and Water Purchase Agreement related to the Regional Desalination Project which resolved Phase 2 of A.04-09-019. D.10-12-016 also issued a CPCN for the Cal-Am facilities related to the Regional Project.

On January 18, 2012, Cal-Am filed a compliance filing in A.04-09-019 to provide an update to the mediation efforts of Cal-Am, Marina Coast Water District, and the Monterey County Water Resources Agency. In that filing, Cal-Am explained that the parties to the Water Purchase Agreement had met with a Commission-sponsored mediator to try and pursue the Regional Desalination Project, but due to overarching events, Cal-Am no longer supported that project. On April 23, 2012, Cal-Am filed A.12-04-019 to propose the Monterey Peninsula Water Supply Project.<sup>2</sup>

This short overview provides a snapshot of the long history impacting the water situation on the Monterey Peninsula. We emphasize that the instant application is concerned only with costs accrued in 2010. Cal-Am did not formally withdraw its support of the Regional Desalination Project until January 2012.

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<sup>1</sup> Order WR 95-10.

<sup>2</sup> On June 12, 2012, the assigned ALJ in A.04-09-019 issued a proposed decision, recommending that the Commission grant Cal-Am's motion to withdraw its petition to modify D.10-12-016 and to close that proceeding.

**4. The Settlement Agreement is in the Public Interest, Consistent with the Law and Reasonable in Light of the Whole Record**

The Settling Parties have reached agreement on the disputed issues in the Application. The parties agree that the Commission should authorize Cal-Am to transfer \$5,111,492.96 in preconstruction costs incurred for the Coastal Water Project in A.04-09-019 for services rendered through 2010 to the Special Request 1 Surcharge Balancing Account. They also agree that Cal-Am's total request for recovery should be reduced by \$214,569.87. The agreed-upon disallowances include: 1) reduction of \$1,839 in consultant RMC's bills to correct contract billing rates; 2) reduction of \$3,028 in American Water's bills to correct for contract billing rates; 3) removal of withdrawn legal fees of \$13,135.78; d) reduction of \$28,156.41 to remove a portion of customer information costs; and 4) reduction of \$196,657.02 to adjust legal costs.

The Settlement Agreement was reached after DRA conducted a thorough review and audit of the 2010 preconstruction costs. The agreement represents a reasonable resolution of the dispute between Cal-Am and DRA regarding the Coastal Water Project preconstruction costs. We find that the adjustments strike a reasonable balance between the costs incurred by Cal-Am and the disallowances recommended by DRA. We concur that the agreed-upon 2010 preconstruction costs were reasonably and properly incurred in the pursuit of a long-term water supply solution on the Monterey Peninsula. We also find that the Settlement Agreement complies with our prior decisions addressing the Coastal Water Project preconstruction costs.

With the approval granted in today's decision, Cal-Am ratepayers will be paying for a total of approximately \$28.69 million in preconstruction costs incurred from 2006 through 2010. In D.11-03-008, we stated that "we would

expect that certain preconstruction costs would be reduced in 2011 and future years.”<sup>3</sup> Cal-Am should carefully demonstrate and substantiate the need for additional ongoing preconstruction costs in any future applications.

The proposed Settlement Agreement is in the public interest both because the agreed-upon costs are reasonable and because it will avoid potentially costly litigation. It is certainly preferable that parties develop their own mutually-agreeable solution regarding the relatively-minor disputed amounts. There is no need for the Commission or the parties to invest further time and resources in litigation. For all of the foregoing reasons, we grant the Settling Parties’ Motion and adopt the Settlement Agreement as proposed.

## **5. Categorization and Need for Hearings**

In Resolution ALJ 176-3277, dated July 14, 2011, the Commission preliminary categorized this application as Ratesetting and preliminarily determined that hearings were necessary. Given the uncontested Settlement Agreement that we adopt today, a public hearing is not necessary, and we modify the preliminary determination.

## **6. Comments on Proposed Decision**

As a result of the Settlement Agreement, this matter is uncontested. Pursuant to Pub. Util. Code § 311(g)(2) and Rule 14.6(c)(2), comments on the proposed decision of the ALJ are waived.

## **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

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<sup>3</sup> D.11-03-008 at 5.

### **Findings of Fact**

1. As detailed in the Settlement Agreement, we find that Cal-Am should be allowed to recover \$5,111,492.96 in 2010 preconstruction costs incurred in A.04-09-019, and this amount constitutes the entirety of Cal-Am's preconstruction costs incurred for services rendered through December 31, 2010, for which recovery has not been previously authorized.
2. \$5,111,492.96 should be transferred from the Coastal Water Project Memorandum Account to the Special Request 1 Surcharge Balancing Account for recovery from Cal-Am's ratepayers.
3. Cal-Am's ratepayers have been responsible for \$23.58 million in preconstruction costs incurred from 2006 through 2009. As a result of today's decision, ratepayers are now responsible for an additional \$5.11 million in preconstruction costs incurred in 2010, for a total of approximately \$28.69 million.

### **Conclusions of Law**

1. The Settlement Agreement between Cal-Am and DRA is reasonable in light of the whole record, consistent with the law, and in the public interest and should be approved.
2. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.
3. A.11-06-030 should be closed.

### **O R D E R**

Therefore, **IT IS ORDERED** that:

1. The Settlement Agreement between California-American Water Company and the Division of Ratepayer Advocates is approved without modification.

2. California-American Water Company is authorized to transfer \$5,111,492.96 of costs incurred for the Coastal Water Project in Application 04-09-019 for services rendered through December 31, 2010 from the Coastal Water Project Memorandum Account to the Special Request 1 Surcharge Balancing Account.

3. Evidentiary hearings are not necessary.

4. Application 11-06-030 is closed.

This order is effective today.

Dated August 2, 2012, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

Commissioners