

Decision 08-05-032 May 29, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Del Oro Water Company, Inc. (U-61-W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Regional Intertie Project to Resolve the Long-Term Water Supply Deficit In Its Paradise Pines, Magalia and Lime Saddle Districts and to Recover All Present and Future Costs in Connection Therewith in Rates.

Application 06-05-023
(Filed May 19, 2006)

Application of Del Oro Water Company, Inc. (U-61-W) for Authority to Borrow Approximately \$3,500,000 (and to Issue Evidence of Indebtedness in Connection Herewith) in Order to Make Certain Capital Improvements and for Authority to Recover all Such Costs and Advances by Increases in the Respective Water Rates of Customers in its Paradise Pines, Magalia and Lime Saddle Districts in the vicinity of Magalia and Paradise, Butte County, California.

Application 06-05-024
(Filed May 19, 2006)

DECISION APPROVING SETTLEMENT AGREEMENT

1. Summary

Today, we approve a comprehensive settlement agreement (Settlement Agreement)¹ entered into by the Del Oro Water Company, Inc. (Del Oro) and the Division of Ratepayer Advocates (DRA), the parties to this proceeding.

Our approval of the Settlement Agreement means that Del Oro will receive a Certificate of Public Convenience and Necessity to construct Phase I of its regional intertie project (Water Project) financed through: 1) a Safe Drinking Water State Revolving Fund (SRF) construction loan, and 2) equity financing provided by Del Oro. The Settlement Agreement also provides that Del Oro will file an advice letter which implements rate surcharges to ratepayers to repay the SRF loan, and recover equity financing costs through a general rate case filing. The allocation of the SRF debt service obligation will be fairly allocated to the three Del Oro districts served by the Water Project, which are Lime Saddle, Paradise Pines, and Magalia. Within each of these districts, the SRF debt service obligation will be recovered through monthly service charges and connection fees from previously un-served premises. Ratepayers who have previously paid a connection fee will not be subject to the SRF surcharge; however, all customers will pay their proportionate share of the equity portion of the Water Project funding.

As a result of the Settlement Agreement, the estimated monthly net bill increase for Del Oro customers served by standard 5/8-inch by 3/4-inch meters will increase by \$8.25 or 12% for Lime Saddle, \$4.82 or 11% for Magalia, and \$4.15 or 17% for Paradise Pines.

¹ The Settlement Agreement is attached as Appendix A.

2. Procedural Background

Del Oro filed Application (A.) 06-05-023 and A.06-05-024 (Applications) on May 19, 2006 requesting Commission authority for a Certificate of Public Convenience and Necessity (CPCN) to construct and finance the Water Project in Butte County. A.06-05-023 includes two phases: Phase I includes modifications to an Oroville Lake intake, improvements to a water treatment plant, and installation of a water main in Del Oro's Lime Saddle District;² Phase II includes a series of water supply options to improve water supplies to Del Oro's Paradise Pines and Magalia Districts. A.06-05-024, Del Oro's request for financing, only addresses Phase I. Del Oro states that future financing for Phase II will be addressed when Del Oro has a firm direction for the Paradise Pines and Magalia water supplies.³

² See, Appendix A, pp. 4-5.

³ The Applications are not Del Oro's first request for Commission authority for the Water Project. On February 4, 2002, Del Oro filed A.02-02-001 requesting Commission authority for a CPCN for the Water Project which included Phase I and Phase II. A.02-02-001 also included a request for exemption from the California Environmental Quality Act (CEQA).

A ruling by the assigned Administrative Law Judge (ALJ) found A.02-02-001 deficient for various reasons including Del Oro's failure to justify its request for exemption from CEQA. (ALJ's Ruling Finding Application Deficient, March 4, 2002.) On March 28, 2002, Del Oro withdrew A.02-02-001, and the application was dismissed by Decision (D.) 02-04-073. On June 12, 2002, Del Oro filed A.02-06-033 to borrow approximately \$250,000 to pay the costs of determining compliance with CEQA for Phase I of the proposed Water Project. D.02-09-036 authorized Del Oro to borrow the \$250,000 and also denied without prejudice Del Oro's additional request for authority to contemporaneously apply monthly surcharges to customers to repay the principal and interest on the loan.

At the time of filing the Applications, Del Oro anticipated that Butte County, the lead agency under CEQA, would adopt either a negative declaration or a mitigated negative declaration under CEQA requirements. At the prehearing conference (PHC) held on July 18, 2006,⁴ Del Oro stated that Butte County would approve a CEQA document in July 2006. During the second PHC held on August 25, 2006, Del Oro stated that Butte County's CEQA approval would be received in one of the September 2006 Butte County Supervisors' meetings. Also during the August 25, 2006 PHC, Del Oro stipulated to limiting A.06-05-023 to Phase I and parties agreed upon a schedule for filing testimony and for evidentiary hearings. An Assigned Commissioner's Ruling and Scoping Memo (Scoping Memo) was distributed on September 15, 2006. The Scoping Memo anticipated resolution of the proceeding by March 15, 2008.

The third PHC was held on March 27, 2007, during which Del Oro stated that Butte County had approved a CEQA negative declaration with certain restrictions in March 2007. Also, Del Oro stated that it needed to update its 2001-2002 Water Project cost estimates, and also reflect requirements of Butte County's negative declaration. Parties agreed upon a new schedule requiring Del Oro to develop its costs and provide information to DRA, following which DRA would then state its need for additional time for discovery and providing testimony.

At the fourth PHC on August 7, 2007, DRA stated its need to revise testimony and provide the testimony in September 2007. Parties also agreed to

⁴ During the PHC, A.06-05-023 and A.06-05-024 were consolidated as A.06-05-023.

enter into an alternative dispute resolution (ADR) process facilitated by the ALJ Division.

On October 17, 2007, the assigned ALJ issued a ruling requiring both parties to update their testimony and reports to reflect accurate costs and other related amounts.⁵

On October 25, 2007, a public participation hearing (PPH) was held in Paradise. During the PPH, Del Oro representatives explained why the Water Project is necessary, and answered customers' questions. A total of 12 Del Oro customers representing the Lime Saddle, Paradise Pines, and Magalia Districts spoke at the hearing. Customers expressed concerns about various aspects of the Water Project, project financing, poor water supply, whether the local Paradise Pines Irrigation District should buy portions of Del Oro's Districts, and how to address surplus water available as a result of the Water Project. DRA representatives also attended the PPH and explained the role of DRA in the proceeding.

During October and November 2007, parties participated in ADR meetings, and on January 16, 2008, the parties executed the Settlement Agreement and moved for its adoption. As explained in the Motion for Adoption of the Settlement Agreement (pp. 4-5), the most difficult issues regarding the Applications include the financing for Phase I, allocation of costs to Del Oro's three districts, and recovery of costs from ratepayers in each of the districts.

⁵ Phase I of the Water Project estimated at \$3.5 million in the Applications increased to \$5.2 million in the revised cost estimate.

On January 30, 2008, the assigned ALJ issued a ruling requesting information on the Proposed Settlement Agreement,⁶ and on March 5, 2008, Del Oro and DRA filed a joint response.

An Assigned Commissioner Amended Scoping Memo and Ruling on February 8, 2008, revised the schedule and provided that parties were not required to file a statement of contested facts.

On April 3, 2008, the assigned ALJ issued a ruling identifying and receiving into evidence all testimony, revised testimony and CEQA documents effective April 15, 2008.

3. Settlement Agreement

Del Oro and DRA (Settling Parties) agree on all disputed issues in the consolidated applications in this proceeding including:

3.1. The Need for Phase I of the Water Project

DRA supports Del Oro's request to construct Phase I to convey water from an existing intake in Oroville Lake through its water treatment plant to upper Lime Saddle District. Settling Parties agree that the primary beneficiary of the Water Project is the Lime Saddle District, and that the Magalia and Paradise Pines Districts will indirectly benefit from the water reserve no longer required for the Lime Saddle District.

3.2. Phase I Project Financing

Settling Parties agree that Del Oro will use the maximum amount of SRF funding offered by the California Department of Public Health (CDPH) and its agent, the Department of Water Resources (\$4,465,187) and that Del Oro may

⁶ All of the questions in this Ruling address Phase I project financing.

fund the remainder of Phase I Water Project costs with equity funding. Settling Parties agree the maximum equity funding is \$757,320, at an estimated return on equity of 10.54%.

Settling Parties also agree that Del Oro should be authorized to file an advice letter (AL) to implement rate surcharges to repay indebtedness, and implement an SRF surcharge connection fee as described in the Settlement Agreement. Settling Parties further agree that Del Oro shall file a general rate case (GRC) within 90 days after Water Project completion to seek recovery of equity funded Phase I Water Project costs as described in the Settlement Agreement.

3.3. SRF Cost Allocation Between Districts and Cost Savings to the Lime Saddle District

Settling Parties agree to allocate SRF loan debt service to Del Oro Districts in the following amounts: 1) 25% to Lime Saddle, 2) 70% to Paradise Pines, and 3) 5% to Magalia. These allocations reflect consumption of water in each district, connection fees paid by certain Lime Saddle District customers, and Lime Saddle cost savings.

Settling Parties further agree on the methodology for capping the Lime Saddle surcharge, cost calculations for Lime Saddle ownership of Phase I, and calculation of the Lime Saddle monthly surcharge during the 20 years of the SRF loan. The detailed calculations⁷ allow for cost parity between those Lime Saddle customers who previously paid the connection fee and those who will contribute using a monthly surcharge over 20 years.

⁷ See, Appendix A, Section 4.

3.4. SRF Surcharge Design

Settling Parties agree to base the SRF surcharge rate design on equivalent units derived from meter size or meter flow rate capacity pursuant to standard service charge design.⁸ Surcharge connection fees will be charged to previously un-served premises that reflect surcharge rates approved for their district and meter size. The Settlement Agreement provides for application of the SRF surcharge to loan payments, earning of interest and potential refund of excess funds to ratepayers after the SRF loan is repaid.

3.5. The \$5,000 Connection Fee

Although Lime Saddle customers who already paid the \$5,000 connection fee are excluded from the SRF surcharge, all active Lime Saddle connections are responsible for a proportionate share of Phase I equity costs. Upon conclusion of Phase I, Del Oro will file an AL to end collection of the \$5,000 connection fee for new connections.

3.6. Equity Cost Allocation

Settling Parties agree that the greater recovery of equity cost from Lime Saddle customers reflects greater economic and water supply benefits. This greater equity cost recovery is allocated equally among all active customers regardless of whether the Lime Saddle customer has paid a connection fee. Paradise Pines and Magalia customers will pay equity financing in proportion to relative consumption. Del Oro will file for a GRC within 90 days of the completion of Phase I allowing for review of equity funded project costs.

⁸ See, Water Division Standard Practice U-7-W "Rate Design for Water and Sewer System Utilities."

3.7. Cost Overruns and Contingency Costs

The Settlement Agreement provides for a 10% contingency factor (\$431,848). Part of this total (\$368,884) would be paid through the SRF loan, and any remaining amount paid through equity financing capped at \$62,963.

3.8. Total Bill Impact for All Districts

The Settlement Agreement estimates total monthly bill impacts for customers using a standard 5/8-inch by 3/4-inch meter in Del Oro's three districts as:

District	Increase (\$)	Increase (%)
Lime Saddle	\$8.25	12
Paradise Pines	4.15	17
Magalia	4.82	11

The maximum increases for any meter are 28% for Lime Saddle, 24% for Magalia, and 25% for Paradise Pines.

3.9. Butte County Property Tax Revenues

The Settlement Agreement recognizes that certain property tax revenues are held by Butte County, and that these revenues may be made available to Del Oro for application to Phase I costs. In the event that Butte County releases such revenues, Del Oro will file an AL to apply these revenues to Phase I and lower rates accordingly.

4. Discussion

Settling Parties urge the Commission to adopt the Settlement Agreement pursuant to Rule 12.1(d)⁹ and find that it is “reasonable in light of the whole record, consistent with the law, and in the public interest.”

4.1. Settlement Agreement is Reasonable in Light of the Whole Record

The Settlement Agreement was reached after opposing parties were able to assess the strengths and weaknesses of their respective cases. As the Settling Parties explain, the need for the Water Project was not disputed; however, parties disagreed over Phase I project financing. Both Del Oro and DRA assert that the Settlement Agreement results in a reasonable outcome in regard to financing. We agree. The Settlement Agreement proposes to use low-interest SRF financing to the greatest extent possible while also permitting a limited amount of equity financing.

The Settlement Agreement demonstrates a reasonable methodology for the allocation of Water Project costs between the three Del Oro districts, and a reasonable rate design within each district. The proposed cost allocation and rate design considers many relevant factors including tangible and intangible benefits, usage patterns, and the need to recognize prior contributions to the cost of the Water Project such as the connection fees previously paid by Lime Saddle customers.

⁹ All references are to the Commission’s Rules of Practice and Procedure unless otherwise noted.

It is a measure of the reasonableness of the Settlement Agreement that these parties, who vigorously disputed these issues that the Settlement Agreement would resolve, have now agreed to the proposed compromise.

4.2. Settlement Agreement is Consistent With the Law

Settling Parties assert that the Settlement Agreement is consistent with the law. We agree. The Settlement Agreement complies with all applicable statutes and prior Commission decisions. It is entirely consistent with the relevant provisions of the Public Utilities and Health and Safety Codes. The Settlement Agreement recognizes and gives effect to the dual roles of this Commission and the CDPH in bringing a more reliable water supply to Del Oro ratepayers in the Lime Saddle, Magalia, and Paradise Pines Districts, and rates consistent with the requirements of Pub. Util. Code § 451.

As further discussed under Environmental Review, the Settlement Agreement is also consistent with the requirements of CEQA.

4.3. Settlement Agreement is in the Public Interest

Approval of the Settlement Agreement is in the public interest as it will allow Del Oro to proceed in a timely fashion to address potential water supply uncertainties recognized by both Del Oro and DRA. As the Settlement Agreement addresses the disputed financing issues, the Water Project may now move forward to alleviate potential water supply shortages in these three Del Oro Districts.

Also, the Settlement Agreement is in the public interest because it will avoid a potentially extensive and costly litigation of the financing and rate disputes pertaining to the Water Project. Conducting further proceedings,

including evidentiary hearings and filing of briefs, would consume resources of the Commission and the parties.

Finally, we note that the Settling Parties comprise all of the active parties in A.06-05-023 and A.06-05-024, and we do not know of any parties who contest the Settlement Agreement. Thus, the Settlement Agreement commands the unanimous sponsorship of all active parties in this proceeding, who fairly represent the interests affected by the Settlement Agreement. We find that the evidentiary record contains sufficient information for us to judge the reasonableness of the Settlement Agreement and for us to discharge any future regulatory obligations with respect to this matter. Thus, the proposed settlement is consistent with the criteria for all-party settlements set forth in D.92-12-019 (46 CPUC2d 538).

5. Environmental Review

CEQA (Public Resources Code Sections 21000 *et seq.*) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to “inform governmental decisionmakers and the public about the potential, significant environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereinafter “CEQA Guidelines,” § 15002.)

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead or a Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines § 15051(b)).

In this instance, Butte County is the Lead Agency for the Water Project, and the Commission is the Responsible Agency. On March 22, 2007, the Butte

County Planning Commission issued Resolution 07-16¹⁰ (Resolution) adopting a Mitigated Negative Declaration for the Water Project. The Resolution determined that allowing the Water Project to go forward would not have a significant effect on the environment provided that Del Oro implements specific mitigation measures¹¹ including a limitation on the number of Lime Saddle District connections,¹² minimizing aesthetic, aquatic and air quality disruptions during and after construction, and protection of cultural resources. Other mitigation measures address traffic safety, construction noise and protection of elderberry shrubs.

As the Responsible Agency under CEQA, the Commission's role is limited to reviewing the environmental consequences of Del Oro's proposed Water Project as part of its discretionary approval of the Applications. In general, the Commission must consider the Lead Agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project (CEQA Guideline § 15050(b)). We have reviewed and considered Butte County's Resolution and mitigation measures and find that these documents are adequate for our decision-making purposes under CEQA. We find that the Lead Agency reasonably concluded in its Resolution that the construction of the proposed

¹⁰ See, Exhibit 15.

¹¹ See, Exhibit 18.

¹² Del Oro will be limited to 500 connections in the Lime Saddle District (Exhibit 16, p. 9). Lime Saddle currently has approximately 355 connections.

Water Project will have no significant environmental effect and that the required mitigation measures are adequate to address any adverse impacts.¹³

Pub. Util. Code § 1002 requires that the Commission give consideration to community values, recreational and park areas, historical and aesthetic values and influences on the environment before granting a CPCN. Our review of the Initial Study and Proposed Mitigated Negative Declaration indicates that these values were considered as part of the CEQA review process¹⁴ and do not need to be addressed again as part of the CPCN.

6. Conclusion

For all of the foregoing reasons, we grant the Settling Parties' Motion and adopt the Settlement Agreement as proposed.

Del Oro should be authorized a CPCN to construct Phase I of the Water Project with financing provided by the SRF loan and equity financing as discussed herein.

7. Comments on Proposed Decision

Rule 14.6(c)(2) provides that comments may be waived in proceedings where no hearings were conducted and in an uncontested matter where the decision grants the relief requested. As no hearings were held in this proceeding and we are adopting the Settlement Agreement as proposed by Del Oro and DRA, comments are waived.

¹³ See, Exhibit 18.

¹⁴ See, Exhibit 18, pp. 27-62.

8. Assignment of Proceeding

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

Findings of Fact

1. On January 16, 2008, Del Oro and DRA filed a joint motion requesting the Commission to adopt a settlement agreement entitled "Settlement Agreement Between Del Oro Water Company and the Division of Ratepayer Advocates."
2. All parties have agreed to settle this proceeding.
3. All disputed issues in this proceeding are encompassed by and resolved in, the Settlement Agreement.
4. The parties to the Settlement Agreement are all of the active parties in this proceeding.
5. The parties are fairly reflective of the affected interests.
6. No term of the Settlement Agreement contravenes statutory provisions or prior Commission decisions.
7. The Settlement Agreement conveys to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.
8. Conducting a further proceeding would unnecessarily consume valuable resources of the Commission and Del Oro and would delay, and possibly prevent, the realization of the benefits identified above pertaining to the Water Project.
9. The Settlement Agreement is reasonable in light of the record, consistent with law, and in the public interest.

10. Phase I of the Water Project is needed to address water supply problems due to declining output of existing wells and to create a more reliable regional water supply.

11. Phase I of the Water Project primarily benefits Lime Saddle customers although Paradise Pines and Magalia customers will indirectly benefit from the Water Project.

12. Phase I of the Water Project will convey water from Oroville Lake through a water treatment plant to the Lime Saddle District.

13. The maximum amount of SRF funding is \$4,465,187.

14. The Settlement Agreement provides that maximum equity funding is \$757,320.

15. The Settlement Agreement allocates SRF loan debt service to Del Oro Districts in the following amounts: 1) 25% to Lime Saddle, 2) 70% to Paradise Pines, and 3) 5% to Magalia.

16. Allocation of loan debt service to the three Del Oro Districts is based on Lime Saddle connection fees and cost savings, and consumption in each district.

17. The methodology to cap the Lime Saddle District surcharge allows for cost parity between customers who previously paid the connection fee and those who will contribute over the 20-year surcharge.

18. The SRF surcharge rate design is based on meter size or meter flow rate capacity.

19. The Settlement Agreement provides for application of the SRF surcharge to loan payments, interest and potential refund of excess funds to ratepayers after the SRF loan is repaid.

20. Lime Saddle District customers who already paid the \$5,000 connection fee are excluded from the SRF surcharge; however, they will pay a proportionate share of Phase I equity costs.

21. The greater allocation of equity costs to Lime Saddle customers reflects greater economic and water supply benefits from the Water Project.

22. The Settlement Agreement provides for a Water Project contingency of \$431,848, of which \$368,884 would be paid by the SRF loan and any remainder up to \$62,963 through equity financing.

23. Butte County holds certain property tax revenues which may be made available to Del Oro for application to Phase I costs.

24. As a Responsible Agency under CEQA, the Commission's role is to review the environmental consequences of the proposed Water Project, and consider the Lead Agency's Negative Declaration.

25. We have considered Butte County's Resolution and Mitigation Monitoring and Reporting Program and conclude that it is adequate for our decision-making purposes under CEQA.

26. We have considered Del Oro's Mitigated Negative Declaration that addresses Butte County community values, aesthetics, cultural resources and recreational impacts and find that it adequately reflects our consideration of the § 1002 factors.

Conclusions of Law

1. The Commission has jurisdiction over the proposed Water Project pursuant to §§ 1001 *et seq.*

2. The Settlement Agreement fully resolves and settles all disputed issues among the parties concerning Del Oro's applications in this proceeding.

3. The Settlement Agreement we approve is reasonable in light of the whole record, consistent with law, and in the public interest.

4. No party opposes the Settlement Agreement.

5. The Settlement Agreement should be approved.

6. Del Oro has met its burden of providing information on the factors required in § 1002 for authorizing a CPCN.

7. The approval of Del Oro's Applications, as provided herein, should be conditioned upon the completion of the CEQA Mitigation and Monitoring and Reporting Program approved by the Lead Agency.

8. The Commission's responsibilities as a Responsible Agency under CEQA are satisfied.

9. This decision should be effective today so that the Settlement Agreement may be implemented expeditiously.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement between Del Oro Water Company, Inc. (Del Oro) and the Division of Ratepayer Advocates, attached as Appendix A, shall be approved without change.

2. A Certificate of Public Convenience and Necessity is granted to Del Oro to construct and operate Phase I of its Regional Intertie Water Project, and borrow approximately \$4,465,187 as discussed in this opinion.

3. Del Oro shall comply with all California Environmental Quality Act mitigation measures specified by Butte County.

4. Del Oro is authorized to implement changes in rates and tariffs in accordance with the terms of the Settlement Agreement.

5. Applications (A.) 06-05-023 and A.06-05-024 are closed.

This order is effective today.

Dated May 29, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners