Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U210W) for Orders (1) for Standby Authority to Impose Emergency Temporary Increases in Upper Block Volume Rates for Water Service in its Monterey District if Needed to Avoid SWRCB Violations in 2005 and (2) for Authority to Refund Over Collections of the Monterey District WRAM Account Balances Collected Pursuant to D.04-07-035.	Application 04-10-037 (Filed October 29, 2004)

OPINION AUTHORIZING CONSERVATION RATES

Summary

California-American Water Company (CalAm) is authorized to implement in its Monterey District a sharply increasing block rate structure intended to discourage non-essential water use in the upper blocks, if water production levels from its Carmel River sources indicate a likelihood CalAm would otherwise be in violation of a State Water Resources Control Board (SWRCB) production-limitation order. This decision defines the revised rate structure and establishes the triggering criteria and implementation procedure. This authority is temporary and will expire when the Commission issues its order in CalAm's pending Monterey District general rate case later this year. In addition, CalAm is ordered to refund to Monterey customers Water Revenue Adjustment Mechanism (WRAM) balancing account revenues collected when the

Commission approved the same conservation rate structure for use in July through October 2004. This proceeding is closed.

Background

CalAm provides public utility water service to approximately 170,000 customers in various areas in San Diego, Los Angeles, Ventura, San Mateo, Santa Cruz, Sonoma, Sacramento, Placer and Monterey counties.[1] CalAm is a California corporation and a wholly owned subsidiary of American Water Works Company, Inc., which is in turn owned by RWE Aktiengesellschaft, Thames Water Acqua Holdings GmbH.

CalAm's Monterey District provides water service to approximately 39,000 customers on the Monterey Peninsula and vicinity, encompassing the cities of Carmel-by-the-Sea, Pacific Grove, Monterey, Sand City, Del Rey Oaks and part of Seaside, much of the Carmel Valley, the Highway 68 corridor, and several other nearby unincorporated areas.

CalAm supplies about 85% of the Monterey Peninsula's water. It develops its supply from Carmel River surface water and wells in the Carmel Valley, Seaside basin, and along the Highway 68 corridor. It has been apparent for some time that during periods of drought there is not sufficient water to satisfy fully both environmental requirements and unrestrained municipal water demands, but various factors have prevented any permanent solution to date.

In 1995, SWRCB added a major new legal constraint to the Monterey Peninsula's physical water supply limitations. SWRCB, following

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[1] For much of background information in this order, we take official notice of our Decision (D.) 03-02-030 in CalAm's last general rate case, and D.04-07-035 in which we approved the same conservation rate design for use in July through October 2004.

hearings begun in 1992, acted on complaints alleging that CalAm's Carmel River water use was without valid rights and adversely impacted environmental and public trust values. In Order WR 95-10, it directed CalAm to cut its Carmel River diversions to 14,106 acre-feet annually and implement conservation measures to bring that figure down by 20% more beginning with the 1997 water year. CalAm met the SWRCB-mandated cutback during the first water year ending September 30, 1996 following Order WR 95-10. It exceeded the limit in the second year, however, and the SWRCB levied a $168,000 fine on CalAm for the violation.[2] CalAm continues to this day to operate Monterey District under the terms of SWRCB Order WR-95-10 as modified by Order WR 98-04. With the aid of Commission-authorized rate structures designed to provide very strong conservation incentives, it has been able to meet SWRCB's limits in every water year after 1997.

CalAm ran into difficulty again in mid-2004. CalAm works with Monterey Peninsula Water Management District (MPWMD) to create quarterly water production budgets and sets monthly targets that, if met, should at the end of the water year bring production within the SWRCB annual limit. Although it had managed to stay within its cumulative water production target through April 2004 for the October 2003 through September 2004 water year, CalAm recognized that May deliveries were consistently exceeding the daily targets due to early, dry and hot weather conditions with no relief in sight. That pattern

[2] CalAm has been authorized memorandum account treatment in three earlier Monterey District decisions (D.98-08-036, D.00-03-053, and D.03-02-030) for any SWRCB fines due to failure to meet the requirements of Order WR 95-10. Recovery in rates may be allowed provided the Commission determines that CalAm's management and operations related to those fines have been reasonable and their recovery is justified.

continued into June, making it highly likely that Carmel River production would exceed the SWRCB limit for the 2004 water year if extraordinary steps were not taken. In mid-June, CalAm filed Application (A.) 04-06-020 seeking authorization to impose a special conservation rate design. In July 2004 we issued D.04-07-035 granting CalAm authority to implement the modified rate design described below. Its efforts were successful, and CalAm did finish the 2004 water year within the SWRCB limit.

Although the Commission was able to act quickly during 2004, issuing D.04-07-035 just 22 days after the application was filed, that authority has now expired and CalAm is concerned that there need to be measures in place to address future threats without relying on urgent Commission action. CalAm is proposing in its current Monterey District general rate case[3] a rate design that will include provisions to avoid the need for urgent relief of the type that was authorized in D.04-07-035, but that will only address the issue from 2006 forward. To avoid another urgent request if consumption is excessive in 2005, CalAm seeks advance approval to implement the same rate design as in July 2004 should the need arise. In addition, it seeks authorization to refund to Monterey customers excess WRAM balancing account revenues collected while its conservation rate design was in use during July through October 2004.

CalAm mailed notice of the application to all of its Monterey District customers, and provided copies of the application to potentially interested local, state and federal government entities and others. No protests or responses were received.

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[3] Application 05-02-012.

Discussion

In D.04-07-035, we described at length the overusage and overproduction problems CalAm faced during the summer of 2004. Those problems and our approval of conservation measures to address them are summarized above, and we need not repeat the full D.04-07-035 discussion here. Today's application is CalAm's attempt to address the possibility that similar problems could reappear at any time, and to propose in advance a solution that doesn't require the Commission to take action on short notice as it was asked to do in 2004.

If CalAm were to fail to meet SWRCB's water production limits for a water year, it would be in violation of SWRCB Order WR 95-10 and could be assessed substantial fines, perhaps as high as $3 million to $4 million. If fines are assessed, they would be booked in a previously authorized memorandum account, and CalAm would seek Commission authorization to recover them from its Monterey District customers.

We agree with CalAm that the time to devise effective conservation measures and implementation criteria for them is now, not when the situation has grown critical and time to act is short.

CalAm's Proposed Rate Structure

If and when triggered, CalAm's proposed standby conservation rate structure would impose a temporary increase in the upper quantity block rates for all water service connections (Tariff Schedule MO-1) in the affected area.[4] The increases would expire on November 1, 2005, to be replaced by whatever

[4] A relatively small number of Monterey District customers are served by systems drawing from water sources other than the Carmel River system. Those customers are not on Tariff Schedule MO-1 and would not be affected.

rates would otherwise have been in effect.[5] In 2004, those were the winter season rates approved in CalAm's last Monterey District general rate case. The increases CalAm proposes are aimed primarily at decreasing excessive outdoor water usage and water waste. Users of normal amounts of water indoors and those who do not waste water would be largely unaffected.

The specific increases would be:

> Rates for the fourth and fifth blocks of the residential, multi-residential and Program for Alternative Rates (a low-income customer rate category) schedules would be doubled;
>
> The second block rate for golf course customers would be triple the first block rate and would apply to usage above their monthly allotments;
>
> The second block rate for public authority customers would be double the first block rate and a limit of 40 ccf (hundred cubic feet) per month per meter would be allowed in the first block;
>
> The single block rate for special use customers would be increased by one-third; and
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> The second block rate for all other customers would be doubled.

The goal of this rate structure is to increase rates for non-essential uses, primarily excessive outdoor watering, and to the extent possible limit consumption to indoor uses. The upper two rate blocks for residential and

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[5] Although the water year ends on September 30, 2005, the proposed conservation rate structure would remain in effect during October to avoid the billing complications and customer confusion of returning to Monterey District's normal summer rates on October 1st and then switching again to the normal winter rates on November 1st. This is consistent with the timing we approved for 2004 in D.04-07-035.

multi-residential customers and the second block for commercial customers are designed to cover outdoor watering. The first block for all other customers is set at a level to provide sufficient water for normal needs. All other customers are made up primarily of commercial, public authority, and other outdoor watering entities. The increases in rates for golf courses and public authority customers are based on the fact that that they have control over the water they use, and it is mostly outdoor usage. Most special use customers use water for non-essential and construction purposes.

These changes are identical to those we adopted in D.04-07-035 to promote conservation. The actual rates to which these multiples would be applied would be those in effect at the time the increases are triggered, including any Commission-authorized changes that have taken place up to that time. Under ratemaking provisions already in effect, the increased revenues would flow automatically to CalAm's existing WRAM balancing account and eventually be applied to customers' benefit, as further described below.

These rate changes, combined with enhanced outreach efforts and other factors, were sufficient to reduce customer consumption and bring production from the Carmel River supply system within SWRCB's mandated limitation by the end of the 2004 water year. CalAm believes, and we agree, that the same set of changes would once again be effective if the problem were to reoccur in 2005.

CalAm's Proposed Implementation Criteria

As noted above, CalAm works with MPWMD to create quarterly water production budgets and sets monthly targets that, if met, should at the end of the water year bring production within the SWRCB annual limit. Those targets would be the basis for determining whether and when to trigger the proposed standby rates. The standby conservation rate structure would go into effect on

five days' notice pursuant to an advice letter filing when one of these criteria is met:

> If production from the Carmel River resource system on a year-to-date basis exceeds the three month target by 5% or more at the end of the first quarter (December 31, 2004) of the 2004-2005 water year;
>
> If production from the Carmel River resource system on a year-to-date basis exceeds the monthly targets by 5% or more over the established daily year-to-date limitation in any of the months of January, February or March 2005;[6]
>
> If production from the Carmel River resource system exceeds the year-to-date production targets on a daily basis in any amount for a consecutive seven-day period during the months of April, May or June 2005; or
>
> If production from the Carmel River resource system exceeds the daily year-to-date targets on any single day during the months of July, August or September 2005.

These proposed criteria are based on CalAm's experience during the period of overproduction in mid-2004 and reflect the time remaining at each stage to bring Monterey District's cumulative water production back within the SWRCB-mandated limitation by the end of the water year. We agree that objective triggering criteria are needed, and that those criteria should be progressively tightened during the water year to reflect the time remaining to recover from overproduction at each stage. The criteria CalAm proposes meet those tests, and we believe they would be effective.

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[6] Water Division reports that production has stayed within CalAm's targets through January 2005, and would not have triggered either of the first two criteria had they been in effect.

Thus, we agree with CalAm as to the need to prepare now, the specific rate structure it proposes, and the implementation criteria. We will approve those aspects of its request.

One other aspect of CalAm's proposal merits mentioning here. If and when these criteria are met and the higher rates triggered, CalAm proposes to implement them by filing an advice letter and making it effective on five days' notice. We understand and agree with the need for prompt implementation. We also know, however, that if the higher rates are to be effective in reducing consumption, customers will have to be made aware long *before* they receive their first increased bills. CalAm does not state in this application what measures it will take to ensure that happens, beyond a general statement that in July 2004 there was " . . . wide-spread news coverage of A.04-06-020 and exceptional customer outreach by Applicant associated with the water issue . . . ." If these higher rates are triggered again in 2005, we expect CalAm to ensure that all affected water users are made aware *early on* of the need for extraordinary conservation efforts and the higher charges they will incur if their consumption reaches into the upper rate blocks.

CalAm's Proposed Refund

When the Commission in D.04-07-035 ordered CalAm to impose this same conservation rate structure in July through October 2004, it did so knowing that the resulting increased revenues would flow automatically to CalAm's existing WRAM balancing account and eventually be applied to customers' benefit. CalAm's application provides a preliminary figure for the WRAM balance related directly to its D.04-07-035 conservation rates as of September 30, 2004. Water Division later provided a tentative final figure of $1,957,530. Now that

the 2004 water year is over, CalAm seeks authorization to refund those amounts to Monterey customers.

CalAm recommends that one-half of the collections be returned to those customers who paid higher rates due to consuming water in the blocks affected by the 2004 conservation rate structure. The remaining one-half would go to all customers billed under Monterey Tariff Schedule MO-1. An argument could be made that all customers, both high volume users and low volume users, were at risk for sharing the SWRCB fines had conservation efforts not succeeded, so all should receive a share of the collections. But a strong argument could also be made that it was the high block customers who funded most of those collections, and, despite being in the upper blocks, contributed most to the cutbacks that enabled CalAm and the entire community to comply with SWRCB's Order WR 95-10. We agree that the efforts of both groups were vital, and CalAm's proposed method recognizes the efforts of both. We will approve refunds following CalAm's proposed allocation method.

To return the conservation-related collections, CalAm will provide a one-time customer bill credit consisting of: (a) one-half of the total D.04-07-035 WRAM collections distributed to current customers who paid those amounts, to be divided among them in proportion to the amount of the collections each paid; and (b) one-half of the total D.04-07-035 WRAM collections distributed to all current customers based on meter size.[7] CalAm's figures updated for the

[7] Commission regulators and the industry have a standard method that looks to the flow characteristics of each meter size to determine "meter equivalents" that are then used for purposes such as allocating charges to each meter size. That method would be used here.

tentative final refund amount indicate that the typical 5/8" metered customer will receive about $18.54 for the all-customer refund component (and larger meter size customers proportionately more), and each customer who paid the increased charges would in addition receive a credit of about one-half of the amount of the increase each incurred during the July through October 2004 period.

Procedural Considerations

The Commission in Resolution ALJ 176-3142 (November 19, 2004) preliminarily categorized this as a ratesetting proceeding not expected to require hearings. There are no material facts in dispute, and there is no known opposition to granting the relief requested. We conclude that it is not necessary to disturb our preliminary determinations.

This is an uncontested matter which pertains solely to water companies. Accordingly, pursuant to Pub. Util. Code § 311(g)(3), the 30-day period for public comment does not apply.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and James C. McVicar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SWRCB Order WR 95-10 limits the amount of water CalAm may produce from the Carmel River system. Violation of SWRCB Order WR 95-10 could expose CalAm to significant fines that CalAm would likely seek to pass through to its Monterey District water customers.

2. CalAm's compliance with SWRCB-imposed water production limits established in SWRCB's Order WR 95-10 is in the public interest.

3. CalAm has in the past had difficulty staying within the SWRCB-imposed water production limits. Had the Commission not responded quickly in approving CalAm's water conservation rate design request in mid-2004, it is likely CalAm would have exceeded its SWRCB-imposed water production limits and been in violation of SWRCB's Order WR 95-10 for the water year ending September 30, 2004.

4. An overproduction situation similar to that in 2004 could occur again at any time.

5. It is prudent and reasonable to devise effective conservation measures and implementation criteria for them in advance, rather than waiting until an overproduction situation has grown critical and time to act is short.

6. Increasing upper block quantity rates is an effective method for promoting water conservation.

7. The modified rate structures and increases CalAm proposes are aimed primarily at decreasing excessive outdoor water usage and water waste. Users of normal amounts of water indoors and those who use water prudently would be largely unaffected.

8. The criteria CalAm proposes are appropriate for determining if and when a modified rate structure should be implemented.

9. The modified rates we authorize today are extraordinary, temporary, and intended only for promoting conservation. Any increased revenues CalAm receives as a result of the rate increases authorized in this order will automatically accrue to CalAm's previously-authorized WRAM account and eventually be applied to customers' benefit.

10. Objective criteria are needed for triggering the modified rate structure, and those criteria should become progressively tighter during the water year to

reflect the time remaining to recover from overproduction at each stage. The criteria CalAm proposes meet those tests and would be effective.

11. It is reasonable to refund to all customers on CalAm's Tariff Schedule MO-1 one-half of CalAm's WRAM balance related directly to the conservation rate increases we ordered in D.04-07-035, and one-half to those customers on Tariff Schedule MO-1 who paid higher rates due to consuming water in the blocks affected by the 2004 conservation rate structure.

12. CalAm provided notice of the application to all of its Monterey District customers, and provided copies of the application to potentially interested local, state, and federal government entities and others. No protests or responses were received.

13. There is no known opposition to granting the relief requested.

14. No hearing is required.

Conclusions of Law

1. The rate increases authorized in this order are justified and the resulting rates are reasonable.

2. The modified conservation rate design proposed by CalAm and set forth in Appendix A to this order, the rates they would produce, and the implementation criteria CalAm proposes, are in the public interest and should be approved.

3. CalAm should refund to customers on Tariff Schedule MO-1 the WRAM balance related directly to the conservation rate increases we ordered in D.04-07-035.

4. This decision should be made effective immediately to make the water conservation rate structure it authorizes available as soon as possible.

O R D E R

IT IS ORDERED that:

1. If at any time before September 30, 2005 production for the water year to date from California-American Water Company's (CalAm) Carmel River resource system has reached a level projected to cause production for the entire water year to exceed that allowed under State Water Resources Control Board Order WR 95-10 as modified by Order WR 98-04, CalAm is authorized to file in accordance with General Order 96 and make effective on five days' notice a revised Tariff Schedule MO-1. The revised schedule shall follow the rate structure pattern on the sample Tariff Schedule MO-1 sheet included as Appendix A to this order, and shall reflect any other Commission-authorized rate changes to that schedule occurring after January 1, 2005 while maintaining the same allotments and block-to-block rate multiples as shown in Appendix A. The revised schedule shall apply to service rendered between its effective date and October 31, 2005, unless sooner revised, extended or canceled. On November 1, 2005, CalAm shall return to the rate structure and rates that would otherwise have been in effect absent this change.

2. In determining for purposes of Ordering Paragraph 1 whether production has reached a level projected to cause production for the entire water year to exceed that allowed under State Water Resources Control Board Order WR 95-10 as modified by Order WR 98-04, CalAm shall apply the criteria set forth in the body of this order.

3. CalAm shall refund to customers receiving service under Monterey District Tariff Schedule MO-1 the balance in its Water Revenue Adjustment Mechanism account (WRAM) related to the conservation rates authorized in Decision (D.) 04-07-035. The refund shall be in the form of a one-time customer bill credit consisting of: (a) one-half of the total D.04-07-035 WRAM collections distributed

to current customers who paid those amounts, to be divided among them in proportion to the amount of the collections each paid; and (b) one-half of the total D.04-07-035 WRAM collections distributed to all current customers based on meter size.

4. Application 04-10-037 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Schedule No. MO-1
Monterey District Tariff Area

GENERAL METERED SERVICE

APPLICABILITY

Applicable to all water furnished on a metered basis.

TERRITORY

The incorporated cities of Monterey, Pacific Grove, Carmel-by-the-Sea, Del Rey Oaks, Sand City, a portion of Seaside, and certain unincorporated areas in the County of Monterey.

RATES

Quantity Rates:

	Per Ccf	
Elevation Zone Surcharge:		
Elevation Zone 1, per 100 cu. ft., ...	$0.2461	
Elevation Zone 2, per 100 cu. ft., ...	0.4280	
Residential, Multi-Residential, and PAR Customers:		
For the first 100 cu. ft. x Customer ECU.....	1.5264	
For the second 100 cu. ft. x Customer ECU.....	3.0528	
For the third 100 cu. ft. x Customer ECU.....	4.5792	
For the fourth 100 cu. ft. x Customer ECU.	12.2112	(I)
All Water over 400 cu. ft. x Customer ECU.	24.4224	(I)
Service Charge	0.9948	
Golf Course Customers:		
For all water delivered up to monthly allotment, per 100 cu. ft.	3.0528	(n)
For all water delivered over monthly allotment, per 100 cu. ft.	9.1584	(n)(I)
Public Authority Customers:		
For the first 40 ccf's, per 100 cu. ft.	3.0528	(n)
For all water delivered over 40 ccf's, per 100 cu. ft.	6.1056	(n)(I)
Special Use Customers:		
For all water delivered, per 100 cu. ft.....	6.1056	(I)
All Other Customers:		
For all water delivered up to monthly allotment, per 100 cu. ft.	3.0528	
For all water delivered over monthly allotment, per 100 cu. ft.	18.3168	(I)

(END OF APPENDIX A)