

**ITEM 14**



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February 19, 2021

**TO:** MPWMD Board of Directors

**FROM:** David C. Laredo & Fran Farina, Office of the General Counsel

**Cc:** Dave Stoldt, General Manager

**RE:** California-American Water Company  
Status Report on 2019 General Rate Case Application 19-07-004

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California-American Water Company (Cal-Am) filed this 2019 General Rate Case (GRC) with the California Public Utilities Commission (CPUC or Commission) on July 1, 2019. Rates approved by the Commission from this proceeding apply to water consumed in years 2021, 2022 and 2023. This massive filing included initial testimony from fourteen (14) separate Cal-Am witnesses, Minimum Data Requirements (MDRs) with mandatory operational information totaling thousands of pages, seventeen (17) Special Requests, and supporting workpapers. This is also a statewide filing affecting all Cal-Am districts in California in addition to issues affecting only the Monterey District.

**Initial Procedural Activities**

The Monterey Peninsula Water Management District (District) filed its Protest on August 2, 2019 to identify issues in general terms and indicate discovery would be needed to formulate appropriate positions. Other major parties who protested or requested party status have included:

- California Public Advocates Office (Cal PA previously known as ORA or DRA),
- City of Thousand Oaks,
- City of Duarte,
- Coalition of Peninsula Businesses,
- City of San Marino, and
- Las Palmas Wastewater Committee

Cal-Am replied to all protests on August 15, 2019.

Commissioner Genevieve Shiroma and Administrative Law Judge (ALJ) Gerald Kelly jointly conducted A Prehearing Conference on September 19, 2019 during which party status was confirmed and preliminary procedural issues were addressed. Neither Commissioner Shiroma nor ALJ Kelly had had prior experience with Monterey's water history or issues.

A Public Participation Hearing was held in the City of Seaside on February 18, 2020. The District did not have a speaking role as it was a Party to the proceeding but did attend as an observer.

### District Testimony

The District submitted written testimony on February 27, 2020. General Manager Dave Stoldt testified to understated impacts of Cal-Am's proposed rate increases which do not reflect many surcharges paid by Monterey ratepayers. He raised issues related to statewide subsidies currently allowed by the Commission and new subsidies proposed by Cal-Am. These would increasingly shift costs for new water and wastewater acquisitions, major infrastructure upgrades, or low-income assistance to the disadvantage of local ratepayers. There would thus be a transfer of costs from local districts to the benefit of other Cal-Am customers, but most of these other customers are not burdened by water service costs that are as expensive as in Monterey. Stoldt addressed lack of consistent Commission policy to address consolidation issues, and the difficulty identifying true impacts on Monterey customers. Stoldt supported a change to Monterey's rate design to eliminate the 5<sup>th</sup> tier to thus make permanent a previous Monterey pilot Annual Consumption Adjustment Mechanism; he also requested cleanup of tariffs.

Stephanie Locke provided testimony on District conservation activities over the decades, MPWMD coordination with Cal-Am on conservation programs, and supported removal of the 5<sup>th</sup> tier in Monterey's rate design. Her testimony opposed Cal-Am's support for a statewide conservation program and its request to move up to 50% of the Monterey budget to other areas; she opposed elimination of a customer complaint report requirement and proposed changes to the Hardship Assistance Program which would require Monterey ratepayers to fund half the cost.

Jon Lear testified as to conditions of Cal-Am's Carmel Valley wells, their reduced production capacity and related impacts to the capture of excess Carmel River winter flows for the Aquifer Storage and Recovery (ASR) program. He also characterized the need for new Cal-Am wells and well rehabilitation. His testimony additionally addressed the Los Padres Dam Alternatives Study. District testimony strongly supported two proposed Cal-Am projects: a new Carmel Valley Well on the former Rancho Canada Golf Course and a Forest Lake Pump Station.

### COVID Disruptions to Procedural Schedule

Cal-Am submitted extensive rebuttal testimony on March 30, 2020. Parties were to required to participate in Mandatory Alternative Dispute Resolution (ADR) from March 31 to April 17 and an evidentiary hearing was thereafter set for April 20 through May 12, 2020. Neither events happened.

As required, Parties requested ADR but no CPUC judges were available. Parties instead engaged in extensive settlement discussions via telephone and video conference. Unfortunately, Cal-Am structured these efforts in such a way that each Party was placed in a separate "silo" and due to the confidential

nature of the settlement process, one Party was not informed of another Party's position – even on mutual issues. The District asserted settlement discussions with Cal-Am, Cal PA and MPWMD would be productive on Monterey issues because testimony showed areas of alignment as well as disagreement. MPWMD's request for three-party settlement discussions was rejected.

ALJ Kelly amended the procedural schedule multiple times due to impacts caused by COVID lockdowns. On April 2<sup>nd</sup>, the evidentiary hearing was delayed to June 2. On May 22, 2020 hearings were again delayed to July 20. On June 11 an additional ALJ ruling provided instructions for conduct of remote evidentiary hearings. Requirements included agreement on stipulated facts, mutual statements as resolved issues & unresolved issues (those requiring evidentiary hearing), order of witnesses and proposed exhibit lists – basically everything required prior to commencement of a formal hearing. The Parties completed these tasks by July 13.

On July 16, 2020 ALJ Kelly issued a ruling suspending the procedural schedule “until the ADR neutral can be assigned and has a chance to meet with the parties.” He Parties file a joint status conference statement by November 15, 2020. All hearing preparation was put aside until ADR could begin.

Two neutral ADR ALJs were assigned August 12, 2020; they scheduled an initial mediation session on September 9<sup>th</sup>. Thereafter, separate ADR sessions were held. The District had one separate meeting to provide background and request three-Party settlement discussions with Cal-Am, Cal PA and the District. No further ADR sessions were convened by the ADR neutrals involving MPWMD.

On November 16, 2020, Cal-Am submitted the joint Status Conference Statement required by ALJ Kelly's July 16 ruling. Under the “siloes” settlements and ADR discussions, Cal-Am asserted it had reached a comprehensive settlement with all major Parties.

During a status conference with ALJ Kelly on December 3, 2020 Cal-Am and Cal PA objected to the need for a evidentiary hearing; the ALJ indicating he felt similarly. MPWMD acceded as to the need for evidentiary hearing on December 16 when offered the opportunity to complete further settlement efforts with Cal-Am. This also enabled the District to review the 458-page comprehensive settlement with Cal PA that had previously been held as confidential. The District's draft Opening Brief would be filed February 18, 2021.

### The Settlement Agreements

NOTE: As an important aside, it must be kept in mind that even if Parties settle on issues, the Commission can and has disapproved proposed settlements in full or in part.

#### A. Settlement Agreement between Cal-Am, Cal Public Advocates, et al. on GRC Issues

Cal-Am filed a comprehensive settlement agreement on January 22, 2021. Cities of Duarte, San Marino and Thousand Oaks agreed to specific portions of the agreement, only, or agreed to not oppose other portions of the settlement. Primary issues affecting these cities involved only the proposed consolidation of Cal-Am's Southern Division and rate design concerns that were not relevant to MPWMD issues.

## Areas of Agreement

MPWMD's settlement with Cal-Am is separate from Cal-Am's settlement with Cal PA, but there are agreements on certain issues identified below.

As to rate design, all agree to eliminate the 5<sup>th</sup> Monterey tier for residential single-family and residential multi-family customer tariffs; this required modification to the Tier 4 break point. Further agreement set the meter charge to recover 30% of the revenue requirement, an increase from the current 25% recovery.

As to Cal-Am's Special Request #4 (Leak Adjustment Policy), all agree to continue including the adjustments in Monterey base rates with a budget of \$2.7 million in 2021, to escalate in the subsequent two years.<sup>1</sup>

The Water Revenue Adjustment Mechanism (WRAM) cap remains at 15%. This Special Request #5 originally sought an increase to 25% but in its rebuttal testimony Cal-Am agreed to reduce percentage cap. Cal-Am's settlement with Cal PA applies only to this rate case period. As of December 31, 2019, Monterey's cumulative under-collected WRAM balance was a net of \$26.8 million. The revenue is collected by a volumetric surcharge.

Special Request #12 is designed to make permanent Monterey's Annual Consumption Adjustment Mechanism. This originated as a pilot program in 2015 and proved to be an important tool to avoid large under-collected WRAM balances. This relies on more recent actual consumption, by tier, for residential and by division for non-residential. To illustrate how this works, rates effective January 1, 2021 reflect Monterey's actual consumption for the 12 months ended September 30, 2020.

Cal-Am initially proposed Special Request #13 to consolidate its statewide conservation programs rather than to maintain and fund these by its separate regional districts. Cal-AM also proposed it receive authority to shift up to 50% of individually authorized conservation budget funds. Cal PA agreed to the statewide approach with several caveats. MPWMD strongly objected to the proposal. MPWMD negotiated settlement with Cal-Am to maintain its own budget and program to be funded as part of base rates. These funds could only be spent in Monterey with flexibility to spend the funds during the three-year rate cycle and shift funds between Best Management Practices categories. The settlement with Cal PA indicates Cal-Am agreed to withdraw its request.

By Special Request #14 Cal-Am sought to eliminate two reports it alleged were duplicative or unnecessary. Agreement was reached to eliminate Monterey rebate and audit reports originally required by CPUC Decision 09-05-029.

Cal-Am reiterated a 2016 request related to the Monterey Wastewater High Cost Fund in Special Request #17. MPWMD had objected this in the 2016 GRC and objected again in this 2019 filing; Cal PA similarly objected. In both settlements Cal-Am withdrew its request with the proviso that it was not

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<sup>1</sup> The \$2.7 million assumes the rate design and AMI requests are adopted by the Commission or \$3.25 million if they are rejected.

precluded from again raising this in a later case. This issue can be expected to re found again in Cal-Am's next GRC application.

The Parties agreed as to several capital projects for Monterey including the Forest Lake Pump Station and a new Carmel Valley well at the former Rancho Canada Golf Course.

### Areas of Disagreement

Special Request #14 addressed a second mandatory report Cal-Am sought to eliminate. This requirement arose from a 2005 GRC condition that compels Cal-Am file quarterly call center reports to identify types of calls Cal-Am received and the final disposition of these contacts.

Additional proposed issues with statewide impact that MPWMD disputes include Cal-Am's request to impose cost sharing for its catastrophic events, acquisition premiums Cal-Am paid to acquire distressed water and wastewater systems, its ongoing subsidies for operation, maintenance, and capital projects for "high cost" areas, and new hardship programs for non-local low-income customers. MPWMD asserts it is not equitable to impose these burdens on local rate payers given extremely high local water rates, and the fact that other extraordinary expenses have been borne solely by local rate payers and are not proposed to be shared among Cal-Am's statewide ratepayers.

Monies for Carmel Valley well rehabilitation is reduced significantly at a time when production is decreasing. The CPUC has authorized only one standby generator. Monterey is expected to pay for a new well for Sand City's desalination plant, a facility owned by the City of Sand City. Monies available for the fire protection program to improve fire flow in at-risk areas is insufficient to meet the need. None of these costs would be eligible for state-wide sharing.

### B. Partial Settlement between Cal-Am and Las Palmas Wastewater Committee

Partial settlement between Cal-Am and Las Palmas Wastewater Committee was filed on January 25, 2021. MPWMD has been concerned with Monterey Wastewater issues since Cal-Am began to advocate for a "high-cost fund." The number of Monterey Wastewater customers is relatively small – less than 2500 – but operational costs for this wastewater system plus the need for capital improvements is large. Cal-Am proposed Special Request #17 by which all non-low-income customers (water and wastewater) outside this "high-cost area" be assessed a monthly flat surcharge to their bills to subsidize an offset to the high-cost area.

Cal-Am agreed to withdraw its Special Request #17,<sup>2</sup> but for this proceeding only. Both Cal-Am and Las Palmas Wastewater Committee continue to support this as a long-term solution. Testimony showed expenditures could be five times more in the next rate case for one project.

Revision of cost allocation factors between wastewater and water customers as well as between active and passive wastewater customers is also proposed as part of the settlement. Cal-Am proposes to raise the low-income discount for Monterey active wastewater customers from 20% to 35%. MPWMD

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<sup>2</sup> Special Request #17 is also withdrawn in the settlement agreements with MPWMD and Cal PA.

agreed to this request in the 2016 rate case settlement, but that settlement was rejected by the Commission. MPWMD has not objected to this change.

### Next Steps

An Opening Brief is to be filed on February 18, 2021. Formal Comments on other Settlement Agreements will be filed by February 22, 2021. A Reply Brief is anticipated from Cal-Am by March 4, 2021.

Once all briefings have been lodged, the ALJ will take the matter under submission. ALJ Kelly has 90 days to complete his Proposed Decision (PD). When the PD is served, the District has 20 days to file comments on the PD. If needed, replies to comments may thereafter be filed within five days after the last day for filing comments. Generally, the Commission votes on the PD Decision within 60 days of its issuance.

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