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Supreme Court of California
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**No. S271493**

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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CALIFORNIA WATER ASSOCIATION
*Petitioner*,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
*Respondent*.

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**Decisions Nos. 20-08-047 and 21-09-047**

Of the Public Utilities Commission of the State of California

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# REPLY TO ANSWER TO PETITIONS FOR WRIT OF REVIEW

**[Appendix of Exhibits (Vol. II) Filed Concurrently]**

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Dated: March 28, 2022

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## REPLY TO ANSWER TO PETITION FOR WRIT OF REVIEW

California Water Association ("CWA") submits this Reply in support of its Petition to this Court for an original writ of review of Decision ("D") No. 20-08-047 (adopted August 27, 2020, issued September 3, 2020) (the "Decision"), as modified by Decision 21-09-047 (adopted September 23, 2021, issued September 27, 2021 (together, the "Decisions") of the California Public Utilities Commission ("Commission"). This Reply is submitted in response to the Answer of Respondent to Petitions for Writ of Review ("Commission's Answer" or "Answer") filed in response to CWA's and other parties' petitions for review of the Decisions on January 28, 2022.[1]

## I. INTRODUCTION

In June 2017, the Commission opened a rulemaking addressing Class A water utilities' rate assistance programs for low-income customers[2] that resulted in a decision revoking certain accounting mechanisms used for ratemaking purposes.

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[1] Despite the Commission's omission of CWA from its list of petitioners (Answer, at 8) except as a "chapter of [the National Association of Water Companies]," CWA played a prominent role in the Commission's rulemaking representing its members, all of which are water utilities subject to the Commission's jurisdiction, including all the respondents to the rulemaking. CWA filed its present Petition in furtherance of that role.

[2] Order Instituting Rulemaking 17-06-024, 2017 Cal. PUC Lexis 495, opened proceeding R.17-06-024 (hereinafter "the rulemaking" or "the proceeding"). Class A water utilities are Commission regulated water utilities serving 10,000 or more customer connections. There currently are nine such companies.

In doing so, the Commission failed to follow clear rules set out for it by the California Legislature and by itself. CWA's petition focused on the Commission's failure to comply with its obligation to address only topics specified in its scoping memos. The Commission's Answer does not justify or excuse that failure. This Court should grant CWA's petition for review to require correction of this mistake.

The ratemaking accounting mechanisms at issue are the Water Revenue Adjustment Mechanism ("WRAM") and the Modified Cost Balancing Account ("MCBA") or, jointly, the WRAM/MCBA". In short, the Commission, since 2008, has authorized five Class A water utilities (the "WRAM utilities") to employ the WRAM/MCBA to decouple their revenues from their sales of water, thereby allowing those utilities to promote California's water conservation goals without having to worry about how those efforts affect their revenues.

In the rulemaking decision at issue here, by which the Commission eliminated its previous authorization for the WRAM utilities to utilize the WRAM/MCBA, the Commission had three opportunities to describe the scope of the proceeding consistent with its statutory obligation – the Order Instituting Rulemaking ("OIR"), the Scoping Memo, and the Amended Scoping Memo. In none of those documents describing the issues covered in the proceeding was the WRAM/MCBA discussed. In fact, the terms WRAM and MCBA were not even mentioned in any of the three documents.

The proceeding then continued for over two years before the WRAM/MCBA ever was addressed in a ruling by the assigned

Commissioner or an assigned administrative law judge ("ALJ"). A proposal to require discontinuance of the WRAM/MCBA was presented by a representative of the Public Advocates Office at the Public Utilities Commission ("Public Advocates Office"). That led to an ALJ's invitation to the parties to comment on whether the Commission should "***consider***" such discontinuance, indicating that such consideration would come in subsequent, company-specific proceedings. The adopted Decision, however, ordered the subject utilities to discontinue the WRAM/MCBA in such subsequent proceedings without opportunity for further consideration.

The importance of this sequence of events is that it is in direct violation of the Commission's statutory obligations. Public Utilities Code § 1701.1(c)[3] provides the Commission "shall prepare and issue by order or ruling a scoping memo that describes the issues to be considered . . . ." Likewise, Rule 7.3 of the Commission's Rules of Practice and Procedure require that "[t]he assigned Commissioner shall issue the scoping memo for the proceeding, which shall determine the . . . issues to be addressed." (20 Cal. Code Regs. § 7.3.) These requirements provide that in order for a topic to be part of a rulemaking, the assigned Commissioner must address it in their scoping memo. Accordingly, the fact that the OIR did not mention the WRAM/MCBA and the assigned Commissioner also did not do so in either of the scoping memos means that addressing it in the

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[3] All statutory section references herein are to the California Public Utilities Code.

Decision was in direct contravention of the Commission's statutory duties.

The Commission attempts to excuse this deficiency by asserting that "[t]he WRAM/MCBA was included in the original Scoping Memo as part of the water sales forecasting issue," because "the WRAM is inextricably linked to water sales forecasting." (Answer of Respondent to Petitions for Writ of Review ("Commission's Answer" or "Answer") at 23-24.) After providing some examples of relationships among sales forecasts, the WRAM, and utility rates, the Commission flatly concludes that "WRAM issues were included in the list of issues in the Scoping Memo as water sales forecasts and the WRAM are inextricably linked." (*Id*. at 28.)

There is, however, is no "inextricable link" between sales forecasting and the WRAM/MCBA, any more than there is one between sales forecasting and utility rates. These are all distinct subjects, which the Commission must address in orderly fashion, in formal proceedings, the scope of which must be determined in accordance with statute and Commission rules.

The Commission argues that it is not required "to list all possible outcomes to a proceeding." (*Id*. at 24.) This is beside the point. No party has contended the Commission was obliged to list all possible outcomes in its OIR or in the assigned Commissioner's scoping memo. The Commission's error was in prohibiting future use of the WRAM/MCBA without having so much as mentioned the WRAM/MCBA in its scoping memos – not that such prohibition was not listed as a possible outcome.

The Commission also asserts that "[w]ater sales forecasting was an issue in this proceeding because of its effect on WRAM balances and the effect of those balances on customer rates." (*Id.*) If the WRAM were ***the*** reason for sales forecasting being included within the scope of the rulemaking, then why did the Commission fail to mention that connection in the OIR or in either scoping memo? The simple answer is that it is a *post hoc* justification with no basis in fact or the record. Similarly, the Commission's Answer refers to WRAM balances as "perpetually under-collected" and argues that a "cap" on WRAM surcharges "ultimately increased WRAM balances." (*Id.* at 12, 14.) But to the extent the Commission may have shifted its attention from evaluating faults in water sales forecasting to a critique of the WRAM/MCBA, it failed to adjust the scope of the proceeding to accommodate that change of focus. Lastly, the Answer (at 10-11) cites language from a 2016 Commission decision upholding continued use of the WRAM/MCBA without explaining how that decision now supports revoking such authorization.

Review by this Court is petitioner's only opportunity for judicial review. (*See* § 1756(f) ("review of decisions pertaining solely to water corporations shall ***only*** be by petition for writ of review in the Supreme Court . . .").) A court may not deny review of an apparently meritorious petition. (*PG&E Corp. v. Pub. Util. Comm'n* (2004) 118 Cal.App.4th 1174, 1193.) Therefore, based on the merits explained in CWA's Petition and this Reply, the Court should grant CWA's Petition to provide the only judicial review available for oversight of a Commission that has failed to follow its statutory obligations.

## II. ARGUMENT: THE COMMISSION FAILED TO REGULARLY PURSUE ITS AUTHORITY BY VIOLATING THE SCOPING MEMO REQUIREMENT.

As recognized by the Commission's Answer, a key issue presented in the several petitions for this Court's review of the Decisions is whether the revocation of the ability of certain utilities[4] to utilize the WRAM/MCBA was within the defined scope of the Commission's rulemaking proceeding. (Answer, at 17.) It is of great importance to CWA, as a regular participant in Commission proceedings on behalf of its members, that the Commission follows its statutory obligations and its own rules. This is why CWA's Petition and this Reply focus on whether the Commission's actions addressing the WRAM/MCBA were compliant with its obligations to act within the properly defined scope of its proceedings.

As noted above, the Commission's Answer admits that the WRAM/MCBA is not referenced or discussed in either of its scoping memos, but instead contends that consideration of the WRAM/MCBA is part of the identified sales forecasting issue because the two topics are "inextricably tied" or "inextricably linked." (*Id*. at 23-25, 28.) Based on the Commission's own justification, the scoping argument boils down to whether "inextricably linked" is an accurate way to describe the relationship between water sales forecasting and the

[4] The WRAM utilities are California-American Water Company, California Water Service Company, Golden State Water Company, Liberty Utilities (Park Water) Corp., and Liberty Utilities (Apple Valley Ranchos Water) Corp.

WRAM/MCBA. If the answer is no, then the Commission's justification fails and must be rejected.

As discussed *infra*, the answer to this question is, indeed, no. Consequently, this Court should grant CWA's Petition in order to address and require correction of the Commission's clear error.

### A. "Inextricably Linked" Is an Inaccurate Way to Describe Two Related, but Distinct, Subjects.

As CWA noted repeatedly throughout the course of the rulemaking (*see* Ex. L, at 2,[5] 18-19, 21; Ex. O, at 13-14; Ex. S, at 2, 4-5),[6] the WRAM/MCBA was, and remains, outside of the scope of the subject proceeding. While there is a relationship between the WRAM/MCBA and water sales forecasting, as discussed in the Commission's Answer (at 24-25), they are distinct subjects that present different issues. That fact becomes clear upon considering the two topics, followed by a detailed review of the Commission's Answer in the context of past Commission decisions and relevant appellate cases. Additionally, the actions of CWA and others in the rulemaking show that the WRAM/MCBA was not within the scope of that proceeding.

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[5] Exhibit references are to exhibits filed concurrently with CWA's Petition or to exhibits filed concurrently with this Reply.

### 1. Sales Forecasting and the WRAM/MCBA are Separate and Distinct Topics That Are Not "Inextricably Linked."

Understanding whether the topics of sales forecasting and the WRAM/MCBA are "inextricably linked" must start with understanding the basics of each concept.

The WRAM/MCBA is a ratemaking accounting mechanism that decouples sales from revenue to allow utilities to promote conservation without impairing their revenues. If a WRAM utility's actual revenue varies from its revenue projection, then the utility either refunds over-collections through a surcredit or recovers the shortfall through a surcharge.

Water sales forecasting is an important element of a utility's general rate case,[7] where the utility and interested parties may offer competing projections of water sales and revenues at existing and proposed rates and the Commission adopts such projections as elements in determining the utility's revenue requirement and setting its future rates. An adopted sales forecast is among the inputs for the WRAM/MCBA calculations, but the WRAM/MCBA is not a forecasting mechanism. Nor is the WRAM or the MCBA a component of any forecasting mechanism.

Accordingly, there is a relationship between sales forecasting and the WRAM/MCBA, as discussed in the Commission's Answer (at 24-25). However, that does not make

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[7] As required by Public Utilities Code § 455.2, the Commission provides for each of the larger water utilities to file a general rate case ("GRC") application every three years to review the utility's revenue requirement and rates.

them "inextricably linked." It is possible to address and discuss sales forecasting and the WRAM/MCBA as separate topics, considering one without addressing the other. They are a Venn diagram, not concentric circles. The Commission would have the Court see only the shared space of that Venn diagram while ignoring the non-overlapping sections.

2. Past Commission Proceedings Treated the WRAM/MCBA Separately from Sales Forecasting and Expressly Noted When the WRAM/MCBA Was Under Consideration.

The Commission's past consideration of issues related to the WRAM/MCBA and water sales forecasting in relation to one another, as well as the way it has highlighted the WRAM/MCBA when it was under consideration in a proceeding, show that the concepts have never been "inextricably linked." Instead, a review of that history shows that the claim of "inextricable linkage" is nothing more than a *post hoc* justification created by the Commission to justify choices it made without consideration of the proceeding's scope.

In every relevant proceeding from the Commission's initial authorization for water utilities to implement the WRAM/MCBA to the most recent prior decision reviewing the WRAM/MCBA (issued six months before initiation of the subject rulemaking), the Commission treated the concepts of the WRAM/MCBA and sales forecasting distinctly. The Commission consistently addressed these concepts as separate but related topics, and centered its discussion of the WRAM/MCBA in a conspicuous manner that left no question what topic was under consideration.

In 2007, the Commission initiated Investigation 07-01-022 "to address policies to achieve its conservation objectives for Class A water utilities." (*Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities*, *et al.*, D.08-02-036 (Ex. X), at 2.) That proceeding led to the initial adoption of the WRAM/MCBA for certain water utilities. (*Id.* at 25-29; *Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities*, *et al.*, D.08-08-030 (Ex. Y), at 14-16.) The scoping memo for the 2007 investigation specifically provided that "[t]he first phase of this proceeding will address rate-related conservation measures, including the parties' increasing block rate and Water Revenue Adjustment Mechanism (WRAM) proposals." (Ex. AA, at 3.) The word "forecast" does not appear once in that scoping memo. (*See generally, id.*) Any person reading that scoping memo would know that the WRAM was under consideration and that sales forecasting was not.

The next time the Commission generically addressed the WRAM/MCBA was in Application 10-09-017, by which the utilities that had been authorized to use these mechanisms asked the Commission to modify certain past decisions regarding the amortization of WRAM/MCBA balances. In the scoping memo for that proceeding, issued June 8, 2011, the term "WRAM" appears over 40 times. (*See generally,* Ex. BB.) The terms "WRAM/MCBA balances" and "WRAM/MCBA mechanism" are central to both of the topics that the scope of that proceeding was bifurcated to cover. (*See id*. at 13, 16.) Conversely, the term "forecast" does

not appear in either scoping topic. (*See id.*) There are two references in the scoping memo to sales forecasts, but neither suggests or implies anything like an "inextricable linkage" to the WRAM. (*See id*. at 8, 10 n. 11.) Again, any person reading that scoping memo would know that the WRAM would be the focus of consideration.

Similarly, the relevant scoping memo for the only other previous Commission proceeding (apart from individual utilities' general rate cases) relating to the WRAM/MCBA, R.11-11-008, made clear that the WRAM/MCBA would be addressed. The Third Amended Scoping Memo in R.11-11-008 initiated a "Phase 2" in that rulemaking to "review the . . . Commission's . . . forecasting methods, accounting mechanisms and other standards and programs that guide water investor-owned utility (IOU) rates, charges, and cost recovery." Phase 2 would, in particular, "evaluate current policies and potential improvements in policies related to: (1) . . . rate-design issues including forecast mechanisms . . . ; [and] (2) accounting mechanisms such as the Water Revenue Adjustment Mechanisms (WRAMs) and Modified Cost Balancing Account (MCBAs)." (Ex. CC, at 1-2.) The Third Amended Scoping Memo declared that Phase 2 would "analyze issues and propose actions regarding affordability and rate design, including but not limited to, conservation rate design such as tiered rate structures, technical enhancements, forecast methods, and accounting mechanisms such as Water Revenue Adjustment Mechanisms." (*Id*. at 3-4.)

After a lengthy discussion addressing conservation rates and regulatory accounting mechanisms, especially the

WRAM/MCBA, the Third Amended Scoping Memo in R.11-11-008 listed 15 questions to be addressed in Phase 2. Question 4 referred generally to "accounting mechanisms" and "forecasting rules." Ten of the succeeding eleven questions included specific references to WRAMs and MCBAs, without any mention of sales forecasting. (*See id.* at 13-16.) The scoping memo's separate listing of accounting mechanisms and forecasting illustrates that they are separate concepts. And the scoping memo's detailed inquiries about the WRAM/MCBA made clear that these accounting mechanisms were subject to scrutiny and possible change.

Indeed, the Commission's final decision in R.11-11-008 addressed both sales forecasting and the WRAM/MCBA in considerable detail. As will be discussed in greater detail, *infra*, D.16-12-026[8] devoted substantial attention to both sales forecasting and the WRAM/MCBA, noting the relevance of both to utility rates and customer bills, but discussed them as distinct topics with separate findings of fact and conclusions of law. (*See* Ex. Z, at 18-44, 80-84.)

The scoping requirement for GRCs is essentially identical to that applicable to rulemakings. (*See,* § 1701.1(b)(1).) As an example, for Golden State Water Company's 2012 GRC,

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[8] *Order Instituting Rulemaking on the Commission's Own Motion into Addressing the Commission's Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for Class A and Class B Water Utilities*, D.16-12-026. Relevant excerpts from D.16-12-026 are included in the Appendix to this Reply as Ex. Z. A smaller set of excerpts was Ex. C to CWA's Petition.

Application 11-07-017, the scoping memo explicitly discussed the WRAM in its "Scope of the Proceeding" section, including a sub-section addressing the WRAM/MCBA as an element of a Conservation Rate Pilot Program. (*See* Ex. DD, at 7-10.) Similarly, among "issues [to] be considered in this proceeding" were two that related specifically to the WRAM/MCBA. (*Id.* at 10, 14.) None of these references to the WRAM/MCBA alluded in any way to water sales forecasts.

The Commission's practice in all these past proceedings supports two conclusions: (1) the WRAM/MCBA and water sales forecasting are distinct subjects; and (2) until the present proceeding, the Commission took care to provide notice in a scoping memo before addressing the WRAM/MCBA in a decision. No such notice was provided in the OIR or in either of the scoping memos issued in R.17-06-024.

Indeed, the Commission's past practice stands in stark contrast to the process followed in the subject proceeding. That is especially true of D.16-12-026, the decision resulting from R.11-11-008, which the Commission's Answer cited (at 14) to support its argument. That decision addressed both sales forecasting and the WRAM/MCBA as related but distinct topics of concern, and maintained the separation between forecasting and the WRAM/MCBA in a way that disproves the "inextricable linkage" claim. It also shows how recently the Commission has maintained that separation, as D.16-12-026 was issued just six months before the subject proceeding (R.17-06-024) began.

In several scoping memos, in various proceedings, in which the Commission referenced the WRAM/MCBA prior to the subject

proceeding, it sometimes did so without mentioning sales forecasting. But where forecasting was mentioned, the Commission's scoping memos always treated the WRAM/MCBA and sales forecasting as separate topics presenting separate issues. None of those scoping memos suggests or supports the idea that the two topics are "inextricably linked" to the extent that a reference to one necessarily implies reference to the other.

### 3. The Commission's Answer Provides No Effective Support for its Contention That the WRAM/MCBA and Sales Forecasting Are "Inextricably Linked."

The Commission presents the rationale for its "inextricable linkage" argument as follows:

> The Scoping Memo identified water sales forecasting as an issue the Commission would address in the proceeding, specifically asking, "What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?" . . . The WRAM is a regulatory accounting mechanism. Water sales forecasting was an issue in this proceeding because of its effect on WRAM balances and the effect of those balances on customer rates. Accordingly, the WRAM is inextricably linked to water sales forecasting because when forecast sales are higher than actual sales, the WRAM utilities recover that difference in revenue through surcharges on customer's bills.

(Answer, at 24.)

The Commission's claim of "inextricable linkage" between the "scoped" issue of water sales forecasting and the unmentioned issue of the WRAM/MCBA is central to the Commission's defense against the assertions by CWA and other petitioners that its decision to require elimination of the WRAM/MCBA exceeded the

scope of the proceeding and so was improper. As CWA will show, the elements of the Commission's claim that the two issues were "inextricably linked," as stated above, fail to survive scrutiny.

In evaluating this claim, it must be borne in mind that only the assigned Commissioner, in a scoping memo, defines the scope of a Commission proceeding. All other statements, including those in an ALJ's ruling or notice and certainly those of a party, are irrelevant for this purpose.

The initial scoping memo for the challenged proceeding identified "Forecasting Water Sales" as one of the issues to be addressed, presenting the following two questions relating to that topic, one with a significant preamble:

> a. How should the Commission address forecasts of sales in a manner that avoids regressive rates that adversely impact particularly low-income or moderate income customers?
>
> b. In Decision (D.)16-12-026, adopted in Rulemaking 11-11-008, the Commission addressed the importance of forecasting sales and therefore revenues. The Commission, in D.16-12-026, directed Class A and B water utilities to propose improved forecast methodologies in their GRC application. However, given the significant length of time between Class A water utility GRC filings, and the potential for different forecasting methodologies proposals in individual GRCs, the Commission will examine how to improve water sales forecasting as part of this phase of the proceeding. What guidelines or mechanisms can the Commission put in place to improve or standardize water sales forecasting for Class A water utilities?

(Ex. E, at 2-3.)[9]

The Commission's Answer attempts to connect the WRAM/MCBA to the relevant questions from the scoping memo by focusing on the term "mechanism" and arguing that since the WRAM is "a regulatory accounting mechanism," that brings it within the terms of the scoping memo. Put simply, this connection cannot be sufficient. "Mechanism" is such a broad term that it could encompass a diverse assortment of regulatory forms, conventions, and procedures. For example, existing mechanisms approved by the Commission for use by Class A water utilities range from uniform accounting systems and specialized balancing and memorandum accounts for various purposes to tariff filing and review procedures, reporting requirements, and rules governing formal applications for all sorts of relief. If this broad range of "regulatory mechanisms" were implicated by a single reference to "mechanisms" in the Commission's scoping memo, this would have rendered the scoping memo uselessly vague and would have defeated its purpose of providing sufficient notice to potentially interested parties.

In fact, the scoping memo made clear what sorts of regulatory mechanisms would be relevant to – and within the scope of – the proceeding: "mechanisms . . . to improve or standardize water sales forecasting for Class A water utilities." It did so with an express reference to the Commission's recent D.16-12-026, as having "directed Class A and B water utilities to

[9] Relevant excerpts from the referenced D.16-12-026 are provided in Ex. Z.

propose improved forecast methodologies in their GRC application." (Ex. E, at 2-3.)

D.16-12-026, as noted *supra,* addressed both sales forecasting and the WRAM/MCBA, but did so in separate discussions with separate findings of fact and conclusions of law. (*See* Ex. Z, at 18-44, 80-84.) That decision's discussion of sales forecasting referenced and evaluated several specific "forecasting mechanisms," including the Modified Bean Method, the New Committee Method, the Sales Reconciliation Mechanism, and the Water Demand Attrition Model. (*Id.* at 18-34.)[10] That same discussion included numerous references to the WRAM/MCBA, but never referred to the WRAM/MCBA as a "forecasting mechanism" (*id.*), perhaps for the simple reason that the WRAM/MCBA is an ***accounting*** mechanism and a ***ratemaking*** mechanism – but ***not*** a forecasting mechanism.

Beyond its unjustified reliance on the term "mechanism," the Commission's Answer offers a few additional attempts to support its "inextricable linkage" claim. The Commission asserts that "[w]ater sales forecasting was an issue in this proceeding because of its effect on WRAM balances and the effect of those balances on customer rates." (Answer at 24.) There is no basis either in the OIR or in either scoping memo for this assertion, and it is inconsistent with the recent prior decision, D.16-12-026, which determined to retain the WRAM/MCBA while directing the

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[10] D.16-12-026 ordered Class A and B water utilities to consider filing in their next GRCs or by less formal advice letters for authority to implement Sales Reconciliation Mechanisms. (Ex. Z, at 32-34, 84-85.)

utilities to consider proposing new water sales forecasting mechanisms. It is also inconsistent with the breadth of the OIR's sales forecasting inquiry, which extended to all Class A and B water utilities, not just the handful of Class A companies employing the WRAM/MCBA.

The Commission's Answer next contends that "the WRAM is inextricably tied to water sales forecasting because when forecast sales are higher than actual sales, the WRAM utilities recover that difference in revenue through surcharges on customer's bills, and thus the risk of the utilities' inaccurate forecasting is borne by ratepayers." (*Id*. at 24-25.) Putting aside the unsubstantiated attempt to blame the utilities for inaccurate forecasting, which in every GRC is a contested or settled issue resulting in a forecast approved by the Commission, these assertions indicate a relationship between forecasting and the WRAM, but certainly not an inextricable bond. As explained *supra*, the existence of a relationship does not show the concepts are "inextricably linked" and cannot support the claim that the scope of the proceeding allowed for an order eliminating the WRAM/MCBA.

The Commission's Answer goes on to quote passages from D.16-12-026 and from several parties' comments in the subject rulemaking addressing impacts of inaccurate sales forecasts on WRAM balances and customer bills. (Answer, at 25-28.) However, as just explained, ***not*** every relationship is an "inextricable link," and these references show no more than a relationship. Moreover, the fact that parties to the rulemaking discussed the WRAM/MCBA and its effects and eventually

addressed elimination of the WRAM/MCBA did not bring that proposal within the scope of the proceeding – only a scoping memo could have done that, and neither of them did so.

As discussed *supra*, the applicable statute (§ 1701.1(c)) and Commission Rule (Rule 7.3) provide that the scope of the proceeding is set by the scoping memo, not by anything else. Case law confirms that neither discussion by parties, nor an ALJ's attempt to address a topic beyond the limits of the scoping memo, are sufficient to change that memo's scope. (*See Southern Cal. Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, 1106 ("*Edison*").) Accordingly, reliance on references to the WRAM/MCBA in workshop reports, ALJ's rulings, or comments of the parties should be accorded no weight in determining the scope of the Commission's proceeding.

Even considering the ALJ's September 2019 ruling on which the Commission's Answer relies, the events the Commission references to try to show that the WRAM was in the scope of the subject proceeding do not support that conclusion. The pertinent questions presented by that ALJ's ruling were these:

> For utilities with a full Water Revenue Adjustment Mechanism (WRAM)/Modified Cost Balancing Account (MCBA), should the Commission ***consider*** converting to Monterey-style WRAM with an incremental cost balancing account? Should this consideration occur ***in the context of each utility's GRC***?

(Ex. M, at 3 (emphasis added).) The Commission's Answer (at 40) states that this question "specifically" asked whether the Commission "should convert WRAMs to Monterey-style WRAMs."

The Commission's Answer obscures what the ALJ's questions actually were. The word "***consider***" is essential to interpreting the question and should not be ignored.

Reviewing the ALJ's second question – tellingly excluded from the Commission's reference – alongside the first makes even clearer the inaccuracy of the Answer's characterization of this ALJ's ruling. The question "[s]hould this consideration occur ***in the context of each utility's GRC***," especially when read in conjunction with the word "***consider***" in the first question, clearly establishes that the future of the WRAM/MCBA was presented as an issue to be addressed at a later time and in a different proceeding. Those questions in the September 2019 ALJ's Ruling (Ex. M) suggested no more than that the Commission might consider eliminating use of the WRAM/MCBA in future company-specific proceedings, but certainly not in the present rulemaking. That understanding was consistent with the absence of any mention of the WRAM/MCBA in the OIR or either of the scoping memos previously issued by the assigned Commissioner.

Additionally, the Commission's Answer (at 25-28) relies on a small selection from parties' comments over the initial three years of the rulemaking to support its claim that the WRAM/MCBA was within the scope of the proceeding. Apart from the irrelevancy of anything other than the scoping memo for that determination, parties' comments must not be permitted to define a proceeding's scope. Otherwise, any self-interested party could (as the Public Advocates Office did here) offer comments aimed to accomplish a goal beyond the proceeding's scope and

single-handedly change the scope of the proceeding. Such an interpretation would result in disorderly and treacherous regulatory proceedings contrary to the Legislature's intent in enacting § 1701.1(c).

The Commission's effort to defend its Decision as within the scope of the subject proceeding hinges on its poorly supported claim that the WRAM/MCBA was "inextricably linked" to water sales forecasting. The best it can do is to rely on the scoping memo's reference to the term "mechanism" taken out of context; on some assertions with no support in the record or in fact; and on references to a prior decision which discussed relationships between sales forecasts, the WRAM/MCBA, and utility rates, but upheld use of the WRAM/MCBA. The Commission's defense does not withstand scrutiny and cannot support its bold claim to haul within the proceeding's scope a topic alleged to be "inextricably linked" to a different topic actually stated to be within that scope. Further, the Answer's references to, and reliance on, reports, rulings, and pleadings other than the scoping memos should be accorded no weight. According to statute and Commission rule, scoping memos define the scope of a proceeding, is defined by its scoping memo or memos, not by any other documents.

### B. Case Law Confirms That the Commission's Action Exceeding the Defined Scope of Its Proceeding Was Improper.

Case law shows that appellate courts have been concerned by past attempts of the Commission to act beyond the defined scope of its proceedings in violation of its statutorily mandated obligations. The Commission's attempts to distinguish the cases

relied upon by CWA and compare this situation to another case ignore the broader focuses of the courts, and miss the forest for the trees.

The most closely analogous precedent to the present situation is the *Edison* case. There, the main issue on review was whether an issue not included or even suggested in the scoping memo (the prevailing wage requirement) was within the scope of the proceeding. (*Edison*, 140 Cal.App.4th at 1104-1105.) Some parties contended (although the Commission did not) that the "scope of issues described in the preliminary scoping memo was sufficiently broad to encompass the prevailing wages proposal." (*Id*. at 1105.) The court noted that parties had argued that the prevailing wage issue was "beyond the scope of issues identified" and "repeat[ed]" that objection multiple times. (*Id*. at 1093.) The court considered the wording of the scoping memo and its context and noted that there was no express discussion of the topic. (*Id.* at 1105.) The court further noted that both the parties' discussion of the prevailing wage issue and an ALJ's attempt to amend the proceedings were irrelevant. (*Id.* at 1106.) On those bases, the court concluded that the prevailing wage issue was beyond the scope of the proceeding. (*Id.*)

Additionally relevant is *City of Huntington Beach v. Pub. Util. Comm'n* (2013) 214 Cal.App.4th 566 ("*Huntington Beach*"). In that case, unlike the present one, the parties expressly agreed that the topic of contention was outside of the scope of the proceeding. (*Id.* at 591.) However, the court also noted that "[w]e see no authority in the commission's rules or elsewhere for the notion that the scope of the underlying proceeding can be

**<u>expanded</u>** during the reconsideration process to the detriment of a party." (*Id.* at 592-593 (emphasis added).) Moreover, the court held that the Commission "cannot bootstrap" a limited order into something not included within it. (*Id.* at 593.)

*Edison* and *Huntington Beach* confirm the procedural limits on the Commission's discretion to expand the scope of its proceedings and recognize the primacy of the scoping memo for that purpose. Those cases, and the present one, show the propensity of parties to push the boundaries of Commission proceedings, and confirm the need for the Commission to respond to such pressure by acting within the procedural limits set by the Legislature and the Commission's own rules. Failure to do so threatens the rights and expectations of participants in those proceedings as well as other interested parties that may have thought their interests not at risk based on the procedural scope as stated in the assigned Commissioner's scoping memo. If a vague claim of an "inextricable link" is sufficient to expand an ongoing proceeding to address topics not stated in the scoping memo, no such reasonable expectations may be relied upon.

Conversely, in *BullsEye Telecom, Inc. v. Pub. Util. Comm'n* (2021) 66 Cal.App.5th 301 ("*BullsEye*"), the debated issue ("rational basis"), was expressly included in the scoping memo. (*Id.* at 306.) The petitioner claimed the Commission improperly "rescinded a critical issue" and "narrowed" another issue "to a single [factor.]" (*Id.* at 318.) The court paraphrased the petitioner's claim as being that the Commission acted improperly by "narrowing the grounds" of what could constitute rational basis. (*Id.* at 318; *see also id*. at 324.) The court noted that the

scoping memo "does *not* specify what can constitute a rational basis, and it does *not* limit the range of factors regarding which the parties could present evidence." (*Id.* at 320 (emphasis in original).)[11] Thus, the petitioner's claim that the Commission had exceeded the limits of its scoping memo failed. (*Id.* at 327.)

A basic distinction between *BullsEye* and *Edison, Huntington Beach,* and the present case is that an improper narrowing of scope was alleged in *BullsEye* while the other cases concern alleged expansion of proceedings beyond their properly defined scope. *BullsEye* demonstrated the Commission's discretion to limit the issues it chooses to address within the defined scope of a proceeding. The other cases all stand – or should stand – for enforcement of the procedural limits on the Commission's discretion to expand the issues as defined in a proceeding's scoping memo.

The *BullsEye* court itself made the distinction noted here between that case and the *Edison* and *Huntington Beach* cases. The court distinguished *Edison* by noting that *Edison* dealt with a "new issue" that was not contained in either of the scoping memos, whereas in *BullsEye*, the rehearing decision did not address any issues not included in the scoping memo. (*Id.*) Similarly, *BullsEye* noted that the Commission "exceeded the scope of the proceedings" in *Huntington Beach*. (*Id.*) Thus, *BullsEye* made clear that its facts differed from those of cases

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[11] The *BullsEye* court applied the same analysis to a separate complaint by petitioners, holding the Commission acted properly because the scoping memo did not "specify any particular factors that would be considered in the analysis." (*Id.* at 325.)

concerning "new issue[s]" not covered in a scoping memo and cases in which the scoping memo was alleged to have been "exceeded."

Bringing an issue not discussed in a scoping memo into the scope of a proceeding through an "inextricable link" is akin to the facts of *Edison* and *Huntington Beach*, but far afield from those presented by *BullsEye*. This court should rely on the consistent reasoning of the *Edison*, *Huntington Beach*, and *BullsEye* decisions to hold that the Commission acted improperly by "bootstrap[ping]" the WRAM/MCBA into a proceeding in which that subject was not within the properly determined scope.

### C. The Commission's "Inextricably Linked" Claim Facilitates Misuse of the Streamlined Procedures for Rulemaking Proceedings

The scoping memo requirement of § 1701.1(c) is not an isolated provision – it is one element of a thoughtfully crafted administrative structure intended by the Legislature to apply appropriate procedures to the different types of proceedings pursued by the Commission. § 1701.1(a) addresses the categorization of proceedings, requiring the Commission to determine whether each proceeding is a quasi-legislative, an adjudication, a ratesetting, or a catastrophic wildfire proceeding, based on definitions of these several categories in § 1701.1(d).

Depending on the category so determined, very different sets of procedures and procedural safeguards apply. For example, § 1701.2 applies solely to adjudications. Within that provision, § 1701.2(e) specifies that the Commission's decision in such a case "shall be supported by findings of fact on all issues

material to the decision, and the findings of fact shall be based on the record developed by the assigned commissioner or the administrative law judge," while § 1701.2(g) prohibits ex parte communications in adjudication cases. In contrast, § 1701.4 applies solely to quasi-legislative proceedings such as rulemakings. For such proceedings, § 1701.4(f) provides that "[n]o informality in the manner of taking testimony or evidence shall invalidate any order, decision, or rule made, approved, or confirmed by the commission in quasi-legislative cases," while § 1701.4(c) allows ex parte communications without restriction and without reporting requirements, unless the Commission so orders in a particular case. Section 1701.3 sets requirements for ratesetting proceedings less strict than for adjudications but more stringent than for rulemakings.

Section 1701.1(d) defines these procedural categories. "Ratesetting cases" are defined in § 1701.1(d)(3) as "cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms." Section 1701.1(d)(1) defines "Quasi-legislative cases" as "cases that establish policy, including, but not limited to, rulemakings and investigations that may establish rules affecting an entire industry." In D.08-02-036 and D.08-06-030, the Commission authorized a small number of water utilities to employ the WRAM/MCBA. The Decision for which review is now sought directed those five utilities to discontinue use of the WRAM/MCBA in their next GRCs. (D.20-

08-047, at 106.) This directive was an act of ratesetting, not rulemaking.[12]

Categorization normally is determined at the outset of a proceeding, with a "preliminary categorization" specified in any Commission order instituting a rulemaking or investigation or adopted by resolution at every Commission business meeting for applications filed since the last prior meeting. (Commission Rule 7.1) The assigned Commissioner's scoping memo either confirms or changes this preliminary categorization. (Commission Rule 7.3.) As specified in § 1701.1(a), the categorization decision is subject to a request for rehearing within 10 days of that decision or of any subsequent ruling that expands the scope of the proceeding. Only parties who have requested rehearing within that time period have standing for judicial review, and only at the conclusion of the proceeding. (§ 1701.1(a).)

Partly due to the narrow, 10-day window for rehearing requests, categorization choices are rarely challenged. But it is very significant that the Legislature provided for reopening that rehearing opportunity after "any subsequent ruling that expands

[12] The Commission's own Rules define "Ratesetting proceedings" as "proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities)." (20 Cal. Code Regs. § 1.3(g).) The WRAM/MCBA is an accounting mechanism that in turn "sets the rates for specific utilities." (That is why CWA has referred to it as both an accounting and a ratemaking mechanism, *supra*.) If a ratesetting proceeding is required to establish such a mechanism, then mandating its elimination must also be a "ratesetting" function, for which the procedural safeguards of a ratesetting proceeding are in order.

the scope of the proceeding." (§ 1701.1(a).) The Legislature obviously regarded the scoping memo's description of "the issues to be considered" as an important notice to potentially interested parties that their interests might be affected. The Legislature therefore was careful to ensure that any subsequent expansion of a proceeding's scope would also provide such parties opportunity to object to the procedural vehicle the Commission has chosen to address issues within that expanded scope.

The Commission's current claim that the WRAM/MCBA is "inextricably linked" to any inquiry into water sales forecasting is utterly at odds with the Legislative intent for the scoping memo, as evidenced by the above-referenced interdependent provisions of § 1701.1 through § 1701.4. Specifically, § 1701.1(c)'s scoping requirement is intended to ensure notice to potentially interested parties of issues that a newly instituted or newly expanded Commission rulemaking may address. This allows such parties to make informed decisions whether to participate in the proceeding and, if so, to what extent. It also allows parties that choose to participate in the proceeding to evaluate how they wish to be involved and what procedural options to pursue. At appropriate steps in the process, especially when the scope of a quasi-legislative proceeding has been expanded, participating parties may challenge the categorization of the proceeding, in an effort to gain access to procedural safeguards that may not be available in the quasi-legislative form.

Had the scoping memo informed CWA and the WRAM utilities of the Commission's interest in mandating elimination of the WRAM/MCBA by articulating that issue in the scoping

memo, those parties might have challenged the proceeding's quasi-legislative categorization on a timely basis, arguing that the issue was a form of ratesetting under § 1701.1(d)(3). The Commission's claim that the WRAM/MCBA was "inextricably linked" to the sales forecasting issue would deny parties that procedural safeguard.

If parties are unaware that a topic important to their interests lurks "inextricably" bound to a named issue that is of lesser concern to them, they would not be alerted by the naming of that less concerning issue in the scoping memo. As in the *Edison* case, it is hard to fault parties for not taking advantage of procedures available to them when they could not reasonably know that an issue of concern was in play. (*See, Edison*, 140 Cal.App.4th at 1106.)

The challenged decision here provides an apt example of this point. The Commission repeatedly criticizes Petitioners for not offering additional evidence or taking a more active role in the proceeding. (*See, e.g.,* Commission's Answer at 9 ("their own failure to offer evidence").) That argument would make sense only if the Petitioners actually had reason to know that disposition of the WRAM/MCBA was within the scope of the proceeding. Otherwise, *Edison*'s logic applies, as Petitioners ought not to be faulted for not requesting evidentiary hearings or taking other steps when they understood the proceeding's scope as not including reevaluation and possible elimination of the WRAM/MCBA. Indeed, CWA repeatedly noted the fact that the WRAM/MCBA was outside of the scope of the proceeding. (*See* Ex. L at 2, 18-19, 21; Ex. O at 13-14; Ex. S at 2, 4-5). The

assigned Commissioner never responded to CWA's concerns, either by stepping back from the WRAM/MCBA issue or by re-scoping the proceeding to include that issue as a legitimate topic to address.

The Commission's contention (Answer, at 23), that "any interested party would have known" that the Commission intended to address the WRAM/MCBA based on the scoping memo's reference to water sales forecasting, is demonstrably erroneous because, in fact, ***none*** of the WRAM utilities understood this to be the case.[13] That the parties most affected by the Decision had no inkling of this possibility is real-world proof that the Commission is wrong. The National Association of Water Companies ("NAWC"), an organization that represents regulated water and wastewater companies serving 73 million Americans (*Letter of Amicus Curiae NAWC in support of the Petitions in Case. No. S271493*, at 1) and participates in regulatory proceedings around the country (*id*. at 2), makes the same point: The Scoping Memo's references to sales forecasting

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[13] This fact is documented by the WRAM companies' comments on the proposed decision, in which the determination to eliminate the WRAM/MCBA was first pronounced. (*See Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves*, filed July 27, 2020 (Ex. EE), at 6-7; *Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves*, filed July 27, 2020 (Ex. FF), at 11-12; *Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order*, filed July 27, 2020 (Ex. GG), at 3-4; *Joint Comments of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Utilities (Apple Valley Ranchos Water) Corp. (U 346-W) on the Proposed Decision*, filed July 27, 2020 (Ex. HH), at 4-5).

gave no indication the Commission might mandate elimination of the WRAM/MCBA (*id*. at 5). Failure to identify WRAM/MCBA as an issue in any scoping memo in the subject proceeding effectively prevented NAWC from participating in the Commission's consideration of that issue. (*Id.* at 2.)

Accordingly, the Commission's reliance on the idea that sales forecasting and the WRAM/MCBA are "inextricably linked" to permit adoption of an order to terminate the WRAM/MCBA prevented CWA and the other Petitioners, as well as NAWC, from understanding the range of issues the Commission would be addressing. They were thereby disabled from fully participating in the proceeding on that important issue. Even if the link between forecasting and the WRAM/MCBA were "inextricable," which CWA has shown was not the case, the failure of both scoping memos to articulate an intent to address the WRAM/MCBA deprived affected parties of any notice of that intention – and so left that subject beyond the defined scope of the Commission's proceeding. Nonetheless requiring elimination of the WRAM/MCBA was an abuse of discretion and a failure by the Commission to regularly pursue its authority.

## III. CONCLUSION

The Commission's claim that the WRAM/MCBA was included in the challenged proceeding because it is "inextricably linked" to the water sales forecasting issue listed in the scoping memo is contrary to the Commission's past treatment of these subjects, inconsistent with case law addressing the Commission's duty to conform to statutory scoping procedures, and at odds with

the Legislative policy implicit in the statutory scheme. Moreover, the Commission's Answer fails to provide any support for its claim that these subjects are "inextricably linked" that survives critical analysis. Thus, it is evident that the Commission issued a decision with very substantial effects addressing a topic not covered by any relevant scoping memo, in violation of its statutory obligations and its own rules. Accordingly, this Court should grant CWA's Petition to afford CWA its only opportunity for relief and proceed to consider a remedy sufficient to correct the Commission's error.

Dated: March 28, 2022

Respectfully submitted,

NOSSAMAN LLP

Martin A. Mattes
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By: */s/ Martin A. Mattes* _____
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***Attorneys for California Water Association***

**CERTIFICATE OF WORD COUNT**

**(Cal. Rules of Court, Rules 8.204, 8.504, 8.486)**

The text of the Reply consists of 7,797 words (including its footnotes), as counted by the Microsoft Word word-processing program used to generate the document.

Dated: March 28, 2022

Respectfully submitted,

NOSSAMAN LLP

By: /s/ Martin A. Mattes _____
Martin A. Mattes

***Attorneys for California Water Association***

**LIST OF DOCUMENT EXCERPTS INCLUDED IN CONCURRENTLY FILED APPENDIX**

The Appendix concurrently filed with this reply includes as exhibits true and correct excerpts (except Exhibits V and W, which are included in their entirety) from the following documents, all of which were issued or filed in the Commission's Rulemaking 17-06-024 (except as specified for Exhibits V through DD below):

V. California Public Utilities Commission Rules of Practice and Procedure, 20 Cal. Code Reg., Div. 1, ch. 1, § 1.3 ("Rule 1.3")

W. California Public Utilities Commission Rules of Practice and Procedure, 20 Cal. Code Reg., Div. 1, ch. 1, § 7.6 ("Rule 7.6")

X. *Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities*, Investigation 07-01-022, D.08-02-036 (February 28, 2008)

Y. *Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities*, Investigation 07-01-022, D.08-08-030 (August 21, 2008)

Z. *Order Instituting Rulemaking on the Commission's Own Motion into Addressing the Commission's Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for Class A and Class B Water Utilities,* Rulemaking 11-11-008, Decision 16-12-026 (December 9, 2016)

AA. *Order Instituting Investigation to Consider Policies to Achieve the Commission's Conservation Objectives for Class A Water Utilities*, Investigation 07-01-022, Assigned Commissioner's Ruling and Scoping Memo (March 8, 2007)

BB. *Application of California-American Water Company (U210W), California Water Service Company (U60W), Golden State Water Company (U133W), Park Water Company (U314W) and Apple Valley Ranchos Water*

*Company (U346W) to Modify D.08-02-036, D.08-06-002, D.08-08-030, D.08-09-026, D.08-11-023, D.09-05-005, D.09-07-021, and D.10-06-038 regarding the Amortization of WRAM-related Accounts*, Application 10-09-017, Assigned Commissioner and Administrative Law Judge's Ruling and Scoping Memo (June 8, 2011)

CC. *Order Instituting Rulemaking on the Commission's Own Motion into Addressing the Commission's Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for the Multi-District Water Utilities of: California-American Water Company (U210W), California Water Service Company (U60W), Del Oro Water Company, Inc. (U61W), Golden State Water Company (U133W), and San Gabriel Valley Water Company (U337W)*, Rulemaking 11-11-008, Assigned Commissioner's Third Amended Scoping Memo and Ruling Establishing Phase II (April 30, 2015)

DD. *In the matter of the Application of the Golden State Water Company (U133W) for an order authorizing it to increase rates for water service by $58,053,200 or 21.4% in 2013, by $8,926,200 or 2.7% in 2014; and by $10,819,600 or 3.2% in 2015*, Application 11-07-017, Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (November 2, 2011)

EE. Comments of California-American Water Company on the Proposed Decision of Commissioner Guzman Aceves, (July 27, 2020)

FF. Comments of California Water Service Company (U 60 W) on the Proposed Decision of Commissioner Guzman Aceves, (July 27, 2020)

GG. Comments of Golden State Water Company (U 133 W) on Proposed Decision and Order (July 27, 2020)

HH. Joint Comments of Liberty Utilities (Park Water) Corp. (U 314-W) and Liberty Utilities (Apple Valley Ranchos Water) Corp. (U 346-W) on the Proposed Decision (July 27, 2020)

## DECLARATION OF SERVICE

*California Water Association*

*v.*

*Public Utilities Commission of the State of California*

I, Sonia Ortiz, hereby declare that I am a citizen of the United States, am over 18 years of age, and am not a party in the above-entitled action. I am employed in the City and County of San Francisco, State of California. I am over the age of eighteen and my business address is 50 California Street 34th Floor, San Francisco CA 94111.

On March 28, 2022, I served the following document(s):

1. **REPLY TO ANSWER TO PETITIONS FOR WRIT OF REVIEW**

2. **APPENDIX OF EXHIBITS VOLUME II TO REPLY TO ANSWER TO PETITIONS FOR WRIT OF REVIEW**

**VIA FEDERAL EXPRESS**: by placing copies of the documents listed above in envelopes designated as FedEx Express–Overnight Delivery and addressed to the persons as set forth below.

Christine Jun Hammond, General Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102-3214

Rachel Peterson, Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102-3214

I am readily familiar with the firm's business practice for collection and processing of correspondence for delivery by FedEx Express–Overnight Delivery. On the same day, as referenced above, correspondence is placed for collection by FedEx Express–Overnight Delivery, with whom we have a direct billing account for payment of said delivery, to be delivered to the office of the addressees as set forth below on the next business day.

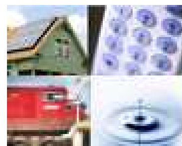
**VIA ELECTRONIC MAIL**: by transmitting an electronic mail message to each of the parties identified on the below Service List, through their attorneys of record as identified by the service list and corresponding email list provided in proceeding R.17-06-024 before the California Public Utilities Commission and/or as directed by the party(ies) and/or as directed by the California Rules of Court and Public Utilities Code. That email provided a link to an FTP site where the documents have been made available. Additionally, I stated in my email that if the recipient requested a physical copy of the documents my office would provide one.

I declare under the penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this Declaration of Service was executed on March 28, 2022 in San Francisco, California.

/s/ Sonia Ortiz
Sonia Ortiz

## SERVICE LIST

See attached service list from California Public Utilities Commission and list of email addresses



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Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 3/28/2022 by M. Chang, Deputy Clerk

**STATE OF CALIFORNIA**
Supreme Court of California

# *PROOF OF SERVICE*

**STATE OF CALIFORNIA**
Supreme Court of California

Case Name: **CALIFORNIA-AMERICAN WATER COMPANY v. PUBLIC UTILITIES COMMISSION**
Case Number: **S271493**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **whon@nossaman.com**

3. I served by email a copy of the following document(s) indicated below:

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| REPLY TO ANSWER TO PETITION FOR REVIEW | 2022-03-28 CWA Reply to Answer to Petitions for Writ of Review S271493 |
| ADDITIONAL DOCUMENTS | 2022-03-28 Appendix of Exhibits Volume II to CWA Reply to Answer to Petitions for Writ of Review S271493.PDF |

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

3/28/2022

Date

/s/Willis Hon

Signature

Hon, Willis (309436)

Last Name, First Name (PNum)

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